

Sheku Bayoh Inquiry
Inventory of evidence about race
Inquiry hearing 5, PIRC PIM, Cause of Death and written evidence

Contents

| | |
|---|-----------|
| 1. Introduction | 4 |
| 1.1 General comments | 4 |
| 1.2 Commonly used terms or acronyms | 4 |
| 1.3 Chronology of events following contact at Hayfield Road between Mr Bayoh and officers from Police Scotland on 3 May 2015 | 5 |
| 2. Race generally | 24 |
| 2.1 Investigators | 24 |
| 2.2 Others | 26 |
| 2.3 The Equality Act 2010 | 27 |
| 3. PIRC investigators' previous investigations involving black people or the black community | 29 |
| 4. Training | 31 |
| 4.1 Equality and Diversity | 31 |
| 4.2 Unconscious bias | 32 |
| 4.3 Investigations of discriminatory treatment | 33 |
| 4.4 PIRC investigations following deaths | 33 |
| 5. Use of language to describe Mr Bayoh | 35 |
| 6. Conduct of the inquiry by PIRC | 37 |
| 6.1 General | 37 |
| 6.2 Reliance on initial accounts by Police Scotland | 37 |
| 6.3 Deployment of family liaison officers | 41 |
| 6.4 Family liaison strategy | 42 |
| 6.5 Lines of inquiry followed | 43 |
| 6.5.1 House- to-house enquiries | 43 |
| 6.5.2 Altercation between Mr Bayoh and PC Short | 44 |
| 6.5.3 Drug use by Mr Bayoh | 45 |
| 6.6 Securing evidence | 45 |
| 6.6.1 General | 45 |
| 6.6.2 Hayfield Road | 46 |
| 6.6.3 Victoria Hospital, Kirkcaldy | 48 |
| 6.6.4 PC Short and CS/PAVA spray cannisters | 51 |
| 6.6.5 Kirkcaldy Police Office | 52 |

| | | |
|-------------|---|-----------|
| 6.6.6 | House to House Enquiries | 53 |
| 6.6.7 | The Knife at Hayfield Road | 55 |
| 6.6.8 | Post Mortem | 55 |
| 6.7 | Collating witness evidence | 56 |
| 6.7.1 | General..... | 56 |
| 6.7.2 | Use of CS/PAVA Spray..... | 59 |
| 6.8 | Categorisation of attending officers as witnesses rather than suspects | 60 |
| 6.9 | Approach to identifying, selecting and instructing expert witnesses .. | 62 |
| 6.9.1 | General..... | 62 |
| 6.9.2 | CV's / criteria for selection of experts..... | 62 |
| 6.9.3 | Independence of expert witnesses | 65 |
| 6.9.4 | Training in selection of expert witnesses | 65 |
| 6.9.5 | Instructing the experts | 65 |
| 6.10 | Consideration by PIRC of race as a factor..... | 66 |
| 6.11 | The effectiveness of “treating everyone the same” as a means of | |
| | avoiding race discrimination | 69 |
| 7. | Identification of Mr Bayoh..... | 69 |
| 7.1 | Practice in Place..... | 69 |
| 8. | Post Mortem | 70 |
| 8.1 | Identification of Mr Bayoh | 70 |
| 8.1.1 | PIRC’s perspective | 70 |
| 8.1.2 | Mr Bayoh’s family’s perspective..... | 72 |
| 8.1.3 | COPFS’s perspective | 73 |
| 8.2 | Arrangements for the post mortem | 74 |
| 8.3 | The post mortem | 81 |
| 8.4 | Notification of the Sierra Leone High Commission..... | 82 |
| 8.5 | Impact of the post mortem on Mr Bayoh’s family | 82 |
| 9. | Treatment of family and friends | 83 |
| 9.1 | Delivery of the death message..... | 83 |
| 9.1.1 | To Collette Bell..... | 83 |
| 9.2 | Contact with PIRC and FLOs..... | 84 |
| 9.2.1 | General..... | 84 |
| 9.2.2 | After the post mortem | 85 |
| 9.3 | Family relationship with PIRC | 88 |
| 9.3.1 | General..... | 88 |
| 9.3.2 | Meeting on 3 September 2015 | 89 |

| | | |
|----------------|---|-----|
| 9.4 | Seizure and search of houses | 92 |
| 9.4.1 | Mr Bayoh and Ms Bell's address | 92 |
| 9.5 | Zahid Saeed | 93 |
| 9.6 | Dick and MacLeod | 93 |
| 9.7 | Database searches | 94 |
| 10. | Media | 99 |
| 10.1 | Decisions made in relation to media briefings | 99 |
| 11. | Lines of accountability, data monitoring and quality assurance | 104 |
| 11.1 | Lines of accountability | 104 |
| 11.2 | Data monitoring..... | 105 |
| 11.3 | Quality assurance | 106 |
| Annex 1 | – List of Witnesses | 108 |

1. **Introduction**

1.1 **General comments**

This document collects and summarises relevant evidence relating to race, taken from Inquiry hearing evidence, statements and other evidence provided to the Inquiry.

When referred to, “the attending officers” are the nine response officers who attended Hayfield Road while Mr Bayoh was also there. They are PCs Alan Paton¹, Craig Walker, Nicole Short², Ashley Tomlinson, Alan Smith, Kayleigh Good, Daniel Gibson, James McDonough, and Sergeant Scott Maxwell.

A table setting out the witnesses referred to and a brief summary of their role in events referred to in this Inventory has been added in Annex 1.

1.2 **Commonly used terms or acronyms**

ACR means Area Control Room.

Airwave means the secure private mobile radio communications network used by Police Scotland to communicate securely with each other whilst on duty.

ARV means Armed Response Vehicle.

CAAPD means the Criminal Allegations Against the Police Division of COPFS

COPFS means the Crown Office and Procurator Fiscal Service

Critical Incident means any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or the community. Such resources required to deal with the incident will be re-deployed by the police as necessary. The most senior officer within Police Scotland is also made aware of the incident.

FLO means Family Liaison Officer. They are specially trained officers or investigators who can provide a two-way flow of information between bereaved families and investigation teams. The primary role of a Family Liaison Officer is that of an investigator who will gather evidence and information from the family to contribute to the investigation.

Gold Group means the group of police officers responsible for delivering the strategic, tactical and operational response to an incident.

Gold Group Meeting means a meeting of the Gold Group convened by the police officer who has overall strategic command of the investigation to initially set the overarching strategy that all other plans should take account of. Roles are allocated

¹ Alan Paton has now retired from Police Scotland

² Nicole Short has now retired from Police Scotland

to officers within the Gold Group in order to contribute towards the overarching strategy. Officers within the Gold Group may have to develop individual strategies for their particular area of responsibility to implement and support the overarching Gold Group strategy. Subsequent Gold Group Meetings can be arranged to monitor progress in relation to the overall strategy.

KPO means Kirkcaldy Police Office

MIT means the Major Incident Team

PIM means Post Incident Manager

PIP means Post Incident Procedure

PIRC means the Police Investigations and Review Commissioner. The Commissioner is appointed by Scottish Ministers.

SFIU means the Scottish Fatalities Investigation Unit within COPFS

SIO means Senior Investigating Officer

SPF means Scottish Police Federation

SPOC means the Single Point of Contact identified as the representative of Mr Bayoh's family through whom information will be provided by PIRC

SOP means Standard Operating Procedure

1.3 Chronology of events following contact at Hayfield Road between Mr Bayoh and officers from Police Scotland on 3 May 2015

This chronology is based upon the PIRC Chronology³ and is provided for context to assist the reader to navigate the body of the inventory which follows.

3 May 2015

At approximately 09:25 Superintendent Craig Blackhall of Police Scotland Professional Standards Department contacted Mr David Green (Head of SFIU and on call that day)⁴. Mr Green instructed that the death would be investigated by PIRC while the preceding events would be investigated by Police Scotland.⁵

At 09:35 Mr Green contacted Deputy Senior Investigator Keith Harrower. Mr Green told Deputy Senior Investigator Harrower that police had attended the area following reports that a 'black male', in possession of a knife, was causing a serious disturbance. Deputy Senior Investigator Harrower noted the description of events as follows: "Report was of a black male with a knife above his head causing a serious disturbance (full location unknown at present), male and female uniformed officers attend locus.

³ SBPI-00430

⁴ 90/30/11 to 90/30/19

⁵ SBPI-00227 page 4, para 3

Challenge male, fight takes place during which CS and baton used. Eventually placed in police vehicle and he subsequently collapses. Paramedics attend scene and do CPR. Taken to Kirkcaldy Royal Infirmary and dies at [09:04]"⁶. Deputy Senior Investigator Harrower in his statement states "Mr Green directed me, on behalf of PIRC, to carry out an independent investigation into the circumstances surrounding the death of the man. He informed me that formal written confirmation of his direction would be forwarded at a later stage."⁷

No formal instructions were sent but were intended to follow 'in due course'.⁸

At 10:01 Deputy Senior Investigator Harrower contacted Superintendent Blackhall. Superintendent Blackhall provided Deputy Senior Investigator Harrower with a summary of the circumstances of the incident involving Mr Bayoh and were noted by Deputy Senior Investigator Harrower as follows: "About [07:00] a number of calls to Police Scotland regarding African male armed with a knife in town centre of Kirkcaldy. Suspect makes run at female police officer and assaults her. Suspect is CS'd but this has little effect and he laughs. Suspect struck with baton at least once. A number of police officers attended the locus. Suspect was unconscious on the ground. CPR done by police and then by paramedics short time later"⁹.

At 10:10 Deputy Senior Investigator Harrower contacted Senior Investigator Richard Casey and made him aware of the incident.¹⁰ Senior Investigator Casey noted the description of events as follows: "7am this morning black male swinging a knife above his head in Kirkcaldy Town Centre. Craig Blackhall now speaking to Keith. Male and Female Uniform attend, stop and out challenge, guy runs at PW punches her, mellee, CS'd & baton..... collapse state of unconsciousness, CPR, Paramedics. 9:04 extinct"¹¹. Deputy Senior Investigator Harrower also contacted other PIRC investigators to make them aware of the incident and to ask them to attend a briefing at PIRC's offices.¹²

Senior Investigator Casey telephoned Head of Investigations Irene Scullion to make her aware of the incident and to ensure that the Commissioner, Kate Frame, was informed. Head of Investigations Scullion called the Commissioner.¹³

At 10:22, Detective Superintendent Patrick Campbell was contacted by telephone by Deputy Senior Investigator Harrower who confirmed that the status of the attending officers involved in the incident was as witnesses. Detective Superintendent Campbell informed Deputy Senior Investigator Harrower that the locus was Hayfield Road in

⁶ PIRC-01468: Deputy Senior Investigator Harrower Operational Notes – page 3

⁷ PIRC-00007: Deputy Senior Investigator Harrower statement; PIRC-01468: Deputy Senior Investigator Harrower Operational Notes

⁸ PIRC-03694: PIRC Briefing Document Death in Custody 3 May 2015; PIRC-00002: PIRC Report (Vol 1) 8.2, page 113; PIRC-01468: Deputy Senior Investigator Harrower Operational Notes; PIRC-00007: Deputy Senior Investigator Harrower statement

⁹ PIRC-01468: Deputy Senior Investigator Harrower Operational Notes - page 3

¹⁰ PIRC-00007: Deputy Senior Investigator Harrower statement; PIRC-00381: Senior Investigator Casey statement

¹¹ PIRC-04528: Senior Investigator Casey Notebook – page 1

¹² PIRC-01468: Deputy Senior Investigator Harrower Operational Notes; PIRC-00036: Investigator McGuire statement

¹³ SBP-00414: Head of Investigations Scullion Inquiry statement

Kirkcaldy, that the deceased was believed to be Mr Bayoh, who had been reported missing by his partner, Ms Collette Bell.¹⁴ Deputy Senior Investigator Harrower confirmed that PIRC would lead the investigation.¹⁵ Deputy Senior Investigator Harrower also sought assurance from Detective Superintendent Campbell that the locus at Hayfield Road was secure and that Mr Bayoh's body was secure at the hospital¹⁶. Deputy Senior Investigator Harrower noted the circumstances described to him by Detective Superintendent Campbell as follows: "Summary of Circumstances: 07:14: Call from named reporter re African man in Hendry Road, Kirkcaldy. The male is chasing cars with a knife.

07:15: Second reporter states male is jumping out in front of cars.

07:15: Reporter states male with knife. Hayfield Road. 3 marked police vehicles and 1 unmarked car responded. Male appears in front of them. He runs towards them with knife. Batons pulled out and CS deployed. Initial reports are that CS does not take effect. Officer strikes man with batons. The male punches female on side of head. He is subdued and taken to the ground, handcuffed and leg restraints used. During struggle male becomes unconscious. Ambulance attends [07:30]. Male is not breathing and CPR given by officers.

07:32: Ambulance arrives and crew take on CPR

07:38 Male taken into ambulance and taken to Kirkcaldy Royal Infirmary.

09:04: Life Pronounced Extinct. Extinct Body moved from resuscitation room to side room of A&E"¹⁷.

At 11:30 Police Scotland held a Gold Group meeting at Kirkcaldy Police Office, chaired by Assistant Chief Constable Ruaraidh Nicolson. No PIRC investigators were present at this meeting.¹⁸

At 11:55 there was a PIRC meeting at PIRC's offices in Hamilton in which Deputy Senior Investigator Harrower provided a briefing to PIRC Senior Investigator Casey, and Investigators John Ferguson, Garry Sinclair, Alex McGuire, Maurice Rhodes and Stuart Taylor.¹⁹ With the exception of Senior Investigator Casey, who remained in Hamilton, PIRC's investigators left PIRC's offices following the briefing to travel to Kirkcaldy²⁰. Investigator McGuire notes a synopsis of the briefing given by Deputy Senior Investigator Harrower as follows: "there had been an incident in Kirkcaldy where there were reports of a black man running about Hayfield Road with a knife. He was running between cars causing mayhem. A number of calls had been received of a similar nature/ circumstances. Police Officers had attended and upon their arrival at the locus encountered the suspect who ran at a female police officer and attacked her wielding the knife. CS had been discharged with no effect. The suspect was struck several times with police batons. There was no blood at the locus. There was a rumpus on the ground where the suspect was eventually handcuffed and leg restraints were applied. The suspect then became unconscious. An ambulance was summoned and

¹⁴ PIRC-00007: Deputy Senior Investigator Harrower statement

¹⁵ PIRC-00212 Detective Superintendent Campbell statement

¹⁶ SBPI-00382: Deputy Senior Investigator Harrower Inquiry statement

¹⁷ PIRC-01468: Deputy Senior Investigator Harrower Operational Notes – page 4

¹⁸ PS06491: Gold Group Meeting – 1130 hours

¹⁹ PIRC-00007: Deputy Senior Investigator Harrower statement; PIRC-00381: Senior Investigator Casey statement; PIRC-00309: Investigator Sinclair statement; PIRC-00036: Investigator McGuire statement; PIRC-00358: Trainee Investigator Taylor statement; Investigator Rhodes statement; PIRC-00363: Investigator Ferguson statement

²⁰ PIRC-00358: Trainee Investigator Taylor statement

CPR was started. An ambulance arrived at [07:30] and he was removed by ambulance to hospital where at 09:04 he was pronounced life extinct by medical staff. He had been removed from the main resuscitation area into a side room”²¹.

At around 12:30 Deputy Senior Investigator Harrower spoke by telephone with Mr Green. Deputy Senior Investigator Harrower provided an update on the incident. Mr Green wished to see the press release and ‘prefers an early PM.’²² Mr Green clarified that ‘PIRC should investigate the direct interaction between the now deceased and the police and the events thereafter.’²³

At around 12:40, Deputy Senior Investigator Harrower spoke to Detective Superintendent Campbell and informed him again that he considered the position of the attending officers to be that of witnesses. Deputy Senior Investigator Harrower asked Detective Superintendent Campbell to confirm that the attending officers’ footwear was being taken.²⁴

At around 13:05, Deputy Senior Investigator Harrower received a call from Mr Green. Mr Green informed Deputy Senior Investigator Harrower that he was arranging for a post-mortem examination to be carried out by two doctors. Deputy Senior Investigator Harrower gave his opinion that it would be impracticable for the post-mortem to take place on 3 May 2015.²⁵

At around 13:30, PIRC’s investigators arrived at Kirkcaldy Police Office.²⁶ Deputy Senior Investigator Harrower met with Detective Superintendent Campbell.²⁷ Detective Chief Superintendent Lesley Boal was also in attendance.²⁸ Investigators Sinclair and Rhodes were tasked with managing the scene at Hayfield Road and Investigators Ferguson and Taylor were tasked with managing the scene at Victoria Hospital, together with the recovery of Mr Bayoh’s body.²⁹ Both scenes were to be managed in conjunction with a Police Scotland Scene Manager.³⁰

At 14:01, an email was sent from Senior Investigator Casey to Mr Green discussing a proposed media release.³¹

At approximately 14:05, Deputy Senior Investigator Harrower attended a Gold Group meeting chaired by Assistant Chief Constable Nicolson.³² Also in attendance were Chief Superintendent Garry McEwan, Detective Chief Superintendent Boal, Detective

²¹ PIRC-00036: Investigator McGuire statement page 2

²² PIRC 01468: Deputy Senior Investigator Harrower Operational Notes

²³ PIRC-00007: Deputy Senior Investigator Harrower statement

²⁴ PIRC-00007: Deputy Senior Investigator Harrower statement

²⁵ PIRC-00007: Deputy Senior Investigator Harrower statement

²⁶ PIRC-00007: Deputy Senior Investigator Harrower statement; PIRC-00309: Investigator Sinclair statement

²⁷ PIRC-00007: Deputy Senior Investigator Harrower statement

²⁸ PS00669: Detective Chief Superintendent Lesley Boal statement

²⁹ PIRC-00007: Deputy Senior Investigator Harrower statement; PIRC-00309: Investigator Sinclair statement; PIRC-00363: Investigator Ferguson statement; PIRC-00324: Investigator Rhodes statement; PIRC-00358: Trainee Investigator Taylor statement

³⁰ PIRC-00007: Deputy Senior Investigator Harrower statement; PIRC-00358: Trainee Investigator Taylor statement

³¹ COPFS-03869

³² PS07268: Gold Meeting Minutes 3rd May 2015 1540hrs

Superintendent Campbell, Detective Chief Inspector Stuart Houston, Chief Inspector Nicola Shepherd, Detective Inspector Colin Robson, Kate Findlay (media), Detective Chief Inspector Keith Hardie and Investigator Ferguson. Deputy Senior Investigator Harrower confirmed to those present that PIRC considered the attending officers to be witnesses and requested operational statements from them. Deputy Senior Investigator Harrower also informed Police Scotland that PIRC would only be dealing with the scenes at Hayfield Road and Victoria Hospital, not the scenes for the period prior to Mr Bayoh's arrival at Hayfield Road.³³

At approximately 15:15, Deputy Senior Investigator Harrower and other PIRC investigators met with Detective Chief Inspector Houston concerning scene management and forensic issues. Deputy Senior Investigator Harrower requested that PC Short's head injury be photographed, and that the PAVA / CS sprays be weighed.³⁴

At approximately 15:15, Detective Superintendent Campbell informed Deputy Senior Investigator Harrower that the attending officers had been advised by a SPF representative not to provide witness statements. Deputy Senior Investigator Harrower asked Detective Superintendent Campbell to inform the representative that he would be willing to meet with them to clarify the attending officers' status as witnesses. No such meeting took place.³⁵

Between 15:30 and 21:05, clothing, footwear and officer safety equipment was seized from the attending officers involved in the arrest of Mr Bayoh.³⁶

At 15:40 Deputy Senior Investigator Harrower received a call from Mr Green confirming arrangements for a post-mortem examination to be carried out commencing at 12:00 the next day (Monday 4 May).³⁷

At 16:40 a forensic strategy meeting took place between PIRC investigators and Detective Chief Inspector Houston.³⁸ Detective Chief Inspector Houston chaired this meeting.³⁹

At about 17:35, Detective Constable Brian O'Neill was introduced to PIRC Investigator Sinclair, who confirmed that PIRC had primacy for the investigation and that he would oversee DC O'Neill's role as Crime Scene Manager for Hayfield Road.⁴⁰

At 18:00 there was a meeting at Kirkcaldy Police Office between Investigators Ferguson and Taylor, Crime Scene Manager Detective Constable Peter Grady and

³³ PIRC-00007: Deputy Senior Investigator Harrower statement

³⁴ PIRC-00007: Deputy Senior Investigator Harrower statement; Investigator Sinclair statement

³⁵ PIRC-00007: Deputy Senior Investigator Harrower statement

³⁶ PIRC-00190: Inspector Jane Combe statement; PS00935: Detective Constable Bellingham statement

³⁷ PIRC-00007: Deputy Senior Investigator Harrower statement

³⁸ PS01298: Forensic statement meeting minutes; PIRC-00007: Deputy Senior Investigator Harrower statement; PIRC-01468: Deputy Senior Investigator Harrower Operational Notes; PIRC-00309: Investigator Sinclair statement

³⁹ PS00669: Detective Chief Superintendent Boal statement; PS17896: Forensic Strategy Meeting Agenda

⁴⁰ PIRC-00129: Detective Constable O'Neill statement; PIRC-00309: Investigator Sinclair statement

SPA Scene Examiners Gordon Young and Judith Harley.⁴¹ The forensic strategy was discussed regarding the joint recovery of evidence from Mr Bayoh. Clarification was sought by Investigator Ferguson in relation to cultural considerations in the post-mortem. DC Grady discussed this with COPFS. Investigator Ferguson states: “This resulted in the agreement that the recovery would be sensitively carried out and further discussion may be required at the mortuary with the Pathologist. The matter was [COPFS] directed and there was nothing that would impinge on the recovery of evidence at this time”⁴²

At about 19:10, Investigators Ferguson and Taylor, Detective Constable Grady and SPA Scene Examiners Young and Harley attended at Victoria Hospital, Kirkcaldy;⁴³ Detective Constables Ryan Balsillie and Andrew Brown were relieved at about 19:30.⁴⁴ Investigator Ferguson queried why Detective Constables Balsillie and Brown were not forensically dressed, and was told that they had not had the necessary equipment made available to them. Detective Constables Balsillie and Brown advised Investigator Ferguson that a number of productions, comprising boots, clinical waste and four samples of blood, were within the room with Mr Bayoh’s body. Investigators Ferguson and Taylor, DC Grady and SPA Scene Examiners Young and Harley, all of whom were forensically dressed, entered the room and found that the productions, while contained in individual bags, were not labelled and the bags were not sealed. Evidential photographs of Mr Bayoh’s body were taken by the SPA Scene Examiners.⁴⁵ There was a full forensic recovery of samples of blood and clothing, including footwear. A record was made of the position of the deceased and the clothing worn.

At about 19:20, Investigators Sinclair and Rhodes attended the scene at Hayfield Road.⁴⁶

At about 20:15, a third Police Scotland Gold Group meeting took place, again chaired by Assistant Chief Constable Nicolson.⁴⁷ Deputy Senior Investigator Keith Harrower was present at that meeting.⁴⁸

During the course of the meeting Chief Superintendent McEwan indicated that Mr Bayoh’s family had articulated significant concerns over information disclosed to them by representatives of Police Scotland. Additionally, in the course of the meeting it became apparent to Deputy Senior Investigator Harrower that “Police Scotland FLOs had not been deployed as previously intended, and that Chief Superintendent McEwan and others considered it inappropriate to do so”.⁴⁹ Deputy Senior Investigator Harrower’s notes from the meeting record that ‘[Family] Not happy with disclosure of information by the police. Family think relative murdered. Have distrust of local officers’.⁵⁰

⁴¹ PIRC-00363: Investigator Ferguson statement; PIRC-00358: Trainee Investigator Taylor statement

⁴² PIRC-00363: Investigator Ferguson statement

⁴³ PS00778: Detective Constable Grady statement; PIRC-00358: Trainee Investigator Taylor statement

⁴⁴ PIRC-00058: Detective Constable Balsillie

⁴⁵ PIRC-00363: Investigator Ferguson statement

⁴⁶ PIRC-00309: Investigator Sinclair statement

⁴⁷ PS03139: Gold Group Meeting Minutes – 2015 hours

⁴⁸ PIRC-00007: Deputy Senior Investigator Harrower statement

⁴⁹ PIRC-00007: Deputy Senior Investigator Harrower statement

⁵⁰ PIRC-01468: Deputy Senior Investigator Harrower Operational Notes

At approximately 21:30, a search of the grass area, public footpath and public roadway at Hayfield Road was commenced by Police Scotland search advisors (POLSA). This was under the direction of Investigator Sinclair. The street drains at the incident scene were emptied by Scottish Water then searched. Other areas (bushes area; gardens and hedges of nearby properties) were not searched at that time due to low levels of light.⁵¹

At 21:45, Deputy Senior Investigator Harrower spoke to Mr Adeyemi Johnson by telephone and arranged to see him and other members of Mr Bayoh's family at Mr Johnson's home.⁵²

At 22:10, Deputy Senior Investigator Harrower, accompanied by Investigator McGuire, visited the home of Mr Adeyemi and Mrs Kadijartu Johnson, where he spoke to approximately sixteen family members. Deputy Senior Investigator Harrower states that he outlined the role of the PIRC in undertaking an independent investigation. He informed the family that a post-mortem examination had been arranged for the following day and requested that two family members attend for identification purposes. It was apparent to Deputy Senior Investigator Harrower that the family were extremely upset at the information that had been communicated to them by Police Scotland and intimated that they intended to make a complaint regarding this.⁵³

Mrs Johnson recalls telling Deputy Senior Investigator Harrower that Mr Bayoh's mother was in London; that she was going to be travelling up from London on Monday 4 May 2015; and that it would be arranged for members of the family to identify Mr Bayoh.⁵⁴ Deputy Senior Investigator Harrower later stated: "no members of the family were willing to do the identification until family members, including the deceased's mother, came to Kirkcaldy".⁵⁵

Investigator McGuire's notebook records that PIRC's investigators were informed by Mr Bayoh's family during this meeting that they had been told conflicting stories by the police.⁵⁶

At about 22:30, undertakers attended by arrangement, and took Mr Bayoh's body by private ambulance to Edinburgh City Mortuary. Investigators Ferguson and Taylor followed the ambulance to the mortuary "keeping it in sight at all times"⁵⁷.

At around 23:35, Deputy Senior Investigator Harrower made a call to Mr Green and "made him aware of the family decision not to carry out the identification of the now deceased". Mr Green instructed that the post-mortem examination would go ahead as scheduled and alternative arrangements for identification of the body would be made.⁵⁸

⁵¹ PIRC-00002: PIRC Report Vol. 1

⁵² PIRC 00007: Deputy Senior Investigator Harrower Statement

⁵³ PIRC-00007: Deputy Senior Investigator Harrower statement

⁵⁴ PIRC-00252: Mrs Johnson statement

⁵⁵ PIRC 00007: Deputy Senior Investigator Harrower Statement

⁵⁶ PIRC-04184: Investigator McGuire notebook

⁵⁷ PIRC-00358: Trainee Investigator Taylor statement; PIRC-00363: Investigator Ferguson statement; PIRC-04198: Trainee Investigator Taylor notebook – page 5

⁵⁸ PIRC 00007: Deputy Senior Investigator Harrower Statement

At around 23:40, the search of the grass area, the public footpath and the public roadway undertaken by Police Scotland search advisors (POLSA) was stood down.⁵⁹

At around 23:45, Deputy Senior Investigator Harrower spoke to Detective Superintendent Campbell regarding the identification of Mr Bayoh's body prior to the post-mortem.⁶⁰

A PIRC summary of events prepared by Deputy Senior Investigator Harrower during the course of 3 May states that the family: "... refused collectively for any member of the family to attend the post-mortem to identify the body as they are waiting for relatives and 'Elders' to attend from England. Clearly, this raises significant issues ... The [Senior Investigating Officer] and Mr Green were made aware of these issues. However, Mr Green intends to progress with the post-mortem as arranged and will make alternative arrangements through the [Senior Investigating Officer] to have officers identify the body. Mr Green was made aware that attempts would be made to discuss matters further with the family in the morning to seek a resolution."⁶¹

4 May 2015

At 08:30 there was a briefing at the PIRC office in Hamilton.⁶² Deputy Senior Investigator William Little was appointed the lead investigator.⁶³ Investigators Alistair Lewis⁶⁴ and John Clerkin were appointed as Family Liaison Officers.⁶⁵ Investigator Sinclair was appointed as Production Officer.⁶⁶ Deputy Senior Investigator Brian Dodd was tasked with co-ordinating the house-to-house enquiry teams.⁶⁷

Deputy Senior Investigator Little records in his notebook that he has been appointed to investigate the death of a man believed to be Mr Bayoh at "Kirkcaldy Victoria Hospital after being arrested". The terms of reference are noted as being 's.33(A) Police Public Order and Criminal Justice (Scot) Act 2006 to investigate interaction between the police and the deceased and the events thereafter.'⁶⁸

At around 10:30 Deputy Senior Investigator Harrower contacted Mr Johnson by telephone: "I confirmed with him that COPFS had confirmed that the post-mortem examination would go ahead as scheduled, however he reiterated that the family were not willing to attend to carry out the identification of the body. I also asked Mr Johnson if he would be willing to meet with myself and Investigator Lewis, who had been given duties to act as the FLO. He declined this invitation and told me that he had engaged a solicitor...to act on behalf of the family and who would contact PIRC in due course."⁶⁹

⁵⁹ PS17853: Scene Entry Log Hayfield Road

⁶⁰ PIRC-01468: Deputy Senior Investigator Harrower Operational Notes; SBPI-00382: Keith Harrower Inquiry statement

⁶¹ PIRC-03694: PIRC Briefing Document Death in Custody 3 May 2015

⁶² PIRC-04156: Operation Quoich Morning Briefing Minutes

⁶³ PIRC-00370: Deputy Senior Investigator Little statement

⁶⁴ Alistair Lewis was promoted to Deputy Senior Investigator prior to giving his evidence to the Inquiry

⁶⁵ PIRC-00341: Investigator Lewis statement

⁶⁶ PIRC-00309: Investigator Sinclair statement

⁶⁷ PIRC-04156: Operation Quoich Morning Briefing Minutes

⁶⁸ PIRC-04200: Deputy Senior Investigator Little's notebook

⁶⁹ PIRC 00007: Deputy Senior Investigator Harrower Statement

Deputy Senior Investigator Harrower was informed later on 4 May 2015 by Investigator Lewis that Mr Aamer Anwar would represent Mr Bayoh's family.⁷⁰

At approximately 10:40 there was a FLO meeting between Deputy Senior Investigator Little and Investigators Lewis and Clerkin.⁷¹

On the morning of 4 May 2015, Head of Investigations Scullion informed Director of Investigations, John Mitchell, in relation to the incident involving Mr Bayoh.⁷²

At 12:00 (until 17:50) a post-mortem examination of the deceased was undertaken at Edinburgh City Mortuary by Dr Kerryanne Shearer and Dr Ralph Bouhaidar, pathologists. Deputy Senior Investigator Little, Senior Investigator Casey, and Investigators Ferguson and Taylor were in attendance.⁷³

Investigator Ferguson briefed the pathologists on the circumstances known at that time including that CS / PAVA spray had been used against the deceased and that there was possible blunt force trauma, as information had been provided by Police Scotland that batons may have been used on Mr Bayoh.⁷⁴

Investigator Taylor states that he and Investigator Ferguson had a meeting with Dr Shearer around 12:30 where cultural issues were discussed as "deceased believed to be Muslim". A note created following the post-mortem states: "The area of cultural issues was highlighted with Detective Chief Inspector Hardie confirming that the deceased was Muslim, again the pathologist were happy to proceed after being advised by Mr Ablett that the investigation would take precedent [*sic*]. It was agreed that the hair samples would be taken discreetly from an area at the rear of his head at the neckline of the deceased."⁷⁵

At around 12:35, Deputy Senior Investigator Little received a telephone call from Assistant Chief Constable Nicolson. Assistant Chief Constable Nicolson had some concerns regarding the handover of the investigation from Police Scotland to the PIRC, in particular whether it could be viewed that Police Scotland were still dealing with the incident. Deputy Senior Investigator Little assured him that arrangements were being made for the handover in line with the terms of reference and that Detective Superintendent Campbell was fully aware that PIRC were the sole investigators of the interaction between the deceased and the police.⁷⁶

At 14:30, Investigators Lewis and Clerkin met with Detective Constable Wayne Parker and Detective Constable Andrew Mitchell at Kirkcaldy Police Office. Detective Constables Parker and Mitchell had made the first contact with Mr Bayoh's family. They provided an update on their involvement with the family.⁷⁷

⁷⁰ PIRC-01468: Deputy Senior Investigator Harrower Operational Notes; SBPI-00382: Keith Harrower Inquiry statement

⁷¹ PIRC-04150: Family Liaison Log – Log No 1

⁷² SBPI-00423: Director of Investigations Mitchell Inquiry statement

⁷³ PIRC-04148: Officers Note re. Post-mortem

⁷⁴ PIRC-00358: Trainee Investigator Taylor statement; PIRC-00363: Investigator Ferguson statement

⁷⁵ PIRC-04148: Officers Note re. Post-mortem

⁷⁶ PIRC-00370: Deputy Senior Investigator Little statement

⁷⁷ PIRC-00341: Investigator Lewis statement

At 15:35, Investigator Lewis was contacted by Mr Johnson advising him that Mr Anwar would be the family solicitor and provided him with a contact mobile phone number. At 15:40 Investigator Lewis called Mr Anwar to introduce himself and provide his contact details.⁷⁸

At 15:45, Investigator Lewis telephoned Mr Johnson and arranged a home visit to take place at 18:30 later that day.⁷⁹

At 16:00, a Gold Group meeting was chaired by Assistant Chief Constable Nicolson. Chief Superintendent McEwan, Detective Superintendent Campbell and Investigator Lewis were also in attendance. Investigator Lewis records that Chief Superintendent McEwan “expressed some concern the family were unhappy with the PIRC and our lack of contact. I informed the meeting I was surprised by this as I had spoken with Mr Johnson prior to the meeting and had arranged a home visit.”⁸⁰

At 16:52, an email from Head of Investigations Scullion to John Logue, Director of Serious Casework, COPFS, provided a summary of the incident within a briefing document.⁸¹ The briefing document states that the officers could “clearly see [Mr Bayoh] in possession of a knife and was making his way towards them” when they arrived and the female officer attacked “sustained no serious injury”.⁸² Mr Logue forwards the email to Stephen McGowan, Procurator Fiscal Major Crime and Fatalities Investigation, COPFS, and Mr Green stating: “Irene explained that the PIRC investigation was focused on the police contact on the street; having read this I think is too narrow and will need to be expanded to include the earlier incidents in which there is evidence of the deceased having taken drugs and being aggressive. It is not clear from this briefing what happened to his two friends and where he was for a couple of hours between 5 and 7. We can deal with this in the morning once we get a clearer briefing but I will let Irene know that I think the scope of PIRC investigation will need to be expanded to cover all of this.”⁸³

The PIRC FLO log states that at 15:40 Investigator Lewis telephoned Mr Anwar who confirmed he was acting as the family’s solicitor.⁸⁴

The PIRC FLO log states that at 15:45 Investigator Lewis telephoned Mr Johnson to confirm he had received details for Mr Anwar, and that Mr Johnson requested a home visit for 18:30 that day.⁸⁵

The PIRC FLO log states that at 17:29 Investigator Lewis telephoned Mr Anwar to advise him of the planned home visit to the family of Mr Bayoh that evening.⁸⁶

⁷⁸ PIRC-00341: Investigator Lewis statement

⁷⁹ PIRC-00341: Investigator Lewis statement

⁸⁰ PIRC-00341: Investigator Lewis statement

⁸¹ COPFS-03876

⁸² PIRC-03694: PIRC Briefing Document Death in Custody 3 May 2015

⁸³ COPFS-03876

⁸⁴ PIRC-04150: FLO log p.15

⁸⁵ PIRC-04150: FLO log p.16

⁸⁶ PIRC-04150: FLO log p.17

The PIRC FLO log states that at 17:48 Investigator Lewis telephoned Mr Anwar and “advised Amer Anwar of result of PM – unascertained death subject to toxicology and brain tissue exam. Asked who the pathologist had been, unaware at that time”.⁸⁷

At 18:30, Investigators Lewis and Clerkin attended the home of Mr Johnson with the purpose of introducing themselves to the family of Mr Bayoh, and to explain the role of a FLO and of PIRC.⁸⁸

At 20:05, Deputy Senior Investigator Little and Senior Investigator Casey met with Detective Superintendent Campbell, Detective Chief Inspector Hardie and Detective Inspector Stuart Wilson at Kirkcaldy police office, where it was agreed that there would be a handover of the investigation undertaken by police to PIRC. During the meeting, Deputy Senior Investigator Little confirmed the status of the attending officers as witnesses. He advised that he was happy for the attending officers to be updated with the interim result from the post-mortem. Detective Superintendent Campbell “intimated that each of the attending officers would be personally contacted that night and advised accordingly. He believed that following this the attending officers would submit operational statements which up till then they had refused to provide.”⁸⁹

It was agreed that (1) PIRC FLOs would visit the family and provide them with the results of the post-mortem (2) a form of words would be agreed with Deputy Senior Investigator Little to provide information to the attending officers.⁹⁰

Deputy Senior Investigator Little became aware during the meeting that Ms Bell required access to her property at Arran Crescent. A decision was taken to return the dwelling to Ms Bell following a visual examination by a Police Scotland scene manager and the obtaining of general still photographs, but without it being subjected to a full forensic examination.⁹¹

On this day, PIRC contacted the Sierra Leone High Commission in order to inform it of the death of a Sierra Leone national. There was no reply as the High Commission was closed for the public holiday.⁹²

5 May 2015

Senior Investigator John McSporrان returned to work on this day.⁹³ Director of Investigations Mitchell also returned to work on this day and informed Senior Investigator McSporrان that he would be the senior investigator for the incident.⁹⁴

Detective Chief Inspector Hardie and Deputy Senior Investigator Little met and agreed that: outstanding actions would be progressed by PIRC; statements previously obtained by officers from Police Scotland would be handed to the PIRC; the PIRC

⁸⁷ PIRC-04150: FLO log p.18, PIRC-00341: Investigator Lewis statement

⁸⁸ PIRC-04150: FLO log p.18

⁸⁹ PIRC 00370: Deputy Senior Investigator Little statement; PIRC-00381: Senior Investigator Casey statement

⁹⁰ PIRC-00215: Detective Superintendent Patrick Campbell statement

⁹¹ PIRC-00370: Deputy Senior Investigator Little statement

⁹² PIRC-04024: PIRC summary of contact with Sierra Leone High Commission

⁹³ SBPI-00361: Senior Investigator McSporrان Inquiry statement

⁹⁴ SBPI-00423: Director of Investigations Mitchell Inquiry statement

would complete the house-to-house enquiries at all dwellings which provided a line of sight to the police contact; and officers from Police Scotland would complete the peripheral house-to-house enquiries. It was further agreed that officers would seize any CCTV that may provide footage of the incident or footage of Mr Bayoh prior to the police contact; all such CCTV was thereafter handed to the PIRC for further investigation.⁹⁵

The PIRC FLO log states at 09:47 Investigator Lewis received a text from Mr Anwar to “call him urgently”.⁹⁶

The PIRC FLO log states at 10:29 Investigator Lewis telephoned Mr Anwar.⁹⁷

At 10:30, there was a meeting between senior Police Scotland and PIRC staff. Investigators Lewis and Clerkin were also present.⁹⁸ It was proposed that PIRC staff meet with the solicitor representing the family of Mr Bayoh.

At approximately 14:20, Mr Anwar called Investigator Lewis. The PIRC log states Mr Anwar informed Investigator Lewis that he had spoken to Lord Advocate who had said that the post-mortem would be put on hold. The PIRC log states Investigator Lewis reminded Mr Anwar of their previous call about the post-mortem. Mr Anwar stated he was with the family and was unaware of the post-mortem.⁹⁹

At 15:27, Mr McGowan (COPFS) sent an email to Head of Investigations Scullion containing the first written instructions for the investigation (the subject heading was “Further letter of instruction from COPFS to PIRC”). The letter refers to “Section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006”, confirms the “request made on 3 May 2015” and sets out two areas of investigation: the circumstances leading up to the incident, and the incident.¹⁰⁰

The Commissioner, Kate Frame, wrote to Deputy Chief Constable Neil Richardson requesting that Police Scotland submit various documents to PIRC including certified copies of the CS/PAVA spray records for the attending officers involved in the arrest.¹⁰¹

At around 19:20, Ashley Wyse gave a statement to PIRC Investigators McGuire and Margaret-Ann Headrick. “I have previously given this phone to Police Scotland and have given them authority to examine and download only the video excerpts applicable to [3 May 2015]. I am now giving the same authority to officers of the Police Investigations and Review Commissioner to examine my mobile phone and to download the images for May 3rd relating to this incident only.”¹⁰²

⁹⁵ PS00667: Detective Chief Inspector Keith Hardie statement

⁹⁶ PIRC-04150: FLO log p.25

⁹⁷ PIRC-04150: FLO log p.26

⁹⁸ PIRC-00359: Investigator Clerkin statement

⁹⁹ PIRC-04150: FLO log p.30

¹⁰⁰ COPFS-02539

¹⁰¹ PIRC-04051

¹⁰² PIRC-00043 pp/ 4-5. PIRC-04188: Notebook Extract Investigator Headrick

On this day PIRC contacted the Sierra Leone High Commission and spoke to a female member of staff who would not provide her name. She was told what PIRC was, that PIRC wished to notify the High Commission of the death of a Sierra Leone national and asked her what the process was for doing so. The member of staff at the High Commission stated that she would not be able to advise of the process until PIRC could provide the cause of death and what the person had been detained for. PIRC told her they were not in a position to do so at that point and were told to phone back when they could.¹⁰³

On this day, Director of Investigations Mitchell spoke with Professor Peter Watson, who identified himself as acting on behalf of the attending officers involved in the arrest of Mr Bayoh. Director of Investigations Mitchell identified that PIRC was seeking to obtain operational statements from the attending officers and that their status was as witnesses. Director of Investigations Mitchell's recollection is that Professor Watson's advice to the attending officers was not to supply statements at that time.¹⁰⁴

6 May 2015

The initial port-mortem report was issued.¹⁰⁵

Deputy Senior Investigator Little and Senior Investigator McSporran met with Detective Chief Inspector Hardie and Detective Inspector Wilson at Kirkcaldy Police Office and verbally requested witness statements from the attending officers.¹⁰⁶

At 09:30, Investigators Lewis and Clerkin attended the Edinburgh City Mortuary to meet with members of Mr Bayoh's family. Investigators Lewis and Clerkin were present when some family members viewed Mr Bayoh's body.¹⁰⁷

At 12:00, Deputy Senior Investigator Little and Senior Investigator McSporran attended at Aamer Anwar & Co's offices.¹⁰⁸ They, and Investigator Lewis, met with Mr Anwar and various family members including Mr and Mrs Johnson and Ms Bell. PIRC provided an overview of investigation to date. The family said that the single point of contact (SPOC) for the family would be their solicitor, Mr Anwar.¹⁰⁹

7 May 2015

At around 11:00. Director of Investigations Mitchell spoke with Professor Watson, the legal representative of the attending officers involved in Mr Bayoh's arrest. Professor Watson identified that he had advised the attending officers not to provide statements until their "status is known", which required the full results of the post-mortem examination.¹¹⁰

¹⁰³ PIRC-04024: PIRC summary of contact with Sierra Leone High Commission

¹⁰⁴ SBPI-00423: Director of Investigations Mitchell Inquiry statement

¹⁰⁵ PIRC-01444: Initial Post-mortem Report

¹⁰⁶ SBPI-00361: Senior Investigator McSporran Inquiry statement

¹⁰⁷ PIRC-00341: Investigator Lewis statement

¹⁰⁸ SBPI-00361: Senior Investigator McSporran Inquiry statement

¹⁰⁹ PIRC 00370: Deputy Senior Investigator Little statement; PIRC-00341: Investigator Lewis statement

¹¹⁰ PIRC-03710

At 12:20, Senior Investigator McSporrán wrote to Detective Chief Inspector Hardie stating: “At this point in time, the status of the [attending] officers is that of witnesses to the events.” Senior Investigator McSporrán requested that the attending officers be given the opportunity to submit operational statements, and asked for the identities of the relevant officers.¹¹¹

At 14:55, Detective Inspector Wilson emailed Senior Investigator McSporrán and confirmed that each of the attending officers had been contacted, their status clarified and that they had been asked if they were willing to provide a statement. In response, each officer advised that they did not wish to provide a statement at that time, following legal advice, with the exception of PC Short, PC Paton, and Sergeant Maxwell, all of whom still required to be seen as they were on sick leave or otherwise off work.¹¹²

PIRC emailed the generic e-mail address of the Sierra Leone High Commission, referring to the call of 5 May 2015, stating that PIRC were now in a position to provide the cause of death, and asking for an email address to which PIRC could send the details of the deceased.¹¹³

8 May 2015

At 10:30, Investigator Lewis and Investigator Clerkin met with Ms Bell and Ms Bell’s mother, Lorraine Bell at Lorraine Bell’s home address.¹¹⁴ The role of PIRC and the FLOs was explained to both.

At approximately 13:10, there was a meeting between Mr Anwar and Senior Investigator McSporrán and Deputy Senior Investigator Little.¹¹⁵

On this day PIRC sent a letter to the High Commissioner. PIRC received no acknowledgement of receipt of this letter.¹¹⁶

10 May 2015

At 06:30, a road check commenced in Kirkcaldy at Hayfield Road at its junction with Hendry Road in an attempt to trace any witnesses to the incident involving Mr Bayoh.¹¹⁷

11 May 2015

At approximately 13:00 Investigators Kevin Rooney and John McAuley attended at the Victoria Hospital, Kirkcaldy where they met with NHS Security Officer. Investigators Rooney and McAuley asked Mr Park to provide CCTV footage from 3 May 2015 at approximately 07:30 covering the “Accident and Emergency External Entrance” and the “Ambulance Entrance Internal”. The CCTV footage was not seized as cameras

¹¹¹ PIRC-02671; SBPI-00361: Senior Investigator McSporrán Inquiry statement

¹¹² PIRC-02671

¹¹³ PIRC-04024: PIRC summary of contact with Sierra Leone High Commission

¹¹⁴ PIRC-00341: Investigator Lewis statement

¹¹⁵ PIRC-04200

¹¹⁶ PIRC-04024: PIRC summary of contact with Sierra Leone High Commission

¹¹⁷ PIRC-02663

were not pointing at the entrance at the relevant times. An external camera showed only the front cab of an ambulance waiting. The internal hospital camera movement function was defective, so footage showed only the ceiling.¹¹⁸

On this day Mr Les Brown (Head of the CAAPD) wrote to PIRC highlighting a number of issues raised by the family which PIRC were to consider as the enquiry proceeded. These issues included details surrounding the restraint, the past medical history of the deceased, the analysis of tablets recovered and details surrounding the resuscitation attempts.¹¹⁹

On this day a Situation Report was provided by PIRC to COPFS.¹²⁰

12 May 2015

At around 14:30, a Forensic Strategy Meeting took place. The meeting was attended by pathologists, SPA staff, Mr Brown and a number of PIRC investigators.¹²¹

14 May 2015

Press releases were published on this day by Mr Anwar and the SPF.¹²²

Mr Anwar and Mr Bayoh's family had a meeting with the Lord Advocate.¹²³

18 May 2015

Following the meeting between the Lord Advocate, Mr Anwar and Mr Bayoh's family, Mr Brown sent a letter to Commissioner Frame asking that a number of issues raised by Mr Anwar be factored into PIRC's investigation.¹²⁴

19 May 2015

A member of staff at the Foreign and Commonwealth Office contacted PIRC seeking clarity on PIRC's role ahead of a meeting with a representative from the Sierra Leone High Commission on 20 May 2015.¹²⁵

21 May 2015

PIRC provided a second Situation Report to COPFS. This report provides an overview of the enquiries that have been undertaken since that date of the first situation report (dated 11 May).¹²⁶

29 May 2015

¹¹⁸ PIRC-00002

¹¹⁹ COPFS-02833(a)

¹²⁰ PIRC-04053

¹²¹ PIRC-04161: Forensic Strategy Meeting minutes

¹²² PS04932, SPF-00010(a)

¹²³ COPFS-02769 (a)

¹²⁴ COPFS-02769(a); COPFS-02769(b)

¹²⁵ PIRC-04024: PIRC summary of contact with Sierra Leone High Commission

¹²⁶ PIRC-04053

At 16:15, there was a meeting between the Mr Anwar and PIRC, with Deputy Senior Investigator Little, Senior Investigator McSporran and Investigator Lewis in attendance. At 17:15, they were joined by Mr and Mrs Johnson, Ms Bell and Ms Bell's mother, Lorraine Bell.¹²⁷ An overview of the investigation was provided to the family.

1 June 2015

Around 10:35, Director of Investigations Mitchell received a telephone call from Professor Watson, who advised that the attending officers he represented would not provide statements until their status was clear, which was dependant on final post-mortem findings.¹²⁸

2 June 2015

Around 09:55, Director of Investigations Mitchell telephoned Mr Brown to inform him that, following a discussion with David Kennedy, SPF, it had been suggested that the attending officers would make themselves available for interview if their status was confirmed as witnesses.¹²⁹

At 10:46, Director of Investigations Mitchell emailed Professor Watson to confirm the attending officers' status as witnesses.¹³⁰ At 11:53 Director of Investigations Mitchell sent a further email to confirm that the attending officers would not be interviewed under caution.¹³¹

A press release was issued on behalf of the SPF, which includes detail that an injured officer is off work, has had "several hospital visits" and is in "rehabilitation" with injuries that are "significant". The press release states, quoting Professor Watson: "The [attending] officers involved have never refused to provide statements. It was agreed at the outset with PIRC that they would revert to us when they wanted statements and when they were clear on the basis that statements were to be given. PIRC emailed me this morning at [10:46] asking for our assistance to organise interviews and we answered at [11:29] confirming we would be pleased to assist. Those are the facts." The press release also includes a quote from Brian Docherty "Mr Anwar can try to throw whatever mud he wishes but the fact remains that a petite female police officer was violently assaulted by a large male and believed she was going to die".¹³²

The attending officers agreed to be interviewed by PIRC.

Director of Investigations Mitchell sent a letter to Mr Brown confirming that PIRC's investigation would examine Police Scotland's compliance with SOPs.¹³³

3 June 2015

¹²⁷ PIRC-04200: Deputy Senior Investigator Little's notebook

¹²⁸ PIRC-03725

¹²⁹ PIRC-03726

¹³⁰ PIRC-04006

¹³¹ PIRC-04006

¹³² SPF-00019

¹³³ PIRC-02017

Around 10:15, Director of Investigations Mitchell received a telephone call from Mr Brown in which Mr Brown confirmed that COPFS were content for the attending officers to be interviewed as witnesses.¹³⁴

Investigator Sinclair created the witness interview strategy to be used when taking the attending officers' statements.¹³⁵

4 June 2015

The attending officers were interviewed by PIRC investigators, largely at Tulliallan Police College, and statements were obtained.¹³⁶

PIRC issued a statement to the media, stating: "The PIRC has been leading on the investigation into the death in custody of Sheku Bayoh and since the hours following his death on Sunday 3 May 2015, has made several attempts to secure statements from the [attending] officers. Those [attending] officers have now agreed to provide statements to the PIRC and now that the PIRC is in the process of gathering the material, it will be considered along with the information already gathered throughout the course of the investigation to date."¹³⁷

11 June 2015

PC Smith was interviewed by PIRC investigators.¹³⁸

12 June 2015

PIRC were further directed by COPFS (via a letter from Mr McGowan) to also investigate concerns expressed by the family, namely:

1. Allegations by the family that they were provided with misleading and erroneous information concerning the death of Mr Bayoh to family members and a concern as to why they were provided with that information.
2. Concerns that the initial police investigations and attempts to secure evidence were not thorough meaning that crucial evidence was lost to the inquiry.
3. There was inappropriate conferring between the attending officers.¹³⁹

18 June 2015

The final post-mortem report was issued.¹⁴⁰

22 June 2015

¹³⁴ PIRC-03727

¹³⁵ PIRC-00309: Investigator Sinclair statement; PIRC-04182: Witness Interview Strategy

¹³⁶ PIRC-00266: Sergeant Maxwell statement; PIRC-00264: PC Walker statement; PIRC-00263; PC Tomlinson statement; PIRC-00274: PC Good statement; PIRC-00273: PC McDonough statement; PIRC-00262: PC Paton statement; PIRC-00254: PC Short statement; PIRC-00258: PC Gibson statement

¹³⁷ PIRC-03925, pages 31 – 32

¹³⁸ PIRC-00278: PC Smith statement

¹³⁹ COPFS-04010(a)

¹⁴⁰ PIRC-01445: Final Post-mortem Report

A meeting took place between Mr Anwar and Senior Investigator McSporrان and Deputy Senior Investigator Dodd.¹⁴¹

At 1030, Deputy Senior Investigator Dodd and Senior Investigator McSporrان met with PC Amanda Givan in the presence of Professor Watson to take her statement.¹⁴²

2 July 2015

PIRC were further directed in an email from Mr Brown to Senior Investigator McSporrان to investigate an allegation of criminal conduct made by Zahid Saeed. Mr Brown also confirmed that COPFS would take responsibility for the instruction of appropriate experts in relation to positional asphyxiation.¹⁴³

7 July 2015

Senior Investigator McSporrان emailed Mr Anwar. The email addresses a complaint by Mr Saeed about his treatment by police, stating that Mr Saeed did not mention this in either of his two interviews with PIRC and asking him to arrange a further interview with PIRC. The email also confirms that COPFS has indicated they will instruct appropriate experts.¹⁴⁴

Around this time, a Minute was submitted by Commissioner Frame, to the Lord Advocate, identifying four potential expert witnesses for instruction, including Dr Jason Payne-James and Dr Steven Karch.¹⁴⁵

21 July 2015

Mr Saeed provided a third statement to PIRC, which included his allegation of assault against police officers. He stated he could not remember the names of the officers but had one name in his personal diary, which he did not want to share.¹⁴⁶

10 August 2015

An interim PIRC report was submitted by email to Mr McGowan at COPFS.¹⁴⁷

Dr Jason Payne-James was provided with a letter of instruction by PIRC.¹⁴⁸

13 August 2015

Dr Steven Karch was provided with a letter of instruction by PIRC.¹⁴⁹

19 August 2015

¹⁴¹ PIRC-02487(a)

¹⁴² PIRC-00238: PC Givan statement

¹⁴³ COPFS-04808

¹⁴⁴ PIRC-02494

¹⁴⁵ COPFS-06005

¹⁴⁶ PIRC-00034

¹⁴⁷ PIRC-00001

¹⁴⁸ PIRC-03434(b)

¹⁴⁹ PIRC-03435(a)

Detective Sergeant Katrina Thompson (Police Scotland Counter Corruption Unit) was instructed by PIRC to carry out an audit of the police systems to establish who had accessed the records of named individuals between 3 May 2015 and 18 August 2015, and in particular to establish if any of the attending officers had accessed any of the records and, if so, to establish if this was for a legitimate policing purpose.¹⁵⁰

24 August 2015

A letter was sent from Mr Brown to Commissioner Frame stating that under s.33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 COPFS was instructing PIRC to carry out an investigation in relation to several matters raised in a letter from Mr Anwar dated 31 July 2015 addressed to Police Scotland, including allegations made against PC Paton. PIRC were instructed to “carry out an investigation in relation to the circumstances in relation to the attached correspondence from Aamer Anwar”.¹⁵¹

2 September 2015

A letter was sent from Mr Brown to the Commissioner, outlining areas for further investigation and asking the Commissioner to confirm that issues of race and whether there was any evidence of racial motivation were a primary focus in the PIRC investigation.¹⁵²

3 September 2015

PIRC met with members of Mr Bayoh’s family. The meeting was attended by Commissioner Frame, Director of Investigations Mitchell, Deputy Senior Investigator Little, Investigator Lewis, Head of Communications Michael Tait, Mr Anwar, Mr and Mrs Johnson, Ms Bell and Lorraine Bell.¹⁵³

10 September 2015

Dr Steven Karch provided his opinion in an expert report to PIRC.¹⁵⁴

11 September 2015

A meeting between COPFS and PIRC was attended by Director of Investigations Mitchell, the Commissioner, Mr Brown and Mr McGowan, in which PIRC’s investigation of issues of race was discussed.¹⁵⁵

At 09:20, Deputy Senior Investigator Little and Deputy Senior Investigator Dodd attended Stirling Police Office to meet with Detective Constables John McGregor and

¹⁵⁰ PIRC-00004: PIRC Report Vol.3

¹⁵¹ COPFS-02768(a)

¹⁵² COPFS-02557

¹⁵³ PIRC-04152, page 31

¹⁵⁴ PIRC-02527(a)

¹⁵⁵ COPFS-03585 (a)

Simon Telford. The officers were advised of Mr Saeed's allegation of assault and that PIRC was instructed by COPFS to investigate this.¹⁵⁶

1 October 2015

Detective Constables McGregor and Telford were interviewed regarding Mr Saeed's allegation of assault.¹⁵⁷

2. Race generally

2.1 Investigators

Deputy Senior Investigator Harrower is asked whether there was anything about Mr Bayoh's race that was relevant to the initial instruction that he received from Mr Green at COPFS.¹⁵⁸ He says, "No, not to my mind, I took the mention of the fact he was black simply as a description of the individual involved.... The important aspect was that a person was dead and there had been direct interaction with the police. So that was a very serious incident and, on that phone call, that was obviously the priority, to initiate the response to that and deal with that as best we could"¹⁵⁹.

Deputy Senior Investigator Harrower is asked what guidance or reference materials in relation to race he was aware of being available to him on 3 May 2015, had he wished to consult these. He says that he was not aware of any PIRC guidance or reference materials in relation to race being available to him in May 2015¹⁶⁰.

When asked if there is anything, knowing what they know now, they would have done differently with particular regard to the issue of race, Deputy Senior Investigator Harrower, Deputy Senior Investigator Dodd¹⁶¹ and Investigator McGuire¹⁶² say that there is not anything that they would have done differently. Deputy Senior Investigator Harrower says that "I cannot think of anything specific that I would have done differently in relation to the issue of race"¹⁶³. Investigator McGuire adds that he "didn't actually see this as a racist incident as such. The man was black, undeniably, but it wasn't racist. The officers were attending the report of a black man in the street. It could quite easily have been a white man in the street. It just happened to be that that was the description that was passed over to police Scotland contact centre by the witnesses who phoned in. "There's a black man in the street," that's the easiest way that they would describe him. There was nothing racist in that that I was aware of"¹⁶⁴.

¹⁵⁶ PIRC-00371

¹⁵⁷ PIRC-00345: Deputy Senior Investigator Dodd statement

¹⁵⁸ In SBPI-00259 para 6, Deputy Senior Investigator Harrower is referring to the initial telephone call he had with Mr Green of COPFS, where Deputy Senior Investigator Harrower recorded that he had been instructed "to carry out an independent investigation into the circumstances surrounding the death of [Mr Bayoh]".

¹⁵⁹ SBPI-00259 para 6

¹⁶⁰ SBPI-00382 para 217

¹⁶¹ SBPI-00451 para 145

¹⁶² SBPI-00457 para 229

¹⁶³ SBPI-00382 para 219

¹⁶⁴ SBPI-00457 para 219

Investigator Lewis is asked the same question but he said that “the only thing that I would prefer to have been done differently was the contact with the family. I would rather have had more direct contact with the family. I think it would have been beneficial to the family and to ourselves. It’s the only time where, out of 20 plus years in the role, that I have never completed an exit strategy. I have never experienced the level of involvement from the senior management and from [COPFS] in relation to contact with the family and the single point of contact being Aamer Anwar. I have never experienced that level of involvement whilst trying to do the role as family liaison”¹⁶⁵.

Investigator Lewis is asked if, as at May 2015, he had any awareness of investigations by bodies in England and Wales that were investigating the impact of race in a death in police custody investigation. He says that he was aware of investigations in relation to death in custodies, mainly in England, and race being mentioned in those investigations. He adds that he did not study in any great detail the implications of those investigations. He was aware that race was mentioned and was being alleged as a factor in that person’s death or involvement with the police¹⁶⁶.

Investigator Clerkin is asked in his Inquiry statement when he learned that the person involved in the incident on 3 May 2015 was black. He says that “I remember based on the fact - I don't mean this disingenuously but Sheku Bayoh, the name, it wasn't 'Patrick O'Reilly', for example, and I realised that this is likely to be someone with links outwith the UK. I'll be honest in stating that I don't remember. I'm not saying that this wasn't the case, but I don't remember it ever being said that Sheku was black. I don't remember that being the focus”¹⁶⁷. He further says “I don't remember it being stated that Sheku was black, and it really didn't change how we responded as far as I'm concerned in any event”¹⁶⁸.

Investigator Clerkin is asked in his Inquiry statement if he had any insight into why it was specifically himself and Investigator Lewis who were appointed as family liaison officers in this case. He says that it could simply have been the case that they both had capacity to take on the role at that time¹⁶⁹. He also says that whilst it was never confirmed to him that this was the case, he surmises that the fact that he is not Scottish and presents as an Irishman could have illustrated to Mr Bayoh’s family that PIRC is an inclusive organisation and employs people from outwith Scotland. He continues “Whilst I can't think of cultural similarities between Northern Ireland and Sierra Leone, but it illustrates the whole point that they're diverse in terms of their recruitment policy and decision-making, certainly up to some point”¹⁷⁰.

Deputy Senior Investigator Dodd is asked about a previous role he held as a police officer in which he was involved in directing a national operation targeting South-east Asian Organised Crime Groups¹⁷¹. In particular, he is asked about whether the ethnicity of members of these organised crime groups impacted on his approach to this operation. He says that “the ethnicity of the members of the crime group had little

¹⁶⁵ SBPI-00432 para 228

¹⁶⁶ SBPI-00432 para 224

¹⁶⁷ SBPI-00446 para 96

¹⁶⁸ SBPI-00446 para 98

¹⁶⁹ SBPI-00446 para 116

¹⁷⁰ SBPI-00446 para 117

¹⁷¹ SBPI-00451 para 1

impact on the approach to the operation. The ethnicity of persons would only be taken into account if it was relevant to the terms of reference of what was being investigated. When these individuals were arrested, cultural needs and the use of interpreters, one of whom was a serving police officer, was utilised. I attended many courses and inputs in the police relating to diversity and inclusion skills which I carried forward to my role in PIRC”¹⁷².

2.2 Others

Commissioner Frame says in her Inquiry statement that at the start of her tenure as Commissioner in 2014, PIRC as an organisation was not very diverse. It was predominantly white and male. She says that the profile of the team had been set in 2013 and more or less remained unchanged.¹⁷³

Deputy Senior Investigator Ian MacIntyre is asked how diverse PIRC was as an organisation in 2015. He says that “there was a poor level of diversity in 2015, and unfortunately that did not change up until the date I retired from PIRC [in] 2023. I felt that there was a lack of female investigators and investigators from a non police background. In particular, I was disappointed that the senior managers, were all former senior officers. I had been led to believe that during the lifetime of the PIRC, efforts would be made to introduce senior managers who had no association with the police, unfortunately this did not happen”¹⁷⁴.

Head of Communications Michael Tait is asked if he thinks that not giving consideration to Mr Bayoh’s race could explain why a relationship could not be established with Mr Bayoh’s family, due to the fact that Black people may have experienced differential treatment in the past on account of their race and if that might, therefore, have merited an alternative approach to family liaison in this case. He says that he believed that “[PIRC] were not given the opportunity to properly engage with the family in the usual manner”¹⁷⁵. He further adds that Mr Bayoh’s race was not a factor in any of his decisions and actions in the investigation¹⁷⁶.

During her evidence to the Inquiry hearing, Mr Bayoh’s partner Ms Bell speaks about Mr Bayoh’s views and experiences of the police.

“Shek used to always say to me that – about racism and the police... “Do you know, as a Black man when you are up against the police, it doesn’t matter if you have done right or if you have done wrong, the only way you’re getting out from a confrontation with the police is if you run. There is no way out, as a Black man, when you are coming up against the police”¹⁷⁷. Ms Bell says “we’ve heard how they do come across people who are on drugs, they do come across people who have knives, they manage to arrest them all right, you know, they managed to get the restraints on him”¹⁷⁸.

¹⁷² SBPI-00451 para 14

¹⁷³ SBPI-00447 para 59

¹⁷⁴ SBPI-00470 para 31

¹⁷⁵ SBPI-00418 para 230

¹⁷⁶ SBPI-00418 para 229

¹⁷⁷ 40/95/21

¹⁷⁸ 40/96/12

Ms Bell speaks about the depiction of Mr Bayoh in the media, as particularly large, and a 'zombie', and says to her this seems like racism. She says that the press were "briefed that Shek was part of genocide in Sierra Leone. I think Shek was about 8 when that happened"¹⁷⁹. She also speaks of a story in the media about her and Mr Saeed, which was "completely made up and totally false and defamation of me and Zahid's character". She says she believes this was in the media to deflect from a meeting between the family and Commissioner Frame¹⁸⁰. Ms Bell is asked during the Inquiry hearing when she first became aware that race might be an issue. She says "I really didn't think about it straightaway. I think that's maybe naïve on my behalf again... I didn't want to think of the idea that racism was maybe involved in this. But I think more the way they were describing him and, you know, like, saying how big he was, what a build he had, to me it just portrayed him in a really bad way and not true"¹⁸¹.

Mrs Johnson speaks about her experiences of living in Scotland as a black woman. She says she is just "living day to day" as she doesn't know how she will be treated¹⁸². When asked about her concerns about involvement with Police Scotland she says she receives hate mail and threats and is concerned for her own and her family's safety¹⁸³. She says "I feel if Sheku was White, he would have been treated in a different way. And I'm saying this now with a lot of fear, because I know I will get people coming for me for saying this... if Sheku was White, the police had met him, they would have approached him in a different way. I feel they would have approached us as a family as well in a different way. So, for me, because he was Black, that's why he was treated the way he was treated from the very first instant the police met him"¹⁸⁴.

The family of Mr Bayoh and members of their legal team have been subject to racist abuse during the course of this Inquiry¹⁸⁵.

2.3 The Equality Act 2010

Investigator Lewis is asked if racism (or the race of the deceased) being a factor was something that PIRC would have recorded and he says he does not know, as at 2015, if it would have been recorded anywhere¹⁸⁶.

Deputy Senior Investigator Harrower and Deputy Senior Investigator Dodd are asked as at 3 May 2015, did PIRC record the race or ethnicity of the deceased person who was the subject of an investigation following a death in police custody or death following police contact? If so, how was such information recorded? If this information was not recorded, why was this? Have PIRC's procedures for recording a deceased person's race or ethnicity changed since 3 May 2015? If so, in what way?

Deputy Senior Investigator Harrower says that "before 3 May 2015, I do not believe that PIRC recorded the race or ethnicity of the deceased person following a death in

¹⁷⁹ SBPI-00247 para 60, 61, 62

¹⁸⁰ SBPI-00247, 63, 64

¹⁸¹ 40/97/19

¹⁸² 34/90/5

¹⁸³ 34/91/1

¹⁸⁴ 34/92/5

¹⁸⁵ 23/5/9

¹⁸⁶ SBPI-00432 para 221

police custody or death following police contact. Now, I do not believe this has changed”¹⁸⁷. Deputy Senior Investigator Dodd says he was not aware if PIRC recorded race or ethnicity of a deceased person in 2015¹⁸⁸.

Commissioner Frame is asked in her Inquiry Statement what steps PIRC took in order to comply with the public sector equality duty¹⁸⁹ during her tenure. She says that she discussed that with the Head of Corporate Services shortly after she took up post and he advised her that it did not apply to the organisation¹⁹⁰. During the Inquiry hearing Commissioner Frame says that PIRC’s Head of Corporate Services at the time was Barry MacKay¹⁹¹. She is also asked if she checked independently the advice that she had been given by Mr MacKay or whether she relied on Mr MacKay’s assurance that the public sector equality duty applied to PIRC. She says that she recalls that “.... he seemed to be fairly confident that it didn't apply, and it wasn't a matter that he required to go away and check, he was able to respond immediately to me”¹⁹².

She is also referred in her Inquiry statement to The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (the 2012 Regulations), which impose “specific duties”¹⁹³ on certain public authorities for the better performance of the general public sector equality duty and the fact that, within the 2012 Regulations, PIRC is not listed as being subject to those specific duties. She says that she does not know why PIRC was not listed¹⁹⁴.

Commissioner Frame is also asked in her Inquiry statement if PIRC voluntarily carried out impact assessments for its policies and procedures, notwithstanding the fact that PIRC were not subject to the 2012 Regulations, and she says that she was not aware of any impact assessments being carried out¹⁹⁵. During the Inquiry hearing, when Commissioner Frame is asked to explain what an impact assessment is, she says that any documentation or policies that are produced by the organisation would have to be assessed before publication to consider whether they had an impact on groups with protected characteristics such as race¹⁹⁶.

Commissioner Frame acknowledges that if it was the case that the public sector equality duty did indeed apply to PIRC then she cannot remember if any steps were taken to comply with the duty throughout her tenure as the Commissioner¹⁹⁷.

Commissioner Frame also says in her Inquiry statement that, as at 3 May 2015, she does not think that PIRC would have recorded the race or ethnicity of the deceased person who was the subject of an investigation following a death in police custody or death following police contact¹⁹⁸. During the Inquiry hearing she adds that if the public

¹⁸⁷ SBPI-00382 para 214

¹⁸⁸ SBPI-00451 para 135

¹⁸⁹ The EHRC provide their description of the “public sector equality duty” in SBPI-00614

¹⁹⁰ SBPI-00447 para 80

¹⁹¹ 89/51/21 to 89/51/23

¹⁹² 89/51/24 to 89/52/4

¹⁹³ The EHRC provide their description of the “specific duties” in SBPI-00614

¹⁹⁴ SBPI-00447 para 81

¹⁹⁵ SBPI-00447 para 83

¹⁹⁶ 89/52/22 to 89/53/8

¹⁹⁷ 89//55/9 to 89/55/15

¹⁹⁸ SBPI-00447 para 790

sector equality duty had applied to PIRC then this sort of information would have been recorded¹⁹⁹.

3. PIRC investigators' previous investigations involving black people or the black community

Investigator McGuire²⁰⁰, Deputy Senior Investigator Harrower²⁰¹, Deputy Senior Investigator Dodd²⁰², and Director of Investigations Mitchell²⁰³ were asked if they had any experience prior to 3 May 2015 of deaths in custody or deaths following police contact in which the deceased was from an ethnic minority, and they say that he had no such prior experience.

Deputy Senior Investigator Harrower and Deputy Senior Investigator Dodd are also asked, with the exception of the investigation of Mr Bayoh's death, if they have been involved in any subsequent investigations dealing with the investigation of a death in custody or deaths following police contact in which the deceased was from an ethnic minority. Deputy Senior Investigator Harrower²⁰⁴ says that he cannot recall any such investigation whilst Deputy Senior Investigator Dodd says that "in 2020 I was lead investigator in a death following police contact where the deceased was from an Asian Scottish background"²⁰⁵.

Deputy Senior Investigator Harrower and Deputy Senior Investigator Dodd are also asked what experience they had had prior to 3 May 2015 in deaths in custody or deaths following police contact in which race was a factor to investigate. Deputy Senior Investigator Harrower says that he cannot recall being involved in such an incident²⁰⁶. Deputy Senior Investigator Dodd says that he had "no experience where race was a factor or race within my terms of instruction"²⁰⁷.

Deputy Senior Investigator Harrower was asked if he had ever acted in a PIRC investigation, as at 3 May 2015, in which the issue of race was within the terms of PIRC's instruction. Deputy Senior Investigator Harrower says that he cannot recall being involved in an incident since the death of Mr Bayoh where race was a factor²⁰⁸.

Deputy Senior Investigator Harrower and Deputy Senior Investigator Dodd are also asked if PIRC had ever considered the issue of race within an investigation prior to 3 May 2015. They are also asked, with the exception of the investigation following the death of Mr Bayoh, has PIRC considered the issue of race within an investigation since 3 May 2015 and, if so, in what way was race a consideration in either case. Deputy Senior Investigator Harrower says that although he could not be positive, he does not

¹⁹⁹ 89/53/16 to 89/53/20

²⁰⁰ SBPI-00457 para 221

²⁰¹ SBPI-00382 para 207

²⁰² SBPI-00451 para 129

²⁰³ SBPI-00423 para 420

²⁰⁴ SBPI-00382 para 207

²⁰⁵ SBPI-00451 para 129

²⁰⁶ SBPI-00382 para 208

²⁰⁷ SBPI-00451 para 130

²⁰⁸ SBPI-00382 para 208

believe so²⁰⁹. Deputy Senior Investigator Dodd says that he is not aware of any issues of race within an investigation prior to or since 3 May 2015²¹⁰.

Deputy Senior Investigator Harrower and Investigator McGuire are also asked if they have any experiences of racism (or the race of the victim) being a factor, in any way, in a death in custody or death following police contact. Deputy Senior Investigator Harrower says that he has no experience in this regard²¹¹ and Investigator McGuire says that there are no such investigations that he is aware of²¹².

Deputy Senior Investigator Harrower is also asked when PIRC's terms of reference were expanded by COPFS to include issues of race, what steps did he or others at PIRC take to address this instruction including taking further statements from witnesses to address additional issues contained within the updated instructions from COPFS. Deputy Senior Investigator Harrower says that any steps or additional actions required to address the expanded terms of reference were the responsibility of the lead investigators and he did not have any specific recollection of what steps they took²¹³.

Deputy Senior Investigator Dodd²¹⁴ and Investigator McGuire²¹⁵ are also asked if prior to the instruction from COPFS to investigate issues of race, had they or anyone at PIRC given consideration to race being a factor in the incident. Deputy Senior Investigator Dodd says that he was not aware that race had been given consideration as being a factor in the incident. Investigator McGuire states "not to my recollection".

Deputy Senior Investigator Harrower and Deputy Senior Investigator Dodd are asked whether the race or ethnicity of a deceased person is automatically considered by PIRC as part of an investigation following a death in custody or a death following police contact? If so, in what way? If not, is the deceased's race or ethnicity only considered when directed by COPFS?

Deputy Senior Investigator Harrower says that in "all the circumstances, including the race or ethnicity of a deceased person, would be automatically considered by PIRC as part of an investigation following a death in custody or a death following police contact. An open mind would be maintained as the investigation progressed and evidence and information was obtained"²¹⁶. Deputy Senior Investigator Dodd says that he is not aware that race is automatically considered or only considered when directed by COPFS. He says that he believes that race or ethnicity would only be identified as a factor if evidence suggested this²¹⁷.

Director of Investigations Mitchell is asked if he was satisfied that the PIRC investigators in his team had experience from previous work (for example, within Police Scotland) of investigating deaths in custody or after police contact where race

²⁰⁹ SBPI-00382 para 209

²¹⁰ SBPI-00451 para 131

²¹¹ SBPI-00382 para 212

²¹² SBPI-00457 para 222

²¹³ SBPI-00382 para 210

²¹⁴ SBPI-00451 para 133

²¹⁵ SBPI-00457 para 225

²¹⁶ SBPI-00382 para 213

²¹⁷ SBPI-00451 para 134

was a factor²¹⁸. He says that the investigators in his team at PIRC would not have had experience from within their time at PIRC²¹⁹ but he was of the opinion that they had sufficient investigative experience to identify whether or not race was a factor²²⁰.

4. Training

4.1 Equality and Diversity

Investigator Lewis says that he has received training on racial awareness or equality and diversity with both the police and with PIRC. He says that the training received before he retired from the police²²¹ was “at least annual, whether it be a one day awareness or a couple of days”²²². He goes on to say that he received training for equality, diversity and inclusion within PIRC annually²²³. He says however that he cannot recall if he had received training on equality, diversity and inclusion in 2015²²⁴. He further adds when asked if any part of the annual training on equality, diversity and inclusion which was particularly relevant for his role as a family liaison officer and he says that there was not²²⁵.

Investigator Lewis is also asked if, as at 3 May 2015, he felt adequately trained and experienced to carry out his role. He says “yes. I had no issues at all. I have liaised with families from all backgrounds throughout society, race, religion, gender. Unfortunately, I have had to explain to families information that they were not aware about their loved one. I have many years of liaising with families from all sorts of backgrounds, all sorts of areas within society. So, yes, in my opinion I was prepared for dealing with the incident with Sheku Bayoh on 3 May²²⁶.

Investigator McGuire is asked in his Inquiry statement if he received any training while he was at PIRC about investigating the issue of race, and he says that there is nothing that he can recall. He adds that “there were a couple of online inputs about equality and diversity, but nothing, around investigation of racial crimes or otherwise”²²⁷.

Investigator McGuire says that he recalls receiving training about equality issues while at PIRC but that was in about 2017/18²²⁸.

Deputy Senior Investigator Harrower says that prior to 3 May 2015 he received equalities training at the PIRC in October 2014. He adds that “I cannot recall if this was online or face to face training or what the course content was”²²⁹.

²¹⁸ 91/48/13 to 491/48/20

²¹⁹ 91/48/17 to 91/48/18

²²⁰ 91/48/21 to 91/48/24

²²¹ SBPI-00246 para 5. Investigator Lewis says that he retired from the police in October 2010 after thirty years’ service.

²²² SBPI-00246 para 8

²²³ SBPI-00246 para 8

²²⁴ SBPI-00432 para 222

²²⁵ SBPI-00432 para 223

²²⁶ SBPI-00432 para 16

²²⁷ SBPI-00457 para 226

²²⁸ SBPI-00457 para

²²⁹ SBPI-00382 para 215

Deputy Senior Investigator Dodd is asked what training he had completed by 3 May 2015 in relation to equality and diversity issues. He says that he had received equality and diversity training in his previous employment with the police. He is unable to recall what this training involved due to the passage of time²³⁰.

Commissioner Frame says in her Inquiry statement that “prior to my tenure, I am not aware that there had been any diversity or equality training within PIRC. I asked that it be introduced on a mandatory basis. The training was delivered by an external organisation. It comprised presentations, interactive sessions and discussion groups”²³¹ although she says that she cannot recall when the training was introduced²³².

Commissioner Frame is referred to Investigator Lewis’s note in the PIRC Family Liaison Log²³³ which says that: “Commissioner assured family all investigators are diversity trained”. Commissioner Frame says that she thinks that she “was referring to the sessions that I described earlier or my knowledge, from previous discussions, that a number of the investigators had received diversity training previously within their former roles either as police officers or within other organisations. At the training sessions held within PIRC a number of staff confirmed that they had previously received diversity training”²³⁴.

Director of Investigations Mitchell was also referred to the same passage from the PIRC Family Liaison Log²³⁵ and was asked what this diversity training involved, and he says that he has “had so much diversity training over the years. I’ve had continuous updates and diversity training, and rightly so. I do remember getting an input which did talk about unconscious bias, but it wouldn’t be truthful of me to say whether that was before or after. It wasn’t just investigators. It was a whole organisation having diversity training, and it was outsourced and brought in”²³⁶.

4.2 Unconscious bias

Investigator McGuire says that he recalls receiving training about unconscious bias while at PIRC but that was in about 2017/18²³⁷.

Deputy Senior Investigator Harrower says that prior to 3 May 2015 he did not receive any unconscious bias training²³⁸.

Commissioner Frame says in her Inquiry statement that the topic of unconscious bias was covered in training presentations and discussion groups she had attended. She says that she understands that “unconscious bias is where someone behaves differently to others with different characteristics without doing so consciously”²³⁹.

²³⁰ SBPI-00451 para 136

²³¹ SBPI-00447 para 69

²³² SBPI-00447 para 70

²³³ PIRC-04152, page 32

²³⁴ SBPI-00447 para 71

²³⁵ PIRC-04152, page 32

²³⁶ SBPI-00423 para 516

²³⁷ SBPI-00457 para

²³⁸ SBPI-00382 para 215

²³⁹ SBPI-00447 para 78

4.3 Investigations of discriminatory treatment

Deputy Senior Investigator Harrower says that he has not had any specific training during his time in PIRC in relation to investigating an allegation of race being a factor in the conduct of Police Scotland²⁴⁰. Deputy Senior Investigator Dodd is asked the same question but only in relation to training in this regard that he had received during the investigation into Mr Bayoh's death and he says that he did not receive any such training during the investigation. He says he is unsure how he would have benefited from additional training, having previously attended numerous training courses in his police career²⁴¹.

4.4 PIRC investigations following deaths

Investigator Lewis says that the training for family liaison officers provided by PIRC is a five-day course followed by on-the-job training. He says that in his role as a family liaison coordinator, in investigations into deaths, he would always deploy two family liaison officers, especially if one was less experienced; "The less experienced FLO will have an experienced FLO as a mentor who will shadow". He adds that they also have sessions at least twice a year where they "sit down to look at any training issues that we think everybody else needs to know about for example, where a deceased person has to be repatriated to another country, how does that work".

Investigator McGuire is asked in his Inquiry statement if there was any process within PIRC to assess "lessons learned" from previous PIRC investigations. He says that, in roughly 2014, there were debriefs from some of the previous investigations. However, he could not recall if there was any kind of formal notes of those debriefs²⁴².

Deputy Senior Investigator Harrower, Deputy Senior Investigator Dodd, and Investigator McGuire are asked if they thought that they individually and PIRC were sufficiently equipped to investigate issues of race relating to deaths in police custody or deaths following police contact on 3 May 2015. Deputy Senior Investigator Harrower says that he "believes PIRC were sufficiently equipped to investigate issues of race relating to deaths in police custody or deaths following police contact. Staff are experienced and trained investigators and I believe all, or most, had undergone Equality and Diversity Training. I am not aware of any specific race training available in relation to investigation of this type of critical incident"²⁴³. Deputy Senior Investigator Dodd says that PIRC had highly experienced senior Investigators and the investigations team had the experience, skills and training to deal with race matters²⁴⁴. Investigator McGuire says that he thinks that PIRC are "equipped to deal with any sort of investigation and, like Police Scotland, if we need professional guidance / expertise / statements, then we can call them in. In our case, we would be able to ask Police Scotland for assistance with the likes of independent advisory groups, diversity action groups, racial forums etc. If we needed that, then we could ask for it"²⁴⁵ but that he

²⁴⁰ SBPI-00382 para 216

²⁴¹ SBPI-00451 para 138

²⁴² SBPI-00457 para 21

²⁴³ SBPI-00382 para 218

²⁴⁴ SBPI-00451 para 141

²⁴⁵ SBPI-00457 para 227

does not recall that any such requests for external assistance were made in this case²⁴⁶.

Deputy Senior Investigator Little is asked in his Inquiry statement how many deaths following police contact or deaths in police custody he had investigated as at 3 May 2015. He says that he thinks that PIRC had had “about a total of 80 investigations at the time of this incident I am unsure how many such investigations related to either Death in Custody or Death following Police Contact but it was about 18. I had undertaken three investigations of Death in Custody or Death following Police contact”²⁴⁷.

Deputy Senior Investigator Dodd, and Investigators Sinclair and Rhodes are asked in their Inquiry statements what experience, if any, they had prior to 3 May 2015 of PIRC investigations into deaths in police custody, or deaths following police contact and in what ways were these investigations similar or different to the investigation following the death of Mr Bayoh. Deputy Senior Investigator Dodd says that he was lead investigator or part of an investigation team on several PIRC investigations of deaths in police custody, or deaths following police contact. He says that he recalls that some of these investigations were similar to the incident on 3 May 2015, in that persons were restrained by police officers whilst under the influence of drugs/legal highs, became unresponsive and, despite CPR and medical intervention, lost their lives²⁴⁸. Investigator Sinclair says that in June 2014 he carried out the role of scene manager when a male died within his cell at Kittybrewster Police Station, Aberdeen. He says that the male remained in situ until he arrived, and no items had been removed which was different to the incident involving Mr Bayoh. In November 2014 he says that he also carried out the role of scene manager when a male swallowed controlled drugs and choked on them within the custody suite of Stewart Street Police Station, Glasgow. He was removed to hospital and died a few days later. The similarities to the incident involving Mr Bayoh were that prior to PIRC attending officers from Police Scotland had already moved and packaged productions from the scene²⁴⁹. Investigator Rhodes says that although he has been involved in a “few deaths in custody with PIRC” he cannot recall if any of these incidents were prior to 3 May 2015. There were certainly some incidents that he was involved in after 3 May 2015²⁵⁰.

Investigator Clerkin is asked how many times he had acted as a family liaison officer within PIRC as at May 2015 and he says that “probably at the very most - no more than five times”²⁵¹. He is also asked if his other PIRC deployments as family liaison officer concerned deaths in police custody or deaths shortly after contact with the police and he says that all of them would have been. They would not necessarily have been whilst in custody but following police contact²⁵².

²⁴⁶ SBPI-00457 para 228

²⁴⁷ SBPI-00255 para 9

²⁴⁸ SBPI-00451 para 16

²⁴⁹ SBPI-00424 para 13

²⁵⁰ SBPI-00433 para 12

²⁵¹ SBPI-00446 para 43

²⁵² SBPI-00446 para 45

Commissioner Frame says that she had previously been involved in death in police custody cases during her previous role within COPFS²⁵³. Those cases involved a death in police cells or within a police station but none of the cases that she had previously been involved in related to an “active engagement with police officers in a public place” like the incident involving Mr Bayoh²⁵⁴.

5. Use of language to describe Mr Bayoh

Investigator Clerkin says that although it was not stated in the summary of events at Hayfield Road in the PIRC FLO Log²⁵⁵ he remembers that it was stated that “[Mr Bayoh] was deemed by the police officers to be of immense strength, I have some notion that that was mentioned”²⁵⁶.

When Director of Investigations Mitchell is asked whether the language used to describe Mr Bayoh as “massive” or “the biggest male that I’ve ever seen”²⁵⁷, whilst not obviously a racial comment²⁵⁸, should have been a red flag to investigators in relation to the issue of race, he says “if we are talking about it being stereotypical, which I agree that it probably is, because it is used when you listen to media, when you listen to -- read newspapers, et cetera. Yes, that should probably have been delved into more deeply”²⁵⁹.

Head of Communications Tait is asked if Mr Bayoh’s race had any impact on the language he used in my communications with the media and he says that it did not.

Director of Investigations Mitchell says that the PIRC investigators were all experienced and it would not have been unreasonable for them to have been able to identify comments as being a potential racial stereotype, but it is difficult for him to say he is confident that they were in a position to understand that²⁶⁰.

Commissioner Frame says that she received a call from Head of Investigations, Irene Scullion, around lunchtime on 3 May 2015 whilst she was on annual leave and that during the call she asked why it had been considered that this might be a terror incident. Commissioner Frame says that Head of Investigations Scullion replied that it was because the man was “a coloured gentleman”²⁶¹. Commissioner Frame says she specifically recalls Head of Investigations Scullion using the term “a coloured gentleman” as she remembers “not understanding what she meant when she said that it had caused the matter to be thought of as a terrorist incident”²⁶² She continues “I did ask her what she meant by it and asked her a variety of questions around the ethnicity of the person. I don’t recall her informing me that Mr Bayoh was black”²⁶³.

²⁵³ SBPI-00447 para 158

²⁵⁴ SBPI-00447 para 159

²⁵⁵ PIRC-04150 page nos 1 to 3

²⁵⁶ SBPI-00446 para 100

²⁵⁷ 91/63/10 to 91/63/12

²⁵⁸ 91/63/16 to 91/63/18

²⁵⁹ 91/63/21 to 91/64/3

²⁶⁰ 91/64/4 to 91/64/16

²⁶¹ SBPI-00447 para 162

²⁶² SBPI-00447 para 165

²⁶³ SBPI-00447 para 165

Head of Investigations Scullion says that whilst she recalls telephoning Commissioner Frame “around 10am to alert her that an incident had occurred (doing so to assist the on-call manager, Mr Casey, who had been unable to locate [Commissioner] Frame’s number)” she could not recall a later call at around lunchtime which Commissioner Frame has referred to²⁶⁴. In her Inquiry statement, Head of Investigations Scullion was asked what Senior Investigator Casey had said which indicated that this particular incident was high profile. She says “I think he said it was a man that had died in custody and that the man was black - obviously we were living in a time where, quite rightly, there’s been a focus – globally - on deaths of people of colour, so he knew that there would be media interest”²⁶⁵. She then says that “I gave the Commissioner the information that Ricky had given me, that somebody had died in police contact, and the person was black”²⁶⁶.

When Head of Investigations Scullion was later asked if, as per the evidence of Commissioner Frame, she had used the phrase “a coloured gentleman” to describe Mr Bayoh during a call with Commissioner Frame on 3 May 2015, she says “I have never in my personal or professional lives used such a pejorative term. Such language is completely alien to me. The only other term I would use in place of ‘black’ is ‘person of colour’²⁶⁷. Furthermore, Head of Investigations Scullion says that she recalls that during the telephone call with Commissioner Frame at 10:00 on 3 May 2015, alerting her to the incident which had occurred, she “used the term “black”²⁶⁸.

Commissioner Frame also refers, in her Inquiry statement, to a media statement by the SPF on 14 May 2015 which contained details about the incident involving Mr Bayoh²⁶⁹ she felt were unhelpful in that they described Mr Bayoh and the female officer in a particular way²⁷⁰. During her oral evidence she says that “Mr Bayoh was obviously being described as a large man who had attacked a petite female officer”²⁷¹. The descriptions caused her concern on the basis that they were reinforcing a stereotypical view of Mr Bayoh, being a black man, who was the aggressor²⁷².

Commissioner Frame is also asked about the statements provided to PIRC by the attending officers and if she considered the language that was being used by the attending officers. She says that she does not think that “there was any reference to language at the Hayfield Road incident, when they were actually hands on, that I can recall”²⁷³. She adds that she does recall “reading the statements and seeing any references to the word “coloured” and reference being made that linked the fact that Mr Bayoh was black with potential terrorism”²⁷⁴. She is also asked if she considered

²⁶⁴ SBPI-00452 para 3

²⁶⁵ SBPI-00414 para 31

²⁶⁶ SBPI-00414 para 32

²⁶⁷ SBPI-00452 para 4

²⁶⁸ SBPI-00452 para 5

²⁶⁹ SPF-00010(a) – The specific excerpt that Commissioner Frame is referring to reads as follows: “... A petit female police officer responding to a call of a man brandishing a knife was subject to a violent and unprovoked attack by a large male. The officer believed she was going to die as a result of this assault”.

²⁷⁰ SBPI-00447 para 365

²⁷¹ 89/66/17 to 89/66/18

²⁷² 89/66/79 to 89/66/23

²⁷³ 88/153/11 to 88/153/16

²⁷⁴ 88/153/17 to 88/153/21

references such as these related to race, and she says that she considered that they potentially did. “However on raising them -- and I think that was with [Director of Investigations] Mitchell -- the view taken was that these were misconduct matters”²⁷⁵.

6. Conduct of the inquiry by PIRC

6.1 General

Commissioner Frame is asked in her Inquiry statement if it was possible for PIRC to run a large-scale investigation entirely independently of Police Scotland. She says that there was a recognition from the inception of PIRC that they would never be equipped with all the specialist skills that Police Scotland had and that would always mean that PIRC would have to rely on cooperation between Police Scotland and PIRC²⁷⁶. She also says that “in the initial stages of any investigation where the police are likely to be the first on the scene, there will be a period of time in which police cooperation will be required to preserve the scene and evidence. PIRC Scene Managers will then take over the scene and direct search activities. However, as the police are usually the first responders it is vital that they preserve the scene”²⁷⁷.

6.2 Reliance on initial accounts by Police Scotland

Deputy Senior Investigator Harrower notes in his Inquiry statement that there are discrepancies between the description of the incident at Hayfield Road which he received from Mr Green at 09:35²⁷⁸ and from Superintendent Blackhall²⁷⁹ at 10:01 and that “looking back these [discrepancies] are apparent but we were not aware of this at the time”²⁸⁰. He says that whilst he would not regard it as commonplace for the information to be provided at the start of the investigation to subsequently prove inaccurate, he has had “similar experiences in the past”²⁸¹. He adds that “it may be that whoever is providing that information has been given inaccurate information but with no malice intended. It’s just passed through a chain of different people, it’s not wholly accurate from what you subsequently establish”²⁸².

Deputy Senior Investigator Harrower also says that the summary of the circumstances in his operational notes²⁸³ was “from recollection” provided by Detective

²⁷⁵ 88/154/9 to 88/154/15

²⁷⁶ SBPI-00447 para 126

²⁷⁷ SBPI-00447 para 127

²⁷⁸ PIRC-01468 – page 3.

²⁷⁹ PIRC-01468 – page 3

²⁸⁰ SBPI-00259 para 10

²⁸¹ SBPI-00259 para 11

²⁸² SBPI-00259 para 11

²⁸³ PIRC-01468 – page 4 “Summary of Circumstances:

0714: Call from named reporter re African man in Hendry Road, Kirkcaldy. The male is chasing cars with a knife.

0715: Second reporter states mail is jumping out in front of cars.

0715: Reporter states male with knife. Hayfield Road. 3 marked police vehicles and 1 unmarked car responded. Male appears in front of them. He runs towards them with knife. Batons pulled out and CS deployed. Initial reports are that CS does not take effect. Officer strikes man with batons. The male punches female on side of head. He is subdued and taken to the ground, handcuffed and leg restraints used. During struggle male becomes unconscious. Ambulance attends 07:30 hours. Male is not breathing and CPR given by officers.

Superintendent Campbell following their telephone call at 10:22 on 3 May 2015²⁸⁴. He says “the information here is quite specific. It’s certainly a timeline of sorts from what the police were aware of at that time”²⁸⁵.

Deputy Senior Investigator Little comments on the note made by Deputy Senior Investigator Harrower following his call with Detective Superintendent Campbell and the fact that reference to “male appears in front of them; he runs towards them with knife” is now, with hindsight known to be inaccurate²⁸⁶.

Deputy Senior Investigator Little says in his Inquiry statement that the description of events recorded by Deputy Senior Investigator Harrower following his calls with Mr Green and Superintendent Blackhall are not inaccurate as such; however, the order of events is incorrect in that it suggests that Mr Bayoh assaulted a police officer before CS spray was deployed²⁸⁷.

A summary of the calls received by Deputy Senior Investigator Harrower and the briefing that he subsequently gave on 3 May 2015 at 11:55²⁸⁸ is as follows:

| Call to/from | Description of Mr Bayoh | Knife? | Sequence of events described after police officers arrive at Hayfield Road to confront Mr Bayoh | | | | |
|--|-----------------------------|---|---|---|---|--|--|
| Mr Green at 09:35 ²⁸⁹ | Black male ²⁹⁰ | Knife above his head causing a serious disturbance ²⁹¹ | Challenge male ²⁹² | Fight takes place during which CS & baton used ²⁹³ | Eventually placed in police vehicle ²⁹⁴ | | |
| Supt Blackhall at 10:01 ²⁹⁵ | African male ²⁹⁶ | Armed with a knife in Kirkcaldy town centre ²⁹⁷ | Suspect makes a run at female officer & assaults her ²⁹⁸ | Suspect CS'd but has little effect ²⁹⁹ | Suspect hit with baton at least once ³⁰⁰ | A number of officers attend ³⁰¹ | Suspect was unconscious on the ground ³⁰² |

0732: Ambulance arrives and crew take on CPR

0738 Male taken into ambulance and taken to Kirkcaldy Royal Infirmary.

00904: Life Pronounced Extinct. Extinct Body moved from resuscitation room to side room of A&E”.

²⁸⁴ SBPI-00259 para 12

²⁸⁵ SBPI-00259 para 12

²⁸⁶ SBPI-00255 para 34

²⁸⁷ SBPI-00255 para 33

²⁸⁸ PIRC-00036 page 2

²⁸⁹ PIRC-01468 page 3

²⁹⁰ PIRC-01468 page 3

²⁹¹ PIRC-01468 page 3

²⁹² PIRC-01468 page 3

²⁹³ PIRC-01468 page 3

²⁹⁴ PIRC-01468 page 3

²⁹⁵ PIRC-01468 page 3

²⁹⁶ PIRC-01468 page 3

²⁹⁷ PIRC-01468 page 3

²⁹⁸ PIRC-01468 page 3

²⁹⁹ PIRC-01468 page 3

³⁰⁰ PIRC-01468 page 3

³⁰¹ PIRC-01468 page 3

³⁰² PIRC-01468 page 3

| Call to/from | Description of Mr Bayoh | Knife? | Sequence of events described after police officers arrive at Hayfield Road to confront Mr Bayoh | | | | |
|-------------------------------------|-----------------------------|---|---|---|--|--|--|
| SI Casey at 10:10 ³⁰³ | Black male ³⁰⁴ | Swinging a knife above his head in Kirkcaldy town centre ³⁰⁵ | Challenge ³⁰⁶ | Guy runs at police woman punches her ³⁰⁷ | Melee, CS'd & batoned ³⁰⁸ | Collaps e, state of unconsciousness ³⁰⁹ | |
| DS Campbell at 10:22 ³¹⁰ | African male ³¹¹ | Chasing cars with a knife ³¹² | Runs towards them with a knife ³¹³ | Batons pulled out & CS deployed ³¹⁴ | Suspect struck with baton ³¹⁵ | Male punches female of the side of head ³¹⁶ | Subdued and taken to the ground ³¹⁷ |

| Briefing by | Description of Mr Bayoh | Knife? | Sequence of Events described after police officers arrive at Hayfield Road to confront Mr Bayoh | | | | |
|--------------------------------------|--------------------------|---|---|--|--|--|--|
| DSI Harrower at 11:55 ³¹⁸ | Black man ³¹⁹ | Running about Hayfield Road with a knife ³²⁰ | Suspect ran at female officer and attacked her wielding the knife ³²¹ | CS has been discharged with no effect ³²² | Suspect struck several times with police batons ³²³ | Rumpus on the ground where suspect eventually handcuffed & leg restraints ³²⁴ | |

Deputy Senior Investigator Harrower was asked in his Inquiry statement whether he has any recollection of saying that the police officer was attacked with a knife and he says that he would “never say that because that was not part of the initial information that I got. Clearly, in the briefing, I would talk about the individual reported to be brandishing a knife and the subsequent arrest and any information regarding the actions of the officers, but definitely not that. Whether he's misinterpreted the information he was given, I don't know”³²⁵.

³⁰³ PIRC-04528 page 1

³⁰⁴ PIRC-04528 page 1

³⁰⁵ PIRC-04528 page 1

³⁰⁶ PIRC-04528 page 1

³⁰⁷ PIRC-04528 page 1

³⁰⁸ PIRC-04528 page 1

³⁰⁹ PIRC-04528 page 1

³¹⁰ PIRC-01468 page 4

³¹¹ PIRC-01468 page 4

³¹² PIRC-01468 page 4

³¹³ PIRC-01468 page 4

³¹⁴ PIRC-01468 page 4

³¹⁵ PIRC-01468 page 4

³¹⁶ PIRC-01468 page 4

³¹⁷ PIRC-01468 page 4

³¹⁸ PIRC-00036 page 2

³¹⁹ PIRC-00036 page 2

³²⁰ PIRC-00036 page 2

³²¹ PIRC-00036 page 2

³²² PIRC-00036 page 2

³²³ PIRC-00036 page 2

³²⁴ PIRC-00036 page 2

³²⁵ SBPI-00259 para 20

Investigator McGuire was asked in his Inquiry statement if he recalls Deputy Senior Investigator Harrower saying that a police officer was attacked with a knife³²⁶. Investigator McGuire says that he does and believes that he included that piece of information in his notes. Investigator McGuire says that his contemporaneous notes concerning events of 3 May 2015³²⁷ were completed by him that day³²⁸. Investigator McGuire then goes on to say that he noted at the time “Suspect ran at PW with a knife (not used assaulted)” and then I’ve put “attacked with the knife.” I think that was more of a question in my mind at that time. I was looking at it from the point of, “Did he actually?” So, he’s ran at her with a knife, but he’s not actually used the knife to assault her. I think that may be a confusion or error on my behalf trying to get as much information down, but I do seem to remember, he ran with the knife, which I thought was strange afterwards because of the later discovery, he didn’t have the knife. The knife was discarded before he actually ran at the female police officer. I cannot be absolutely sure if Deputy Senior Investigator Harrower did in fact say that Mr Bayoh had run at the policewoman with a knife. This may have been an assumption on my behalf which I questioned myself at the time. I think my notes reflect my own personal thoughts and a question and earlier references to him in possession of a knife”³²⁹.

A further description of the events at Hayfield Road was also given at the second Gold Group meeting which Deputy Senior Investigator Harrower noted as having taken place at 14:05 on 3 May 2015. Deputy Senior Investigator Harrower notes in relation to the second Gold Group meeting that Detective Inspector Robson provided an overview of the incident at Hayfield Road. He says that he “details calls from civilian witnesses at 07:14 and 07:18 and then in his own notes records the description of the incident as follows; “Officers left muster Kirkcaldy Police Office along with [Detective Sergeant] and [Detective Constable] to respond to call. 07:20 arrival. Code red button. PAVA and batons deployed. Handcuffed to rear and leg restraints used. Initial warning given re PAVA. Female officer believed to be kicked and struck on the back of the head. Male becomes unconscious. Officers commenced CPR. [...] 0904 PLE. Has minor abrasion to head”³³⁰. When asked if he has any further recollection of what he was told in that meeting he says that he does not. He acknowledges that the description conveyed by Detective Inspector Robson differs from what Deputy Senior Investigator Harrower had earlier noted from initial telephone conversations. In particular, a difference in relation to reports of Mr Bayoh attacking an officer with a knife³³¹.

Deputy Senior Investigator Little is asked in his Inquiry statement how important it is for information provided by the police in the initial hour or two of a PIRC investigation to be accurate and how much this impacts the decision making that follows. He says that “It has a lot of importance as that’s what you’re basing your decisions on. So it needs to be accurate”³³². At the time Deputy Senior Investigator Harrower was speaking on the telephone with Mr Green, Superintendent Blackhall and Detective

³²⁶ SBPI-00457 para 52

³²⁷ PIRC-01467

³²⁸ SBPI-00457 para 44

³²⁹ SBPI-00457 para 52

³³⁰ PIRC-01468 page 6

³³¹ SBPI-00259 para 25

³³² SBPI-00255 para 27

Superintendent Campbell early on the morning of 3 May 2015, Deputy Senior Investigator Little believes that Deputy Senior Investigator Harrower “was not aware that the police officers were refusing to provide statements. A month after that initial account that [Deputy Senior Investigator Harrower] got, we knew that it contained inaccurate information. The inaccuracies only come to light when we start piecing everything together and we get the officers accounts”³³³.

6.3 Deployment of family liaison officers

Deputy Senior Investigator Little says that the fact that Police Scotland did not deploy family liaison officers on 3 May 2015³³⁴ did not help the relationship between PIRC and Mr Bayoh’s family as family liaison officers deployed by PIRC were going into a situation where the family have not had the benefit of the experienced officers trained in how to deal with families in these circumstances. He adds that Police Scotland did not deploy family liaison officers and informed PIRC later that evening and Deputy Senior Investigator Harrower had no means to deploy family liaison officers at that time³³⁵. Investigator McGuire was asked if it was PIRC’s understanding the family liaison officers would be deployed and he says that it was, “absolutely”³³⁶.

Deputy Senior Investigator Little says that in normal circumstances Police Scotland could initially deploy family liaison officers and then family liaison officers from PIRC would take over the next day or two days later. There would be a handover of information between Police Scotland and PIRC family liaison officers and Deputy Senior Investigator Little’s expectation would be that the family liaison officers from Police Scotland would explain who PIRC were and that they would be taking over the investigation and the family liaison role. However, in this case, since Police Scotland had not deployed family liaison officers there was no one who would be able to introduce the family liaison officers from PIRC. Therefore, since Deputy Senior Investigator Harrower had already met with Mr Bayoh’s family, Deputy Senior Investigator Little asked Deputy Senior Investigator Harrower to contact Mr Bayoh’s family on 4 May 2015³³⁷ to provide details of the family liaison officers from PIRC³³⁸.

Deputy Senior Investigator Little says that he understands that Chief Superintendent McEwan visited Mr Bayoh’s family for a second time on 4 May 2015³³⁹. He adds that “once an investigation is underway, and in particular once PIRC family liaison officers are deployed, I wouldn’t generally go see a family as the lead investigator unless I was accompanied by my family liaison officers”³⁴⁰. Deputy Senior Investigator Little says

³³³ SBPI-00255 para 35

³³⁴ PIRC-03694 at page 3 - Deputy Senior Investigator Harrower notes that “Police Scotland intimated at an early stage that they were placing family liaison officers, namely Detective Sergeant Kevin Houlison, and PC Sarah Jane Bell. One of the actions allocated to them is to identify relevant and willing family members to carry out their identification at the post-mortem. However, this did not take place”.

³³⁵ SBPI-00255 para 45

³³⁶ SBPI-00457 para 82

³³⁷ PIRC-00007 at page 7 – Deputy Senior Investigator Harrower notes that “About 1030 hours on 4 May 2015 I contacted [Mr Johnson] by telephone..... I also asked [Mr Johnson] if he would be willing to meet with myself and [Investigator Lewis], who had been given duties to act as the FLO. He declined this invitation..... A short time later I provided [Mr Johnson] with a contact telephone number for [Investigator Lewis]”.

³³⁸ SBPI-00255 para 48

³³⁹ SBPI-00255 para 52

³⁴⁰ SBPI-00255 para 51

that his concern was that the post mortem was due to take place on 4 May 2015 and he could not be sure what information Chief Superintendent McEwan was sharing with Mr Bayoh's family and how accurate that might be. Deputy Senior Investigator Little adds that, by that time, he was aware that there appeared to have been a number of conflicting messages passed to Mr Bayoh's family in their interactions with Police Scotland³⁴¹.

Investigator Lewis is asked during the Inquiry hearing why family liaison officers from PIRC were not deployed earlier given that Mr Green from COPFS had called Deputy Senior Investigator Harrower at approximately 9:35 on 3 May 2015. Investigator Lewis says that he understands that Police Scotland were to deploy family liaison officers on 3 May 2015 and that the reasons for that will have been discussed on 3 May 2015 by Deputy Senior Investigator Harrower and the Senior Investigating Officer at Police Scotland, Detective Superintendent Campbell³⁴². However, Investigator Lewis says that "from my point of view, yes, had I got the phone call I could have turned out and been there by early afternoon at the latest"³⁴³.

Investigator Clerkin says in his Inquiry statement that notwithstanding the fact that there had been information provided from Police Scotland sources, "the focus was very much on, yes, we were provided with this narrative, this information from Police Scotland, but equally we have to establish the facts of this matter. We certainly didn't proceed on the basis that really any of this was true"³⁴⁴. He continues, "The focus was on 'find out' rather than 'confirm that this is the case'. I think that was very much part and parcel of how we went about it. I don't know where that information came from, but it's probably a summary of the interaction between senior Police Scotland staff and perhaps our own senior investigators"³⁴⁵.

6.4 Family liaison strategy

Investigator Clerkin is asked if he would have expected a family liaison strategy to be in place on 3 May 2015. He says that "the textbook answer is that [family liaison strategy] should be a consideration at the very outset of an investigation. Now, whether that is the case here or not I can't say for definite. We were certainly appraised of what to do, whether this was noted, whether this was recorded in a S10 policy log, I can't say for definite"³⁴⁶. He further adds that "I can't say that anybody presented me with a written strategy and said, "This is the strategy and this is what you must adhere to, and this is recorded in my policy log". I would always have assumed based on what we were told that consideration had been given to that. I'd be very surprised if consideration hadn't been given to a formulated strategy. I'm sure that there will be narrative within a policy log which will show that that was given consideration to, and fairly early doors as well"³⁴⁷.

³⁴¹ SBPI-00255 para 52

³⁴² 78/110/4 to 78/110/18

³⁴³ 78/110/18 to 78/110/20

³⁴⁴ SBPI-00446 para 102

³⁴⁵ SBPI-00446 para 103

³⁴⁶ SBPI-00446 para 114

³⁴⁷ SBPI-00446 para 115

Investigator Clerkin is asked in his Inquiry statement about the meeting with Investigator Lewis and Deputy Senior Investigator Little on 4 May 2015 at 10:40. At this meeting Investigator Clerkin was appointed co-FLO with Investigator Lewis. FLO tasks were outlined at this meeting by Deputy Senior Investigator Little. The notes state that, "Family liaison tasks were outlined at the meeting by Mr Little". Investigator Clerkin says that he doesn't have "any great specific memory of this particular briefing as such"³⁴⁸. Although Investigator Clerkin says that he cannot be more specific he says that "It would clearly have flagged up any key issues about the family, about the locations of the family, about the dynamic in terms of who Sheku's partner was, what his relationship was, the fact that he had a child with a previous partner, issues around the necessity to approach the previous partner, associates, what he was engaged with at the time in the period leading up to his death, as was best known at that point. All those things would have been certainly outlined"³⁴⁹.

6.5 Lines of inquiry followed

6.5.1 House- to-house enquiries

Deputy Senior Investigator Dodd says that initially he was assigned to the investigation team as house-to-house co-ordinator and completing any actions or tasks allocated to him by the office manager. He carried out house-to-house duties in his previous role in the police on occasions but not as co-ordinator which was usually carried out by a trained uniformed officer. He says that he had never performed this role in a Death in Custody investigation prior the incident involving Mr Bayoh. He had however received training on house-to-house duties whilst in the police³⁵⁰.

The role involves briefing investigators and allocating them houses in zones identified which require to be visited and statements to be obtained from potential witnesses. The purpose of house-to-house is to potentially identify people who have witnessed events connected to the incident, sightings of persons before or after the event, sightings of vehicles or other potential witnesses³⁵¹. He says that he was not involved in developing the house-to-house strategy³⁵².

Deputy Senior Investigator Dodd is also asked in his Inquiry statement to what extent did PIRC rely on Police Scotland when completing house-to-house enquiries during this investigation and if it is standard practice for PIRC to carry out house-to-house enquiries in conjunction with Police Scotland during a PIRC investigation following a death in police custody or death following police contact. He says that his recollection is that Police Scotland completed house-to-house enquiries soon after the incident to ascertain if there were potential witnesses and PIRC investigators became involved the following day. He adds that he would not say that it was standard practice but it had taken place in other investigations where there is a large area to be covered and

³⁴⁸ SBPI-00446 para 106

³⁴⁹ SBPI-00446 para 107

³⁵⁰ SBPI-00451 para 34

³⁵¹ SBPI-00451 para 35

³⁵² SBPI-00451 para 37

this approach is beneficial with regards to visiting potential witnesses and covering areas more quickly³⁵³.

In his Inquiry statement, Deputy Senior Investigator Dodd is asked if there was any delay in completing the house-to-house enquiries³⁵⁴. He says that “the only delay was in contacting people who were not at home, working, unavailable, on holiday etc, which is normal in house-to-house enquiries. I am not aware that this delay had any impact on the PIRC investigation”³⁵⁵.

Senior Investigator McSparran is asked during the Inquiry hearing if, reflecting on the early days of the investigation, there were occasions where PIRC simply didn't have enough staff to deal with particular tasks. He says that “I think as the days went on staff began to multitask. So we are sending out actions: right, let's complete the house-to-house, let's get this -- you are prioritising what you are doing. Right, we want the house-to-house completed as quickly as possible. So it was at that point,..... I went to the Commissioner, and she said: shut down the review section in PIRC, that is the other side of our business, complaint handling reviews, get out and help the investigations team, let's complete the house-to-house at the very least”³⁵⁶.

6.5.2 Altercation between Mr Bayoh and PC Short

Deputy Senior Investigator Dodd is asked whether he was aware at the time that Mr Kevin Nelson was interviewed as a witness on 5 May 2015³⁵⁷ that Mr Bayoh had allegedly stomped or stamped on PC Nicole Short and if so, what consideration was given to asking Mr Nelson questions about the alleged stomp. Deputy Senior Investigator Dodd says that his recollection was that he was not aware of that allegation at the time³⁵⁸. Deputy Senior Investigator Dodd is asked what steps if any were taken by PIRC to assess Mr Nelson's line of sight from his address at Hayfield Road and he says that “Mr Nelson showed us the view from his window and took us outside to indicate his line of sight from his front gate”³⁵⁹.

In his Inquiry statement Deputy Senior Investigator Dodd is referred to the allegation made by PC Tomlinson regarding the stomp on PC Short³⁶⁰. Deputy Senior Investigator Dodd is asked what, if any, discussions he had with other members of PIRC's investigations team in relation to the alleged stomp by Mr Bayoh on obtaining PC Tomlinson's statement. Deputy Senior Investigator Dodd says that he believes that

³⁵³ SBPI-00451 para 43

³⁵⁴ PIRC-01709 page 2 – it is noted that house to house enquiries were completed on 20 May 2015.

³⁵⁵ SBPI-00451 para 59

³⁵⁶ 82/98/4 to 82/98/19

³⁵⁷ PIRC-00019 – Mr Nelson was a resident living on Hayfield Road and observed part of the incident on Hayfield Road on 3 May 2015

³⁵⁸ SBPI-00451 para 48

³⁵⁹ SBPI-00452 para 49

³⁶⁰ PIRC-00263 at page 3 PC Tomlinson says “[Mr Bayoh] ran past me and I turned round right about 180 degrees to see him chasing [PC Short]. She was running across the road away from the bus stop. He caught up with her and punched the back of her head. She didn't have her police hat on and neither did I. She fell to ground face down when he punched her and she tried to protect her head and push herself up with her hands at the same time. I ran over to assist her, but before I got there, he stomped on her back with his foot with a great deal of force. He put his full bodyweight into the stomp and used his arms to gain leverage. After he did this she went back to the floor and never moved. I thought he had killed her. He stomped on her back again with the same force and she wasn't moving”.

he “would have informed Senior Investigator McSporran and Deputy Senior Investigator Little of the alleged stomp after the interview but not the other interviewing officers at that time. I had no further involvement in relation to the alleged stomp”³⁶¹.

6.5.3 Drug use by Mr Bayoh

In his Inquiry Statement Deputy Senior Investigator Dodd is referred to Minutes of the PIRC briefing on 30 June 2015³⁶² in which it was noted that he was attempting to contact Mr Saeed, Mr Martyn Dick and Miss Kirsty MacLeod. He says that PIRC wished to establish from these witnesses if they had knowledge of Mr Bayoh abusing Alpha PVP and MDMA on the night of the incident, frequency of use and potential supply chain. Miss MacLeod says in her PIRC statement on 8 July 2015 that she had “no idea where Shek got his drugs from. I wouldn’t ask him, as the less I know the better”³⁶³.

When Deputy Senior Investigator Dodd is asked in his Inquiry statement why PIRC were seeking to identify where Mr Bayoh obtained his drugs as part of the investigation and if this this line of inquiry was instructed by COPFS, he says that he was not involved in the decision-making process regarding these matters but he believes that this would be public safety related³⁶⁴.

6.6 Securing evidence

6.6.1 General

In his statement Investigator Sinclair says that he met with Detective Chief Inspector Houston at 13:30 on 3 May 2015 in order to gather information on the various scenes that had been identified. He also informed Detective Chief Inspector Houston that he wanted to meet with the crime scene manager for Hayfield Road, Detective Constable O’Neill, and attend the scene at Hayfield Road. He also wanted to examine the items of evidence that had been removed from the scene at Hayfield Road prior to the scene being secured³⁶⁵. Investigator Sinclair says that he liaised regularly with Detective Chief Inspector Houston and Detective Constable O’Neill throughout the day on 3 May 2015. He says that he also discussed and approved of the extent of the cordon that had been put in place at Hayfield Road to secure the scene. Investigator Sinclair says however, that he asked for drains within the cordon at Hayfield Road to be searched. He adds that the scene at Hayfield Road was a joint approach between PIRC and Police Scotland which ensured that “the scene was effectively managed and all evidence recovered”³⁶⁶. Investigator Sinclair says that it is common practice for scenes to be managed jointly following a death in police custody or death following police contact³⁶⁷. Detective Chief Inspector Houston says that at a forensic strategy meeting which was chaired by Detective Superintendent Campbell at 16:45 on 3 May 2015 it was confirmed that Investigator Sinclair would “oversee the work of Detective

³⁶¹ SBPI-00451 para 83

³⁶² PIRC-04156 page 71

³⁶³ PIRC-00054 page 2

³⁶⁴ SBPI-00451 para 104

³⁶⁵ SBPI-00424 para 41

³⁶⁶ SBPI-00424 para 42

³⁶⁷ SBPI-00424 para 43

Constable O'Neill³⁶⁸. When Investigator Sinclair was asked how he maintained oversight of Detective Constable O'Neill, he says that he "attended the scene with DC O'Neill that day where we continued with our discussions regarding the scene"³⁶⁹.

When Investigator Sinclair was asked whether it was possible for PIRC to manage a scene without the assistance of Police Scotland he said that "PIRC require the assistance of Police Scotland when managing a scene on all occasions. It is Police Scotland who contact the Scottish Police Authority on behalf of PIRC to arrange a locus to be photographed and videoed. Due to limited storage capacity within the PIRC office, productions seized are secured within tamper proof evidence bags and retained by Police Scotland. PIRC also use Police Scotland officers to complete and manage the scene entry logs"³⁷⁰.

6.6.2 Hayfield Road

Investigator Sinclair is asked what his initial priorities and considerations were, after he had been instructed to undertake the crime scene management duties at Hayfield Road. He says that first priority when arriving at Kirkcaldy Police Station was to liaise with Detective Chief Inspector Houston who was the scene co-ordinator. He adds that "my rationale for this was to obtain as much information as possible about the scene at Hayfield Road. As the PIRC scene manager it was my responsibility to liaise with Detective Constable O'Neill ensuring that the scene was secure and protected and that scene entry logs had been commenced. I was to be assisted by Investigator Rhodes during this process"³⁷¹.

When Investigator Sinclair is asked who at PIRC ultimately had responsibility for the management of the scene at Hayfield Road, he says that "Deputy Senior Investigator Harrower had no involvement in the management of the scene at Hayfield Road. He instructed me to update him on a regular basis with information regarding the scene which I did. From a PIRC point of view I had control of the scene linking in with Detective Constable O'Neill"³⁷².

Investigator Sinclair was also asked if the delay in PIRC Investigators arriving in Kirkcaldy had any impact on the investigation he says that "In relation to Hayfield Road the scene was being managed by Detective Constable O'Neill and I do not feel that my arrival when I did had any negative bearing in the investigation"³⁷³. Detective Constable O'Neill noted that he was introduced to Investigator Sinclair at around 17:35 on 3 May 2015 at Kirkcaldy Police Office³⁷⁴. Investigator Sinclair noted that he did not visit the scene at Hayfield Road until 19:20 on 3 May 2015³⁷⁵. When he is asked why he did not attend at the scene sooner given that he was originally tasked with scene management at Hayfield Road earlier at 13:30 that day, he says "As previously mentioned when I arrived at Kirkcaldy Police Station Detective Chief Inspector

³⁶⁸ SBPI-00165 page 2

³⁶⁹ SBPI-00424 para 79

³⁷⁰ SBPI-00424 para 44

³⁷¹ SBPI-00424 para 35

³⁷² SBPI-00424 para 37

³⁷³ SBPI-00424 para 38

³⁷⁴ PIRC-00129 page 3

³⁷⁵ PIRC-00309 page 4

Houston briefed me in relation to what Detective Constable O'Neill had in place regards the scene at Hayfield Road. I also spoke to Detective Constable O'Neill after that, who confirmed what was in place. At this time I saw no necessity to attend the locus immediately. Every situation is different and on occasions it might be pertinent for me to attend a scene quicker however on this occasion I was happy with what Detective Constable O'Neill had in place"³⁷⁶.

Investigator Sinclair is also asked about a number of items that had been removed from the scene at Hayfield Road due to heavy rainfall and prior to being photographed by staff from the Scottish Police Authority, such as batons, a mobile phone, and the knife found close to the scene. He is also asked if he was content with the decision to remove these items from the locus and the decision by Detective Constable Derek Connell to photograph the knife on his mobile phone. He says that "These items had been removed prior to Police Scotland instructing Detective Constable O'Neill to carryout scene management duties. Ideally these items should not have been removed prior to being photographed by [the Scottish Police Authority] and if the officers were concerned about the weather conditions they should have made an effort to cover the items. Removal of the items, I would say only caused a slight time inconvenience. It took longer to establish the exact location of where these items had been recovered. As a result of this the items were not photographed in situ"³⁷⁷.

Detective Constable O'Neill says in his statement that around 17:35 on 3 May 2015 "there were no statements or accounts noted from the [attending officers]. There had been no house to house enquiries carried out at the locus therefore there was limited information to base the perimeters of the locus"³⁷⁸. When Investigator Sinclair was asked what information he relied upon to set the perimeters of the scene at Hayfield Road and if the perimeter included the location from which the knife was recovered by police officers earlier in the day, he says that "DC O'Neill I believe must have been provided with details of the incident for him to decide the parameters of the cordon. The cordon covered a large area including the roadway, grass areas and gardens of the house from 2 - 26 Hayfield Road. I agreed with the parameters that Detective Constable O'Neill had put in place. The location where the knife was recovered was within the cordon"³⁷⁹.

Investigator Sinclair is asked about the fact that items recovered from Hayfield Road, including batons and the knife having not been photographed by the Scottish Police Authority, and the decision to later remove these items from sealed and labelled production bags in order for them to be photographed. He is also asked what impact the requirement to have the items photographed at a later date had on PIRC's investigation and what observations he had in relation to the way in which items had been recovered from Hayfield Road. Investigator Sinclair says that "best practice would have been to have left the items in situ and thereafter have them photographed by SPA before being recovered as evidential material. As the items had been removed I wanted to examine that they had been placed within the appropriate tamper proof evidence bags and sealed which they had. For this reason I did not think it was

³⁷⁶ SBPI-00424 para 84

³⁷⁷ SBPI-00424 para 48

³⁷⁸ PIRC-00129 page 3

³⁷⁹ SBPI-00424 para 81

appropriate to have them photographed at this time. I would say it only had a minor inconvenience on the PIRC investigation”³⁸⁰.

6.6.3 Victoria Hospital, Kirkcaldy

Trainee Investigator Taylor says that he does not remember any decisions being taken in relation to the management of the scene at Victoria Hospital or the recovery of the deceased’s body during the Gold Group meeting held around 14:00 on 3 May 2015. He says that “the locus was being ‘stood by’ by detective officers, but nothing was being progressed at that point”³⁸¹.

When Trainee Investigator Taylor is asked what his role involved he says that “this involved recording of the deceased by way of still photography. It involved taking tapings from the surface of the deceased’s body, at his head (including his face), his neck and his arms. This was so that any minute, trace evidence could be obtained. His nose and mouth were to be swabbed in an effort to capture any traces of CS Spray of [*sic*] PAVA. His clothes were to be removed and searched (pockets etc.) and were to be forensically packaged so that their forensic integrity would be protected for any potential future examination”³⁸². He adds that “plastic bags are secured/tied around [Mr Bayoh’s] head and hands, again to protect the forensic integrity (avoid contamination) for any future examination, notably the post mortem ... The majority of this work was done by the SPA Scene Examiners, as this is their day job and they are the experts. The work is overseen and directed by the Scene Manager, however the approach to be taken is discussed beforehand so that everyone present knows what their role is, and to avoid lengthy discussions etc. whilst everyone is dressed in PPE dealing with [Mr Bayoh]”.

Trainee Investigator Taylor is also asked what the initial priorities and considerations were in relation to the scene at Victoria Hospital and he says that “the initial priorities were to assess the body for any indications of significant injuries, so that this could be reported back to Deputy Senior Investigator Harrower. Although a number of small injuries/marks were apparent, in the form of cuts, bruises and abrasions, there were no obvious signs of significant injuries. This certainly seemed to be the prevailing opinion of my more experienced colleague. I did not observe any obvious injuries that I believed could have resulted in death, although that was a layman’s opinion. I recall there being a nasty bruise/abrasion to the deceased’s forehead.

Following that, the preservation and recovery of any potential trace evidence was prioritised, as per the tapings and swabbing previously described. Then it was the removal and packaging of items/productions, in terms of clothing and medical interventions, as previously described. From memory, the deceased’s t-shirt was bagged in a special nylon bag due to the belief that it was likely heavily contaminated with PAVA and/or CS Spray”³⁸³.

Trainee Investigator Taylor is asked if PIRC or Police Scotland were in charge of the scene Victoria Hospital and what their respective responsibilities were in relation to

³⁸⁰ SBPI-00424 para 87

³⁸¹ SBPI-00449 para 49

³⁸² SBPI-00449 para 33

³⁸³ SBPI-00449 para 33

the scene at Victoria Hospital and he says that “It had been clearly articulated throughout the day that the PIRC had primacy over the scene at Hayfield Road and the scene at Victoria Hospital (the deceased). This meant that any decisions made would be directed by the PIRC. The strategy and approach to the scene had been discussed and agreed upon at Kirkcaldy Police Office, with Deputy Senior Investigator Harrower and Investigator Ferguson at the forefront of decision-making. Everyone knew that this was a PIRC scene and what was expected in relation to this. Police Scotland’s roles was *[sic]* to facilitate and assist”³⁸⁴.

Trainee Investigator Taylor is asked what the benefits of managing a scene in conjunction with Police Scotland are. He says that “procedures and practices in relation to Scene Management change and are updated. PIRC Scene Managers are utilised much less often the Police Scotland Scene Managers. It may be the case that Police Scotland Scene Managers would be able to provide advice or information regarding any updates in processes and procedures that may be relevant. They also have a much closer working relationship with the SPA Scene Examiners as they are working with them all the time... PIRC’s primary role is to ensure that the decision-making is independent of the police (i.e. if PIRC’s domain) to ensure that the priorities of the PIRC Investigation are carried through”³⁸⁵. He further adds that “Police Scotland’s role was to facilitate and assist. For example, making contact with SPA Scene Examination through the police Area Control Room to ensure Scene Examiners would attend. To ease access at the hospital, as most medical staff would have no idea who the PIRC are and may be concerned about allowing PIRC access to the deceased. Assistance in terms of local arrangements, e.g. which undertakers are for police incidents in that locale. Assistance with after-hours access to the mortuary”³⁸⁶.

Trainee Investigator Taylor is also asked about a meeting at 18:00 on 3 May 2015 that he attended which took place along with Investigator Ferguson, Detective Constable Grady, Senior Scene Examiner Young and Scene Examiner Harley of the Scottish Police Authority. He says that at this meeting “consideration was made of the following; the scene was to be recorded by means of still photography (SPA evidential, and PIRC independent briefing photos), tapings to be taken of deceased’s head and hands, recovery of deceased’s t-shirt within a nylon evidence bag due to contamination with Pava /CS spray, SPA body recovery kit and contents confirmed, local undertaker details discussed. As per the comments relating to cultural considerations (sought by Investigator Ferguson from [COPFS] Fiscal via Detective Constable Grady). As this was a [COPFS] directed investigation it was decided, by [COPFS], that there was nothing that would impinge on the recovery of evidence at this time”³⁸⁷.

He adds that at the meeting at 18:00 on 3 May 2015 “it was agreed that Investigator Ferguson and myself would follow the private ambulance to Edinburgh City Mortuary, Cowgate, Edinburgh, following the forensic recovery of the body from Victoria Hospital”³⁸⁸.

³⁸⁴ SBPI-00449 para 40

³⁸⁵ SBPI-00449 para 41

³⁸⁶ SBPI-00449 para 69

³⁸⁷ SBPI-00449 para 70

³⁸⁸ SBPI-00449 para 70

Trainee Investigator Taylor is asked what impact, if any, the delay in his arrival at the scene at Victoria Hospital on 3 May 2015 had on the investigation³⁸⁹. He says that he did “not know what impact an earlier arrival at the scene would have had on the investigation. The only issue from the scene that I remember related to the fact that a number of separate productions had been placed in the same bag by the detective officers who had arrived at the hospital whilst the deceased was still being worked on by medical staff. This was well before the PIRC were alerted to the incident and certainly well before we could have attended at the hospital”³⁹⁰. He adds “The fact that these two officers³⁹¹ were not wearing forensic suits is probably the primary criticism I could level at our not attending earlier. Had we attended earlier and discovered that the officers were not forensically dressed, we could have rectified that situation more quickly”³⁹². He further adds that “I would suggest that it would always be preferable to manage, or process a scene, at the locus itself. For the reasons above, if you have ‘eyes on’ a scene you will pick up any issues more quickly”³⁹³.

With regard to the fact that Detective Constable Ryan Balsillie and Detective Constable Andrew Brown were not forensically dressed, Trainee Inspector Taylor says that he “was surprised. I felt that the officers should have been forensically dressed as per protocol. I appreciate that they initially attended the hospital whilst Mr Bayoh was still alive and being worked on by medical staff. However, once it became clear that he was deceased and that they were being tasked to stand-by the body, within an enclosed space, I would have expected that they would have requested appropriate PPE and equipment to fulfil this task (i.e. forensic clothing and production bags etc.) Investigator Ferguson spoke with the officers on our arrival at the hospital. I do not remember the conversation in any detail. I do recall that Investigator Ferguson was not impressed with the fact that they were not in forensic clothing and the way in which productions had been packaged... This did not impact of our ability to recover evidence from this scene, however it had the potential to complicate things if any of their DNA or fingerprints showed up in any analysis further down the line”³⁹⁴.

Investigator Ferguson noted in his statement that four samples of blood were within the room in which Mr Bayoh was located and were “contained within 1 orange plastic bag which was neither sealed nor labelled”³⁹⁵. Trainee Investigator Taylor is asked about whether this was best practice and what impact it had on the recovery of evidence from Victoria Hospital. He says that “the correct practice, as far as I know, would be for samples to have been removed from the orange plastic bag and then all 4 vials to be placed into a single evidence bag, which would then be sealed and labelled with a description of its contents. The evidence bag would also have details of when and where they were seized, and from whom. The orange plastic bag could then be placed into a separate evidence bag and sealed and labelled accordingly. This would have allowed the vials to be visible within the transparent evidence bag and the

³⁸⁹ PIRC-00358 page 4 – Trainee Investigator Taylor notes that at approximately 19:00 on 3 May 2015, he and Investigator Ferguson attended at the Accident and Emergency department of Victoria Hospital.

³⁹⁰ SBPI-00449 para 73

³⁹¹ PIRC-00358 page 4 - Trainee Investigator Taylor notes that on their arrival at the Accident and Emergency department of Victoria Hospital the two officers in the room with Mr Bayoh’s body identified themselves as Detective Constable Ryan Balsillie and Detective Constable Andrew Brown.

³⁹² SBPI-00449 para 73

³⁹³ SBPI-00449 para 73

³⁹⁴ SBPI-00449 para 77

³⁹⁵ PIRC-00363 page 6

orange bag could be retained in case of any challenges/issues at a later date. I believe that this is, in effect, what was done once we arrived. I do not recall the reason that this was not done initially by the detective officers. It was possibly due to them lacking the appropriate equipment / evidence bags. I'm not sure that this really had any detrimental impact on the eventual recovery of evidence from this scene, however it was not particularly professional and Investigator Ferguson was not impressed"³⁹⁶.

When Trainee Investigator Taylor is asked if he was content with the steps taken by Police Scotland to recover and preserve evidence at the scene at Victoria Hospital on 3 May 2015, he says that "I think assumptions were made in respect of how the two detective officers would fulfil their task in relation to standing by the scene in the first instance, probably by the PIRC and Police Scotland. There was a degree of dissatisfaction that this was not done in the way expected. Other than this, the assistance provided by Detective Constable Grady was valuable and appreciated, as were the discussions held with Detective Chief Inspector Houston. Police Scotland could have had a Scene Manager assess this scene at an early stage, which may have allowed for the cordon, forensic clothing, and production seizure/labelling issues to be addressed sooner. The same criticism could also be levelled at the PIRC"³⁹⁷.

Investigator Ferguson notes that the body of Mr Bayoh was transferred to a private ambulance and was taken to the Mortuary in Edinburgh. He adds that "this transfer was followed by both myself and [Trainee Investigator Taylor] who remained with the deceased throughout to maintain integrity re this movement. Assistance was sought of Police Scotland, Police witness DC Grady re access to the Mortuary which was facilitated by him as he obtained keys to open same and he was aware of the protocol in this regard"³⁹⁸. Trainee Investigator Taylor is asked if it is sufficient to keep the ambulance in which a deceased's body is being transported in sight to ensure that the chain of custody is maintained. He says that "keeping the private ambulance in sight is sufficient to maintain the chain of custody in respect of transporting the deceased's body. This allowed us to maintain a visual on the private ambulance at all times, and therefore we knew that no-one had access to the deceased's body at all throughout the transfer to the mortuary. I was not, and am not aware that 'best practice' dictates that we should have travelled within the private ambulance. I am not even sure that there is sufficient space or seating to allow this to take place"³⁹⁹.

6.6.4 PC Short and CS/PAVA spray cannisters

Investigator Sinclair is asked if he was aware of the suggestion that PC Short had been stamped on during the incident involving Mr Bayoh and what steps he took in response to that suggestion as part of the investigation. He says that "I was aware of a suggestion that PC Short had been assaulted by Mr Bayoh. I was aware that PC Short's clothing, footwear and equipment were to be seized however I had no involvement in that process. I was also aware that DSI Harrower had requested that SPA photograph a head injury that PC Short had sustained during the incident. I am unaware of who DSI Harrower made that request to"⁴⁰⁰.

³⁹⁶ SBPI-00449 para 78

³⁹⁷ SBPI-00449 para 84

³⁹⁸ PIRC-00363 pages 5 and 6

³⁹⁹ SBPI-00449 para 85

⁴⁰⁰ SBPI-00424 para 56

Investigator Ferguson noted in his statement that it was requested by Deputy Senior Investigator Harrower during the forensic strategy meeting at 16:40 on 3 May 2015 that PC Short have any apparent injuries photographed and also that Police Scotland ensure that the Pava canisters were weighed in line with force procedures⁴⁰¹. Investigator Ferguson notes that “About 10:00 on [7 May 2015] I arranged for the injuries of the police witness PC Nicole Short to be re- photographed. Peter Watson Solicitor acting instructed that this officer would allow this”⁴⁰². PC Nicole Short agreed to her injuries being photographed, which were taken by Scene Examiner Gordon Young on 8 May 2015⁴⁰³.

Investigator Sinclair is asked what the purpose was of the PAVA and CS spray canisters being weighed and if this task was allocated to Police Scotland, he says that the PAVA and CS spray canisters were weighed “to establish if they had been used and how much spray discharged. I believe that at the time both of these tasks were carried out by Scottish Police Authority and Police Scotland”⁴⁰⁴.

6.6.5 Kirkcaldy Police Office

Investigator Sinclair is asked what impact the delay in seizing the officers' clothing, footwear, and officer safety equipment⁴⁰⁵ may have had on the investigation and he says that “I first became aware that the officers clothing, footwear and officer safety equipment were to be seized shortly after I arrived at Kirkcaldy Police Station. I was aware that they were to be seized under conditions similar to that of a [Post incident Procedure] which is normally used for firearms discharge incidents involving the police. Deputy Senior Investigator Harrower, the PIRC investigators and myself spoke about this and agreed that this was good practice. I do not think seizing these items at this time had any significance on the investigation and I was more supportive that they were being seized under a [Post incident Procedure] environment”⁴⁰⁶.

Investigator Sinclair is also asked what role he played in the seizure of the officers' clothing, footwear and equipment on 3 May 2015, if it was his responsibility to oversee the seizure of these items, and if he gave any special instructions to the Police Scotland officers involved in the seizure of these items. He says that “recovery of the clothing, footwear and officer safety equipment was not my responsibility but was a discussion that was made with Deputy Senior Investigator Harrower. PIRC can utilise Police Scotland resources and the recovery process was to be completed under a PIP environment using Police Scotland trained staff. I found this to be acceptable allowing myself and Investigator Rhodes to concentrate on Hayfield Road”⁴⁰⁷.

⁴⁰¹ PIRC-00363 page 4

⁴⁰² PIRC-00363 page 14

⁴⁰³ PIRC-00363 page 14

⁴⁰⁴ SBPI-00424 para 69

⁴⁰⁵ PS00935 pages 3 to 6 – Detective Constable Bellingham notes that he was involved in the seizure of the clothing and equipment of the attending officers between 15:30 and 21:05 on 3 May 2015.

⁴⁰⁶ SBPI-00424 para 49

⁴⁰⁷ SBPI-00424 para 51

Investigator Sinclair is referred to the PIRC Scene Manager Log⁴⁰⁸ and asked if the way in which the clothing and equipment worn by the attending officers was initially dealt with in a way which would be considered as best practice and what impact there might have been on the investigation by PIRC, he says “my first knowledge of the officers clothing being seized was when I was within Kirkcaldy Police Station and made aware that a [Post Incident Procedure] style process would be carried out. In 2015 this process was not in place for these types of situations and the seizure of the clothing and equipment I believe was seized as quickly as possible under the circumstances. I was not involved in this process and my opinion is that the PIRC investigation was not impacted in a negative way”⁴⁰⁹.

When Investigator Sinclair is asked whose responsibility it was to ensure that the seizure of the attending officers’ clothing, footwear and equipment took place in a timely manner on 3 May 2015 he says that his “understanding was that Deputy Senior Investigator Harrower and Detective Superintendent Campbell had spoken about this however I was not present during this conversation”⁴¹⁰.

6.6.6 House to House Enquiries

On 4 May 2015 Deputy Senior Investigator Dodd was assigned the task to coordinate the house to house enquiry teams⁴¹¹.

Deputy Senior Investigator Dodd is asked what his involvement was in the creation of PIRC’s house to house strategy and if it was based upon the strategy created by Police Scotland and he says that he “had no involvement in creating PIRC’s house to house strategy and I’m not aware of any details regarding the creation of the strategy or if investigative strategies were based on those created by Police Scotland”⁴¹². Deputy Senior Investigator Dodd is asked whether it was standard practice for PIRC to carry out house to house enquiries in conjunction with Police Scotland and he says that “my recollection is that Police Scotland completed house to house enquiries soon after the incident to ascertain if there were potential witnesses and PIRC investigators became involved the following day. I wouldn’t say it is standard practice but has taken place in other investigations where there is a large area to be covered and this approach is beneficial with regards to visiting potential witnesses and covering areas quicker”⁴¹³.

He says in his Inquiry statement that the role of coordinating a house to house enquiry team “involves briefing investigators and allocating them houses in zones identified which require to be visited and obtain statements from potential witnesses. The purpose of house to house is to potentially identify people who have witnessed events

⁴⁰⁸ PIRC-04173 page 82 – the portion that he is referred to reads “On investigation by PIRC, it would appear that when the officers returned to Kirkcaldy police office immediately after the incident no thought was given at that time to their clothing or equipment being taken as productions. The officers had removed their outer clothing and equipment and stored it at various locations in the office, some in locker rooms, the canteen or other areas.

Police Scotland established incident scene protocols at Hayfield Road, Kirkcaldy at 10:45 on Sunday 3 May 2015”

⁴⁰⁹ SBPI-00424 para 53

⁴¹⁰ SBPI-00424 para 55

⁴¹¹ PIRC-04156 page 1

⁴¹² SBPI-00451 para 37

⁴¹³ SBPI-00451 para 43

connected to the incident, sightings of persons before or after the event, sightings of vehicles or other potential witnesses”⁴¹⁴. He is asked what direction he gave to colleagues at PIRC in relation to the house to house enquiries and he says that he “progressed the house to house enquiries by allocating investigators zones and addresses to be visited and ensured that they were fully briefed and had PIRC house to house street forms⁴¹⁵, which to my knowledge, were retained by PIRC”⁴¹⁶.

Deputy Senior Investigator Dodd is also asked what meetings or discussions he had with Police Scotland in relation to the completion of house-to-house enquiries. He says that he met with Detective Superintendent Campbell and PC Richard McMurdo but was “unable to remember what exactly was discussed”⁴¹⁷.

PC McMurdo says within his operational statement that on the morning of 4 May 2015, he was instructed “not to commence with the house to house enquiry until I had met with members of the [PIRC] team. About [15:00] that day, I met with them and they informed me that they would deal with zones 1, 2, 6 and 7⁴¹⁸ but that I was now able to commence my enquiry for all the other zones”⁴¹⁹. Detective Chief Inspector Hardie says within his operational statement that “On Tuesday 5th May 2015 I met with [Deputy Senior Investigator Little] where the previously agreed terms of reference were discussed. At this meeting it was agreed that all outstanding actions would be progressed by the PIRC and that statements previously obtained by officers from Police Scotland would be handed to the PIRC. It was further agreed that the PIRC would complete the house to house inquiries at all dwellings which provided a line of sight to the Police contact and that officers from Police Scotland would complete the peripheral house to house inquiries”⁴²⁰. When Deputy Senior Investigator Dodd is asked why Police Scotland were asked to deal with house to house enquiries in Zones 4 and 5 (which included parts of Hayfield Road)⁴²¹ and if there was any change to allocation of zones between PIRC and Police Scotland on 5 May 2015, he says that he “was not involved in the discussions surrounding strategies or zones to be covered by PIRC and Police Scotland”⁴²².

PC McMurdo further adds that at “About 15:00 on Wednesday 6th May 2015, I again met with members of the [PIRC] team where it was agreed that I would now stop the house to house enquiry, as they would now assume control. It was also agreed that I would examine and collate the forms that had been completed by Police Service of Scotland officers so far and then make them available for examination by them”⁴²³. Deputy Senior Investigator Dodd is asked when Police Scotland ceased to have any

⁴¹⁴ SBPI-00451 para 35

⁴¹⁵ “House to House Enquiries Street Form” - PIRC-04448

⁴¹⁶ SBPI-00451 para 36

⁴¹⁷ SBPI-00451 para 39

⁴¹⁸ According to PS01296 Zones 1, 2, 6 and 7 included parts of Hayfield Road, Hendry Road, Poplar Crescent, and Lothian Terrace.

⁴¹⁹ PIRC-00272 page 3

⁴²⁰ PS00667 page 2

⁴²¹ According to PS01296 Zones 4 and 5 included parts of Poplar Crescent, Hayfield Road, and Myrtle Crescent.

⁴²² SBPI-00451 para 41

⁴²³ PIRC-00272 page 4

involvement in the house to house enquiries and who, within PIRC took that decision. He says that he was not involved in that decision⁴²⁴.

Deputy Senior Investigator Dodd is asked whether he was content that all house to house enquiries carried out by PIRC had been completed correctly. He says that he “was content that these had been completed correctly as all forms were complete and signed off”⁴²⁵. He is also asked in relation to the properties visited by Police Scotland what degree of oversight he had and says that he “had no degree of oversight of properties visited by Police Scotland and no reason to believe that they had not been completed correctly”⁴²⁶.

6.6.7 The Knife at Hayfield Road

Deputy Senior Investigator Dodd is asked in his Inquiry statement about images on a mobile phone regarding the knife recovered at Hayfield Road on 3 May 2015⁴²⁷. He says that he believes that the mobile phone referred to was Detective Constable Connell’s mobile phone. He adds “I believe that I re-allocated this action to a more technically minded person, possibly Kevin Rooney or Stuart Taylor to examine the phone as I did not have the necessary skills to do so. Thumbnail images of a knife were recovered”⁴²⁸.

6.6.8 Post Mortem

Investigator Ferguson notes in his statement that "Quaser" (High intensity light) imaging was to take place prior to the Post Mortem. He also notes that “the purpose of a "Quaser" exam is to identify any bruising on the skin that may not be evident to the naked eye, with a view to photographing them”⁴²⁹.

He adds that at “approximately 12:00 [on 4 May 2015] and prior to the [post mortem] Pathologist Keryanne [*sic*] Shearer was briefed by me and Trainee Investigator Taylor on The PIRC role and the circumstances known to them explained to her. Detective Constable Grady was not present at this time but later spoke to Keryanne Shearer privately prior to the [post mortem] out with PIRC Hearing. It was explained to her that tapings had been obtained of the deceased at the Victoria hospital the previous evening with a view to obtaining evidence of direct contact to the deceased face /nostrils /mouth in relation to CS/ Pava. After consultation with Pathologist Ralph Bouhaider it was decided that an additional and a more effective method of recovery would be a series of wet/dry swabs from his mouth and nostrils. She was aware that she would be obtaining nail scrapings from the deceased prior to [post mortem]. A discussion took place between me, Trainee Investigator Taylor and Pathologist Keryanne Shearer in relation to this incident.

⁴²⁴ SBPI-00451 para 42

⁴²⁵ SBPI-00451 para 60

⁴²⁶ SBPI-00451 para 61

⁴²⁷ PIRC-04156 page 25 which records the minutes of a briefing at PIRC on 26 May 2015. The relevant portion of the briefing pertaining to Deputy Senior Investigator Dodd is as follows: “Mobile Phone download update provided by Deputy Senior Investigator Dodd - Small ‘thumb nail’ photos have been identified from the officer’s phone, which show the positioning of the knife”.

⁴²⁸ SBPI-00451 para

⁴²⁹ PIRC-00363 page 10

There was no death report provided by [Police Scotland] at this time nor were the Medical records delivered at this point. The death report was later delivered by [Police Scotland] once the [post mortem] had started. The medical records were not found at The Victoria hospital until 11 May 2015 as they had been mislaid by staff there. The GP records were likewise not available to the Pathologist prior to [post mortem]. Pathologist Keryanne Shearer was briefed re potential "blunt force trauma" on [Mr Bayoh] as there was evidence of abrasions on his forehead and arm. And from information provided per Police Scotland the previous day that he had been struck with Police batons. She was also advised that PAVA /CS had been discharged"⁴³⁰.

He also notes "Marks of restraints having been used during the arrest process were noted by me at the Victoria hospital and were made known to the Pathologist for her information. The pathologist was also advised that early investigation indicated that the deceased may have taken drugs. Due to this a further discussion took place in relation to "cultural aspects" in that the cutting of hair from the deceased may have been an issue as he was a Muslim. She explained that a sample of hair would be required to examine if there was evidence of "chronic drug abuse". (Ultimately there was a small piece of hair removed from the nape of the deceased's hairline at the back of his head during [post mortem]... Discussion took place during [post mortem] that in some cases female members of Muslim families have been known to in the past attend at the mortuary and wash the body. At the time of the [post mortem] there was no other religious concerns made known to investigators"⁴³¹.

He further notes that "I was advised by the pathologist that the deceased body would be X- rayed and this would be to be carried out at Edinburgh Royal infirmary on 6 May 2015. Additionally brain samples have to be conveyed for neurological examination. The remaining full brain has also been retained by the pathologist for further examination and that organ retention should be noted in this regard. The Pathologist advised me she had retained small samples of brain and lung/ kidney/heart for tests. A toxicology examination was to be carried out including for Steroids as agreed by [COPFS]"⁴³².

Trainee Investigator Taylor is asked why he attended the post-mortem and he says "I believe that the reason I was to attend the post mortem alongside Investigator Ferguson was that we had been involved in the recovery of the body from the Victoria Hospital to Edinburgh City Mortuary the night before"⁴³³.

6.7 Collating witness evidence

6.7.1 General

Deputy Senior Investigator Little is asked in his Inquiry statement whether he had been involved in an investigation into a death, either before or after 3 May 2015 in which police officers hadn't provided operational statements. He says that although he has not been involved in such a case he was "aware of another incident in the organisation, where a member of police staff refused to give a statement". He goes on to say that

⁴³⁰ PIRC-00363 page 11

⁴³¹ PIRC-00363 page 11

⁴³² PIRC-00363 page 12

⁴³³ SBPI-00449 para 102

he was not aware of the reasons why they had refused to do so or how the matter was resolved”⁴³⁴. Deputy Senior Investigator Little adds that in the circumstances of this case, where Chief Inspector Conrad Trickett had been deployed as a Post Incident Manager, he would have expected that “some form of statement from the officers that night or that day”⁴³⁵. He also says that “The [sic] we would have expected an operational statement to be provided thereafter. Then, later on in the investigation, as I then gather more facts from witness accounts from audio, from transcripts from the Airwave transmissions and such like, I would have deployed my staff back to these officers to get a much more detailed statement from them”⁴³⁶.

Deputy Senior Investigator Dodd is asked if he had dealt with a situation prior to or after May 2015 in which officers did not provide statements for several weeks after an incident. He says that he does “not recollect any other situation prior to or after May 2015, other than an officer being unavailable due to being on holiday or too ill to provide a statement”⁴³⁷.

Deputy Senior Investigator Little is also asked if PIRC had the power to force the attending officers to give initial statements and he says that he cannot force them to do that. He says that “the officers, were classified and deemed as witnesses. The information that I had was that they were witnesses. The law provides the same rights to police officers as is it does to general members of the public who are witnesses. I can’t force somebody to give me a statement, I can’t force somebody to speak to me, even as a suspect. I have control over them, if they were deemed a suspect, I am able to invoke powers. At that time, it would have been section 14 powers, if that was what I was going to utilise. So there’s no mechanism for me to force somebody to provide information or provide a statement”⁴³⁸.

Deputy Senior Investigator Little is also asked if he felt that the early hours of the PIRC investigation were hampered by the failure of the officers to give those initial accounts. He says that he believes it was. Furthermore, he wrongly made the assumption that the information that they were receiving about the incident came from the people who were actually at the incident. He says that he would now be more wary of the information initially received and at the back of his mind would be asking ““Is this actually coming from the people or is this just all this mishmash of what’s happened flying about, rather than the people who were actually there telling us what happened?” I’d go back to basic facts, initial accounts”⁴³⁹.

Investigator McGuire is asked in his Inquiry statement how he understood Deputy Senior Investigator Harrower’s request for statements from the attending officers would be actioned, and if this was being conveyed to the officers via Detective Superintendent Campbell. Investigator Lewis says that he was not sure. He adds “the instruction, I think, was made to Detective Superintendent Campbell to facilitate the operational statements. So we were relying on him making the approaches or speaking to Chief Inspector Trickett and saying, “Right, okay, we need operational

⁴³⁴ SBPI-00255 para 10

⁴³⁵ SBPI-00255 para 12

⁴³⁶ SBPI-00255 para 14

⁴³⁷ SBPI-00451 para 91

⁴³⁸ SBPI-00255 para 15

⁴³⁹ SBPI-00255 para 35

statements from you.” Now, how that was put to the attending officers or how that was put to the [Scottish Police Federation], I’ve got no idea. PIRC wasn’t present or party to that request being made”⁴⁴⁰.

Investigator McGuire is asked in his Inquiry statement if Deputy Senior Investigator Harrower had the power to request to be taken to meet the attending officers in Kirkcaldy Police Office, rather than simply offering to meet them⁴⁴¹. He says that “there’s nothing in the legislation to stop [Deputy Senior Investigator Harrower] from going in and speaking to [the attending officers]. Obviously, emotions are going to be running very high at that particular point, and the last thing we want to be seen is kind of pressuring them into submission. My understanding would have been – Police Scotland have their own facilities, their own rules, regulations, guidelines to say, “We require an operational statement from you for any situation,” I think that’s what should’ve been done Deputy Senior Investigator Harrower made it quite clear on a number of occasions up to that point that their (the officers) status was that as witnesses”⁴⁴².

Deputy Senior Investigator Little refers in his Inquiry statement to a meeting on 4 May 2015 at 20:05 with Detective Superintendent Campbell, Detective Chief Inspector Hardie and Detective Inspector Wilson⁴⁴³ in which he confirmed that the attending officers were being treated as witnesses and says that on this basis “I’m at that stage not expecting a 30–40-page statement off the [attending officers], that’ll come in due course, but that we’re getting some statement in which they’re telling us what’s happened and in what sequence”⁴⁴⁴.

Deputy Senior Investigator Little continues saying that “I’m quite clear in my mind at that stage that they’re witnesses, and I’m asking them to advise the officers that they’re witnesses. What they’ve said there is that the nine officers would be personally contacted. What I was actually told was: the divisional commander’s in the office; following our meeting, he will contact each of the officers personally and update them on what we’ve just discussed”⁴⁴⁵. Deputy Senior Investigator Little adds that on the basis that Detective Chief Inspector Hardie was at the post-mortem and had also received the verbal briefing from the pathologists regarding their initial findings he “was happy for that interim result to be disclosed to the officers. I recall that they said to me, “You’ll have your statements by tomorrow.” So, I was fairly confident we were going to have these statements”⁴⁴⁶.

⁴⁴⁰ SBPI-00457 para 83

⁴⁴¹ SBPI-00457 para 84 – Investigator McGuire says that he “distinctly remembers” Deputy Senior Investigator Harrower saying to Detective Superintendent Campbell “Look, if it helps, I will go and explain to them who [PIRC] are, what our remit is, what we’re looking for, and the timescales involved”.

⁴⁴² SBPI-00457 para 85

⁴⁴³ SBPI-00255 para 66 Deputy Senior Investigator Little refers to a note that he made in his notebook of this meeting and records: “Written statements from all officers and staff. Nine officers. Advised Detective Superintendent Campbell that status following PM was witnesses and they could be advised of interim PM result. Chief Superintendent McEwan attended office and will personally contact each officer and asked for statements.”

⁴⁴⁴ SBPI-00255 para 62

⁴⁴⁵ SBPI-00255 para 63

⁴⁴⁶ SBPI-00255 para 63

Deputy Senior Investigator Little further adds that after he met with Mr Bayoh's family on 5 May 2015 along with Senior Investigator McSporran and Investigator Lewis he went to Kirkcaldy and met with Detective Chief Inspector Hardie. Deputy Senior Investigator Little says that he then became aware that the attending officers had not provided statements. He says that his recollection is that the attending officers had not actually been contacted on 4 May 2015 following the meeting at 20:05 as Police Scotland advised they would⁴⁴⁷.

Deputy Senior Investigator MacIntyre is asked if PIRC compared the statements received from the attending officers to identify any consistencies or inconsistencies between their respective accounts and what consideration was given to take further statements from the attending officers when the terms of reference of PIRC's investigation was expanded, he says that he had no involvement in that process⁴⁴⁸.

6.7.2 Use of CS/PAVA Spray

Deputy Senior Investigator Little was asked in his Inquiry Statement whether PIRC had any powers to require Police Scotland to complete forms in relation to the use of CS/PAVA Spray. Deputy Senior Investigator Little says that the PIRC Regulations and legislation⁴⁴⁹ requires that the Chief Constable request PIRC investigate any serious incident involving the police. A serious incident involving the police includes the use of a firearm or other weapon and that would include the discharge of CS or PAVA spray. He continues that PIRC have powers under Regulation 5 of the "Police Investigation and Review Commissioner Regulations 2013"⁴⁵⁰ that can require the police to provide information to PIRC in respect of a police referral under Section 33A(c) of Police, Public Order and Criminal Justice (Scotland) Act 2006. But the investigation into the death of Mr Bayoh was an instruction from COPFS rather than from the Chief Constable and therefore PIRC could not rely on the powers under Regulation 5 to require Police Scotland to complete and provide such forms in relation to the use of CS/PAVA spray⁴⁵¹.

Deputy Senior Investigator Little is asked in his Inquiry statement why the use of CS/PAVA spray forms were marked as being no longer required from Police Scotland⁴⁵² and he says this was because there was no reports; no forms were ever completed and submitted by the attending officers⁴⁵³. When asked why PIRC did not continue to ask the attending officers to complete the use of CS/PAVA spray forms Deputy Senior Investigator Little says that he did not think there was any value in completing the forms retrospectively, from a PIRC perspective, as PIRC covered the officers' use of PAVA and CS in the statements⁴⁵⁴. Deputy Senior Investigator Little adds that the attending officers had been advised by their legal representatives not to

⁴⁴⁷ SBPI-00255 para 66

⁴⁴⁸ SBPI-00470 para 24

⁴⁴⁹ The legislation that Deputy Senior Investigator Little refers to is section 33A(c) of the Police, Public Order and Criminal Justice (Scotland) Act 2006

⁴⁵⁰ The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013

⁴⁵¹ SBPI-00255 para 77

⁴⁵² SBPI-00255 para 78 – The action to obtain CS/PAVA spray forms was noted as no longer required which Deputy Senior Investigator Little believes was noted on 2 July 2015

⁴⁵³ SBPI-00255 para 79

⁴⁵⁴ SBPI-00255 para 80

complete these forms and, as such, they were refusing to complete them. The refusal to complete these forms in respect of the use of force or discharge of CS/PAVA was reported to COPFS⁴⁵⁵.

6.8 Categorisation of attending officers as witnesses rather than suspects

In his operational statement, Deputy Senior Investigator Harrower notes during his call with Detective Superintendent Campbell at 10:22 on 3 May 2015 that Detective Superintendent Campbell believed “there are 7 Officers involved” and Deputy Senior Investigator Harrower further notes that “officers are witnesses”⁴⁵⁶. In his Inquiry statement, Deputy Senior Investigator Harrower also refers to an earlier statement⁴⁵⁷ in which he confirms again to Detective Superintendent Campbell that the attending officers are to be treated as witnesses. He says that it was his decision to view the officers as “witnesses until there was any specific information that indicated to the contrary”⁴⁵⁸. He continues that in a later conversation with Mr Green whilst en route to Kirkcaldy⁴⁵⁹ he said that this was the approach that he would take. He says “Mr Green did not instruct me to view the officers as witnesses, I merely shared my viewpoint with him and how I would progress the investigation at that stage”⁴⁶⁰.

When Deputy Senior Investigator Little is asked in his Inquiry statement whether he felt that there was anything unusual in Deputy Senior Investigator Harrower’s decision to treat the police officers as witnesses so early and prior to arriving in Kirkcaldy, he says that he does not think so⁴⁶¹. He continues “In general terms, police officers are unique in society as they’re allowed to use force, even lethal force if it’s justified, proportionate and necessary. Now for [Deputy Senior Investigator Harrower] to say, “you’re witnesses,” based on very limited information. There’s nothing to say that they’re not witnesses. There wasn’t any information to say that these officers’ actions were untoward at that time. That’s still to be determined by an investigation. To be placed in the suspect character, you’ve got to have reasonable cause. You’ve got to have credible information that gives you reasonable cause to suspect that they committed an offence”⁴⁶².

Deputy Senior Investigator Harrower also says that PIRC investigators do not, by default, assess that a person should be treated as a witness rather than a suspect unless there is evidence to the contrary. He says that it depends on the circumstances⁴⁶³. He adds that in relation to the incident involving Mr Bayoh “we had limited information but, from what we were told, there’d obviously been a pre-incident,

⁴⁵⁵ SBPI-00255 para 79

⁴⁵⁶ PIRC-01468 - page 5

⁴⁵⁷ PIRC-00007 at page 4, Deputy Senior Investigator Harrower notes “About 1240 hours that morning [3 May 2015] I again contacted Detective Superintendent Campbell by telephone. During this call... I also confirmed again that the status of the police officers was witnesses”.

⁴⁵⁸ SBPI-00259 para 15

⁴⁵⁹ The time of this call between Mr Green and Deputy Senior Investigator Harrower is noted in Deputy Senior Investigator Harrower’s operational notes (PIRC-01468 – page 6) as taking place at 13:05 on 3 May 2015.

⁴⁶⁰ SBPI-00259 para 15

⁴⁶¹ SBPI-00255 para 31

⁴⁶² SBPI-00255 para 32

⁴⁶³ SBPI-00259 para 16

there'd been actions with that individual and there had been a police response... We had to clarify at that stage one what we were progressing, and we were getting additional information as the time moved forward before we arrived at the police station"⁴⁶⁴.

Deputy Senior Investigator Little says that PIRC would by default consider a person as a witness until they have information that suggests that they should be treated as a suspect. He says that you need to have reasonable cause to suspect that the person has committed a criminal act before you can treat them as a suspect⁴⁶⁵.

When asked if it would be normal to make a decision about the status of persons as witnesses so early in the investigation, Deputy Senior Investigator Harrower says that "if there'd been much more overt information and it was quite clear that there was an inference of criminality, then that would've been different, but there wasn't at that stage"⁴⁶⁶.

Deputy Senior Investigator Little is asked in his Inquiry statement who makes the decision as to whether officers are witnesses or suspects, particularly in a death following police contact or death in police custody investigation. He says that it is a PIRC decision. He goes on to say that "in really critical incidents like this investigation – this was the biggest investigation we've undertaken – PIRC make that decision and you might seek qualification by [COPFS] that they agree with that decision but, in the main, it's a PIRC decision... As investigating officer, it's basically a decision that you make based on the information you have"⁴⁶⁷. Deputy Senior Investigator Little is also asked how early into an investigation a decision would be made regarding the status of police officers and what information is required to make the decision. He says that "You need information, and you base it on the information you've got. You may decide an officer is now a suspect. But as soon as you place somebody into the suspect position then they are afforded certain protections in law. So if I want to speak to them, I have to afford that protection, under law, to them. At that time, if I was wanting to speak to an officer who was a suspect, they would need to know what their status is i.e. that they're a suspect, and I would interview them on a formal footing... It may well be that we treat somebody as a witness and we take a witness statement from them as a witness, and then as we find other evidence that comes in that actually suggests that, they're a suspect. Then the challenge becomes is that information we've elicited as a witness, is that admissible in any criminal proceedings"⁴⁶⁸.

Deputy Senior Investigator Little is asked in his Inquiry statement about a meeting at Kirkcaldy Police Office with Detective Superintendent Campbell, Detective Chief Inspector Hardie and Detective Inspector Wilson in which he confirmed that the attending officers were being treated as witnesses. He says that during this meeting he was "happy for the [attending officers] to be updated with the interim results from the post-mortem". He says that the information verbally provided by the pathologists following the post mortem was that blunt force trauma was not the cause of Mr Bayoh's death. The cause of death was unascertained, pending toxicology and neurology,

⁴⁶⁴ SBPI-00259 para 16

⁴⁶⁵ SBPI-00255 para 30

⁴⁶⁶ SBPI-00259 para 17

⁴⁶⁷ SBPI-00255 para 28

⁴⁶⁸ SBPI-00255 para 29

further examination. He says “I’m absolutely clear at that time, and at that stage, and the information I have, that they’re witnesses”⁴⁶⁹.

6.9 Approach to identifying, selecting and instructing expert witnesses

6.9.1 General

Director of Investigations Mitchell says in his Inquiry statement that “the whole matter of instructing expert witnesses was shared with [COPFS], so PIRC looked at the specialist areas that we considered were worthy of further investigation whether that be the effect of certain drugs, because ultimately no-one was giving us a definitive cause of death. So, for example, the drugs that Mr Bayoh had taken, what effect would that have on him? The police were clearly opining that they made him violent or fight back. It wasn’t to prove a particular point; it was to get an expert opinion on the effect of those drugs... We looked at the drugs that were there, we looked for people who had an expertise in that area we looked for people who had an expertise in a number of different areas in relation to positional asphyxiation. Those suggestions were then shared with [COPFS] to ensure that [COPFS] were content that that was the correct direction to be going in”⁴⁷⁰.

During the Inquiry hearing Senior Investigator McSporrán is asked why at the point when PIRC have taken statements from Miss Ashley Wyse and Mr Nelson, who witnessed the restraint, the officers’ accounts, and the final post mortem which mentions specifically restraint, PIRC did not say to COPFS “this is the evidence, if you want us to do any more investigation with experts please let us know”? He says that “we went to [COPFS] and [COPFS] said: right, obtain a range of experts. So what we did -- there’s various ways of doing that, you either go to the College of Policing, the National Crime Agency, who maintain the list of experts in various fields, and you obtain a list of experts, and we then send that to [COPFS], and say: right, here’s a range of experts in the various disciplines that you want further examined, and [COPFS] then says -- well, let’s say we obtain the names of six experts, [COPFS] might say: well, go to one, two and four. It’s for [COPFS] to decide who we should approach”⁴⁷¹.

6.9.2 CV’s / criteria for selection of experts

Director of Investigations Michell is asked if there were any rules, guidance, standard operating procedures or case law that PIRC considered when identifying, selecting and instructing expert witnesses during the investigation. In his Inquiry statement he says “no, there wasn’t”⁴⁷². When asked in the Inquiry hearing if that was because there were no rules, guidance, standard operating procedures or case law at that time, or because they did not refer to them, he says “I am unaware of any rules, guidance or standard operating procedures in relation to instructing expert witnesses”⁴⁷³.

⁴⁶⁹ SBPI-00255 para 62

⁴⁷⁰ SBPI-00423 para 536

⁴⁷¹ 83/26/23 to 83/27/15

⁴⁷² SBPI-00423 para 548

⁴⁷³ 85/113/18 to 85/113/23

Director of Investigations Mitchell is also asked if COPFS provided PIRC with any guidance in relation to the identification, selection and instruction of expert witnesses during the investigation. He says that PIRC did not receive any such guidance, adding that “there are responsibilities for the investigators that [COPFS] would rightly turn around and say, “Well, we’ve instructed you to do it. Find what you can and send it to us and we’ll determine whether it satisfies our needs”⁴⁷⁴. During the Inquiry hearing, Director of Investigations Mitchell is asked if in the absence of specific training, experience, guidance, or standard operating procedures, he feels that PIRC had sufficient help or support from COPFS in identifying the best experts to instruct, he says that “I don’t know that I could say that we were given support from [COPFS]..... We had an idea of the type of expert opinion that we were looking for, that subject matter experience in relation to drugs and the effect that those drugs might have on an individual around restraint, all of that. As I said earlier, my concern was that for us to march forward and just assume that we were identifying people who would satisfy [COPFS’s] need would have been a folly, it could have held things back enormously and I thought it was a rational decision to share the CVs, the experience of the persons who had supplied those CVs and get agreement or otherwise from [COPFS] that they were prepared to accept expert testimony from these individuals”⁴⁷⁵.

During the Inquiry hearing Director of Investigations Mitchell is asked if it is fair to say that to some extent PIRC were reliant on the approval or views of COPFS before they instructed experts. He says that “yes, I think that would be right because ultimately [COPFS] being the decision-makers at the end of the day, I would not have considered it appropriate to send them information which did not assist their determinations.”⁴⁷⁶ Senior Investigator McSparran says during the Inquiry hearing that in terms of identifying an appropriate expert PIRC “obtain a range of experts. So we are not selecting the experts, we are obtaining a range of experts, supplying their CVs to [COPFS] and [COPFS] then decide which ones we should then approach on their behalf”⁴⁷⁷. Senior Investigator McSparran adds that it would have been an option for COPFS to reject all of the experts proposed by PIRC and ask them to identify alternative experts. Indeed he says that “from memory in the investigation into the death of Mr Bayoh [COPFS] said: we don’t want you to go to this one, we want you to go to that one”⁴⁷⁸.

When asked if he had any personal involvement in the selection and instruction of expert witnesses by PIRC, Director of Investigations Mitchell says that he had “very little” involvement. He says “I’ve let the others do the research into that, and part of that research was for people who we identified who we thought might be able to help to provide the CVs to support their area of expertise. Details of those identified and their CV were shared with [COPFS] to see if [COPFS] agreed that that we were in the right direction and approaching the right people”⁴⁷⁹.

⁴⁷⁴ SBPI-00423 para 549

⁴⁷⁵ 85/115/16 to 85/116/14

⁴⁷⁶ 85/131/3 to 85/131/6

⁴⁷⁷ 83/29/9 to 83/29/14

⁴⁷⁸ 83/30/6 to 83/30/10

⁴⁷⁹ SBPI-00423 para 537

Director of Investigations Mitchell is also asked if this was the only investigation in which PIRC had instructed expert witnesses, and he says “Yes, I’m sure it is”⁴⁸⁰. He adds that “There’s a uniqueness of the circumstances here because, in the past, families rarely have that reliance on a solicitor to support them in family liaison matters. I believe that Mr Anwar had discussion with [COPFS] that he would like to be involved on the family’s behalf in suggesting certain experts, and [COPFS] agreed. Again, the same stipulation was put in place for the experts suggested by Mr Anwar. [COPFS] were furnished with the details of those suggested along with their CV outlining their experience etc., and then [COPFS] ultimately had the say whether these were people that they wanted to consider as expert witnesses”⁴⁸¹.

Director of Investigations Mitchell is asked who reviewed the CVs of the experts once they had been identified, and he says “I think it would probably be [Senior Investigator] McSporran, but that was communicated to [COPFS], and we received agreement around that”⁴⁸². He is also asked if he knew what the criteria were for selecting experts and he says that he does not know although suggests “a relevant knowledge of the matter under consideration. I think probably from the [COPFS] perspective, the experience of giving evidence in court would have been one of their considerations. The experience and the knowledge of how the system worked for giving evidence, I think that would be important”⁴⁸³.

Senior Investigator McSporran is referred during the Inquiry hearing to the fact that part of the statement of Miss Wyse containing a “significant description of events”⁴⁸⁴ was omitted when the typed version of her statement was sent as part of the expert witness package⁴⁸⁵. When COPFS identified the omission a corrected version was then sent to all of the experts⁴⁸⁶. Senior Investigator McSporran says that although some of the experts had already prepared their expert reports⁴⁸⁷ “I know [the inclusion of the omitted information from Miss Wyse’s statement] didn’t change their opinion”⁴⁸⁸. When Senior Investigator McSporran is asked if a system had been put in place to avoid an error, such as the omission of a significant description of events from the typed version of a statement, arising in the future, he says that “certainly we tightened up on the proof-reading of statements. So statements are obviously written unless they are provided to us in a typed format, Microsoft Word or whatever format, so the admin people would then type that up, but there was obligation on the investigators or the deputy senior investigators to check the typed version against the manuscript version to make sure that there are no omissions”⁴⁸⁹. He adds that it will be the same investigator that took the statement from the witness who will be tasked with checking the typed version, and is asked in the Inquiry hearing if there is anything to guard against that person missing something, he says there is not because it is “a huge ask”⁴⁹⁰. He says that “you have got to understand that we are getting -- well, the year

⁴⁸⁰ SBPI-00423 para 541

⁴⁸¹ SBPI-00423 para 542

⁴⁸² SBPI-00423 para 544

⁴⁸³ SBPI-00423 para 545

⁴⁸⁴ 83/32/2

⁴⁸⁵ 83/31/14 to 83/32/6

⁴⁸⁶ 83/33/13 to 83/33/18

⁴⁸⁷ 83/33/20 to 83/33/21

⁴⁸⁸ 83/33/13 to 83/33/14

⁴⁸⁹ 83/32/16 to 83/33/1

⁴⁹⁰ 83/33/5 to 83/33/7

before I retired 900 referrals, we were getting thousands of statements. If you want a proof-read section to do all that independently, that is a significant funding issue and we simply didn't have the money"⁴⁹¹.

6.9.3 Independence of expert witnesses

Director of Investigations Mitchell is asked if PIRC took steps to ensure that the witnesses were sufficiently independent. He says that "[Senior Investigator] McSporran did a bit of work around the CVs for those witnesses. I do know that he relied quite heavily on the College of Policing down south, who hold a library of witnesses who have previously been used in inquiries and met the requirement of the [COPFS] previously. I am unaware of any conflict of interest in any of the witnesses that were identified in relation to use in this investigation"⁴⁹².

6.9.4 Training in selection of expert witnesses

Director of Investigations Mitchell is asked if he ever received training in relation to the identification, selection and instruction of expert witnesses. He says that he does not think that there is "specific training identifying experts".⁴⁹³

6.9.5 Instructing the experts

Senior Investigator McSporran is asked about the instruction sent to the expert once they have been identified and what support PIRC had in relation to the drafting of a letter of instruction to the expert. He says that "we would draft the letter of instruction, we would show that to [COPFS], so [COPFS] are aware, because each expert might be providing opinion in a particular field, so each letter of instruction would be adapted to take cognisance of that, what we wanted from that expert within that particular field. And we would show that that to [COPFS], [COPFS] would approve that, and that would form part of the expert witness package"⁴⁹⁴, so that the expert would know exactly what is being asked of them"⁴⁹⁵.

Director of Investigations Mitchell is asked who would have been primarily responsible for the creation of the expert witness package. He says that it was "[Senior Investigator] McSporran, although it would have been quality assured by [Commissioner] Frame before she put it out in her name. That is very much a [COPFS-styled] document and [Commissioner] Frame's background is as a Procurator Fiscal"⁴⁹⁶. Director of Investigations Mitchell is also asked who was responsible for the preparation of the briefing paper that was contained within the expert witness package and he says that he thinks it was Deputy Senior Investigator Harrower"⁴⁹⁷.

⁴⁹¹ 83/33/7 to 83/33/12

⁴⁹² SBPI-00423 para 546

⁴⁹³ SBPI-00423 para 547

⁴⁹⁴ The Expert Witness Package contained (1) a briefing paper for the expert witness, (2) a copy of the final post mortem report, (3) a certified copy of CCTV and video footage, and (4) post mortem and other photographs of Mr Bayoh

⁴⁹⁵ 83/30/14/ to 83/30/24

⁴⁹⁶ SBPI-00423 para 585

⁴⁹⁷ SBPI-00423 para 586

Senior Investigator McSporrán says during the Inquiry hearing that in relation to support that PIRC received support in the preparation of the expert witness package, he says that “we prepared it ourselves. Myself and [Deputy Senior Investigator Little] largely did that. Certainly we redacted statements to take out names, so that the experts would largely not be aware of the names. So you would change like the name to officer A, officer B, officer C, and I did those redactions. I think you have probably seen the redacted statements. So I personally undertook those redactions. Partly because sometimes you can read behind the redaction due to the nature of how it occurs, so we were quite cautious in doing the redactions, printing them and then photocopying them so you can't go behind the redaction”⁴⁹⁸.

6.10 Consideration by PIRC of race as a factor

Deputy Senior Investigator Harrower is asked what his initial considerations and priorities were at the outset of the PIRC investigation and what impact, if any, Mr Bayoh's race had on those initial considerations and priorities. Deputy Senior Investigator Harrower says that Mr Bayoh's race was not relevant the initial instructions that he received⁴⁹⁹. He continues, “However, as the incident progressed I very much kept an open mind on the circumstances. His race would have been a consideration for Investigator Ferguson at a later stage when he was dealing with Mr Bayoh's body. In addition, this would also have been a consideration for PIRC FLOs when deployed”⁵⁰⁰. He also says that he kept an open mind as to whether or not race could have been a factor in the incident⁵⁰¹. He adds “however, I was not aware of any information/evidence pointing to [race being a factor in the incident]. I cannot comment on any other member of staff's considerations”.⁵⁰²

Director of Investigations Mitchell is asked if he had any concerns at the early stages of the investigation about the investigating officers' ability to identify what may be relevant to race when they were gathering evidence. He says that his “expectation would be when they are conducting an investigation, that they ingather all of that information that is available and given to them and is obvious”⁵⁰³. He adds that if the available information relating to race was not obvious “it is going to be difficult” for that information to be ingathered and considered⁵⁰⁴.

It is put to Director of Investigations Mitchell that Deputy Senior Investigator Little had explained he did not view race as an active line of investigation. Instead, PIRC would take cognisance of race, by being mindful, or keeping an open mind. If things

⁴⁹⁸ 83/30/25 to 83/31/13

⁴⁹⁹ SBPI-00382 para 17. Deputy Senior Investigator Harrower described those initial priorities as: making contact with an appropriate senior officer at Police Scotland and establishing the full circumstances as known. Ensuring the locus/loci had been properly secured and preserved, all relevant evidence was secured and give any relevant direction/actions to the police prior to PIRC resources arriving in Kirkcaldy. Identifying any witnesses who had significant information that would require a priority response that day”

⁵⁰⁰ SBPI-00382 para 17

⁵⁰¹ SBPI-00382 para 129

⁵⁰² SBPI-00382 para 211

⁵⁰³ 91/48/25 to 91/49/12

⁵⁰⁴ 91/49/13 to 91/49/15

emerged, they would be taken forward, but it would not be a proactive line of enquiry by PIRC. Director of Investigations Mitchell says that that “would probably be right”⁵⁰⁵.

Director of Investigations Mitchell is asked about the letter of instruction that COPFS issued to PIRC⁵⁰⁶ on 2 September 2015 which specifically referred to race, and he says that “I would suggest that even before that letter was issued that part of the investigation relating to the officers concerned, the central officers to this, would be to ingather their personnel records, their discipline records, their complaints records, so ultimately if there had been anything in these records that suggested a racist or racial element, that that would have been gathered at that time during the investigation. I don't think that the letter on 2 September necessarily - I think it put it on an official footing from [COPFS], if we put that way, but it became part of the terms of reference rather than the general investigation”⁵⁰⁷.

Director of Investigations Mitchell also says that at the very early stages of the investigation it would only have been if they received information of any obvious or overt comments suggesting that there were some racial motivations in Police Scotland's response to the incident on Hayfield Road on 3 May 2015 and its aftermath that the hypotheses that Mr Bayoh's race was a factor would have been considered in more depth⁵⁰⁸. He is also asked in his Inquiry statement if he considered that the impact that Mr Bayoh's race had on events should have been a hypothesis from the outset of the investigation, rather than later on. He says that “you need to follow the evidence, and... at that early stage, there was no evidence. We didn't even know at that stage why Mr Bayoh had died. We had no idea of the cause of death, so maybe it would have been better if it had formed one of the hypotheses early on, and it would have done no harm to have considered it”⁵⁰⁹. When asked during the Inquiry hearing whether by not considering the impact of Mr Bayoh's race at an early stage harm was being done, he says that he does not think so⁵¹⁰. He adds “Clearly we know that Mr Bayoh is a black man. But we still need to have evidence to support whether or not that played a part in the way that the police dealt with him. And at those early stages there was no overt evidence. However, I do appreciate the point around -- that it would probably have been better in hindsight had that formed part of the hypothesis from day one”⁵¹¹.

Director of Investigations Mitchell is referred to the witness interview strategy document⁵¹² which contained no questions relating to whether the attending officers had acted as they did because Mr Bayoh was black or whether they would have acted differently had he been white⁵¹³. Although he was not involved in the analysis of statements given to PIRC by the attending officers⁵¹⁴ he is asked if he knew if any consideration had been given by PIRC to whether any inferences could be drawn from the use of certain language by the attending officers in their statements that may be

⁵⁰⁵ 91/50/3 to 91/50/9

⁵⁰⁶ COPFS-02557

⁵⁰⁷ 91/50/10 to 91/51/2

⁵⁰⁸ 91/51/9 to 91/52/7

⁵⁰⁹ SBPI-00423 para 161

⁵¹⁰ 91/53/7 to 91/53/11

⁵¹¹ 91/53/11 to 91/53/19

⁵¹² PIRC-04182

⁵¹³ 91/57/18 to 91/58/4

⁵¹⁴ 91/59/4 to 91/59/9

considered potentially to have racist connotations⁵¹⁵. Director of Investigations Mitchell says “when we speak specifically about the language that is used in the statement, and particularly the word “coloured”, that is offensive as far as I am concerned, it is certainly not language that I would use. It would certainly flag up, if it was a member of my staff, that at the very, very least there was a training requirement, and had it been a member of my staff using that type of language I would have addressed it at that time. So it’s not appropriate language”⁵¹⁶. He also says that more probing questions should have been asked about race during the interviews of the attending officers in response to the use of inappropriate language⁵¹⁷.

Deputy Senior Investigator Dodd took a statement from PC Tomlinson, one of the attending officers⁵¹⁸. Deputy Senior Investigator Dodd says that he was not involved in the preparation of the witness strategy document⁵¹⁹ and could not therefore comment on why there are no questions relating to the impact that Mr Bayoh’s race may or may not have had on the officers’ response to the incident⁵²⁰. Deputy Senior Investigator Dodd asked PC Tomlinson about the use of his baton; PC Tomlinson stated that he used the baton, because Mr Bayoh was attacking PC Short and he genuinely thought that their lives were in danger⁵²¹.

Deputy Senior Investigator Dodd is also asked in his Inquiry statement what consideration, if any, was given to obtaining further statements from the attending officers after PIRC’s terms of reference were expanded by COPFS to investigate issues of race and conduct. He says that he was not involved in these matters as this responsibility was with PIRC senior management⁵²².

Investigator Clerkin is asked about the meeting note indicating that he and Investigator Lewis were tasked with “obtaining relevant background details of the family members and the victim”⁵²³ and how this information was considered relevant to the terms of reference of the investigation. He says that it was “...really to find out about the man in general, about what he enjoyed doing, what he didn’t enjoy doing, and who he consorted with. I mean, there were other companions who were spoken to by the team as well, Martyn Dick being one of them”⁵²⁴. He continues to say that the task of obtaining these relevant background details was an ongoing process⁵²⁵. He further adds that “We didn’t hear anything said about Sheku that suggested that he was a bad person in any way from my recollections”⁵²⁶.

⁵¹⁵ 91/59/13/ to 91/59/16

⁵¹⁶ 91/59/17 to 91/59/25

⁵¹⁷ 91/60/11 to 91/60/17

⁵¹⁸ PIRC-00263

⁵¹⁹ PIRC-04182

⁵²⁰ SBPI-00451 para 73

⁵²¹ SBPI-00451 para 76

⁵²² SBPI-00451 para 90

⁵²³ PIRC-04150 – page no 5. The meeting note referred to is the record in the PIRC FLO Log of a briefing by Deputy Senior Investigator Little at 10:40 on 4 May 2015

⁵²⁴ SBPI-00446 para 112

⁵²⁵ SBPI-00446 para 113

⁵²⁶ SBPI-00446 para 113

6.11 The effectiveness of “treating everyone the same” as a means of avoiding race discrimination

Deputy Senior Investigator Harrower⁵²⁷ and Deputy Senior Investigator Dodd⁵²⁸ are asked if anything that they personally did or did not do was of Mr Bayoh’s race, and they say that none of the decisions they made were based on Mr Bayoh’s race.

Head of Communications Tait is asked if he was concerned about how Mr Bayoh’s race might be a factor within the public perception of the events that took place on 3 May 2015 and the subsequent PIRC investigation. He says that “I’ll be honest, it wasn’t in my consciousness. We’ve talked to Mr Anwar and he had numerous comments, and there was a clear avenue he was pursuing, which I was conscious of but certainly when I was doing my job, it didn’t enter my consciousness in terms affecting my thinking or anything like that. I just treated it like any other case”⁵²⁹.

When asked whether, on or before 4 May 2015, COPFS routinely considered race when dealing with a death in custody or death during or following police contact, Mr Green said that from his perspective it has always been the case “race is/was always a factor, both then and now. Potentially as a possible motivation for the conduct leading to the death but certainly as it may be perceived by nearest relatives, the media or the general public as being racially motivated”⁵³⁰.

7. Identification of Mr Bayoh

7.1 Practice in Place

Investigator Lewis is referred to the PIRC Family Liaison Policy⁵³¹ in relation to the family liaison officer’s role in explaining to a family the other ways in which a body can be identified if visual identification is not possible, and asked what, on the morning of 4 May 2015, his understanding was of the alternative arrangements which had been made to identify Mr Bayoh’s body. He says he understood that police officers had identified Mr Bayoh and that COPFS were satisfied that Mr Bayoh had been identified⁵³².

⁵²⁷ SBPI-00382 para 206

⁵²⁸ SBPI-00451 para 128

⁵²⁹ SBPI-00418 para 235

⁵³⁰ SBPI-00227 para 78

⁵³¹ PIRC-04460 page 24 under the heading “Viewing and Identification of the Body” it reads “The FLO will have a crucial role to play in the identification process of the deceased. Close liaison with the [Senior Investigator] and the Procurator Fiscal concerning the issues of viewing, identification and body release must be undertaken by the FLO. It must be recognised that the formal identification procedure and viewing of the body are separate processes. The formal identification will form an essential element of the post mortem process. Formal visual identification of a body may not always be possible due to the injuries sustained or decomposition of the remains. The [Senior Investigator], in liaison with the Procurator Fiscal, will decide what processes will be employed to establish the identity of the deceased especially if they are invasive, mutilate or use DNA. When other forms of identification are to be undertaken, for example fingerprints, dental charting or DNA profiling, the process and reasons for it must be explained in an open and honest manner by the FLO whenever possible.”

⁵³² 78/152/23 to 78/153/3

Investigator Lewis also says during the Inquiry hearing that on 4 May 2015, he simply knew that some form of identification had taken place which was sufficient to satisfy COPFS but he was not aware of the specific details of how Mr Bayoh had been identified⁵³³. He says that on the morning of 4 May 2015 his priority was to travel to Kirkcaldy⁵³⁴ to see if he was able to assist in the formal identification of Mr Bayoh “from the family’s point of view” rather than ascertaining the alternative form of identification that was going to be used in advance of the post mortem which was scheduled to take place at lunchtime on 4 May 2015⁵³⁵

8. Post Mortem

8.1 Identification of Mr Bayoh

The post mortem took place on 4 May 2015 at Edinburgh City Mortuary between approximately 12:00 and 17:10. Mr Bayoh’s family did not participate in his identification.

Investigator Ferguson says that at around 12:00 on 4 May 2015 he attended Edinburgh City Mortuary. He says that he was made aware by Deputy Senior Investigator Harrower that the family was “not engaging with PIRC” and that they would not be in attendance at the mortuary to carry out identification of the deceased. Following agreement with COPFS, “identification in death” would be carried out by Investigator Ferguson and PC Grady⁵³⁶. Both Investigator Ferguson and PC Grady were involved in the process of Mr Bayoh’s body being moved from Victoria Hospital, Kirkcaldy via private ambulance to Edinburgh City Mortuary on 3 May 2015. Fingerprints and thumbprints were also taken and used in the identification process.

8.1.1 PIRC’s perspective

Deputy Senior Investigator Little says that the main issue that he identified following the briefing given by Deputy Senior Investigator Harrower at 09:00 on 4 May 2015 was that the post mortem was scheduled for that day. He says that “Right away that made alarms bell ring with me because I’m like, “Who’s going to identify the body? You can’t have a post-mortem without identifying the body”⁵³⁷. He continues, saying “the post-mortem is a [COPFS] process, [COPFS] direct it, but we have a big part to play in it”⁵³⁸.

Investigator Lewis says that although he was present whilst Deputy Senior Investigator Harrower spoke to Mr Johnson by telephone on 4 May 2015 regarding the need for a post mortem⁵³⁹ he only heard one side of the conversation. Investigator Lewis says

⁵³³ 78/154/3 to 78/154/10

⁵³⁴ PIRC-00341. Investigator Lewis says that he was present at PIRC’s office at Hamilton House, Caird Park, Hamilton at 09:00 on 4 May 2015 when Deputy Senior Investigator Harrower provided a briefing outlining the events of 3 May 2015.

⁵³⁵ 78/155/2 to 78/155/9

⁵³⁶ PIRC-00363 page 10

⁵³⁷ SBPI-00255 para 38

⁵³⁸ SBPI-00255 para 38

⁵³⁹ PIRC-04150 page 7 (of 54). In the record of contact it is noted “Deputy Senior Investigator Harrower spoke with family [3 May 2015] advised family SPOC Adi Johnson regarding the need for a [post

that he recalls Deputy Senior Investigator Harrower explaining that two members of the family would be required to formally identify Mr Bayoh but that it did not have to include Mr Bayoh's mother. Investigator Lewis says that his understanding was that the family refused to participate in a formal identification of Mr Bayoh prior to the post mortem⁵⁴⁰.

During the Inquiry hearing Investigator Lewis is referred to Deputy Senior Investigator Harrower's Inquiry Statement⁵⁴¹ and agrees that based on this additional information, he would not regard the family's position as being a refusal to identify Mr Bayoh⁵⁴². Instead he says that Mr Bayoh's family are simply expressing what they can and cannot do. He further adds that "Again, hindsight is a wonderful thing but had I been involved on the Sunday then I am confident we could have arranged something to facilitate the family's wishes"⁵⁴³. Investigator Lewis also says that had he appreciated that Mrs Johnson and her family simply wanted to await Mr Bayoh's mother's arrival in Scotland before taking part in the identification of Mr Bayoh, the senior colleagues with whom he would have had to speak were Deputy Senior Investigator Little, Senior Investigator McSparran, or Director of Investigations Mitchell. In turn, Investigator Lewis would have expected his senior colleagues to liaise with Mr Green at COPFS⁵⁴⁴. Investigator Lewis says that he would like to think that the outcome of that discussion between senior colleagues and Mr Green would have been that with a fuller explanation of the circumstances given, Mr Bayoh's family's wishes could have been accommodated. Further, Investigator Lewis says that if it were not possible to delay the start of the post mortem he would have expected senior colleagues to provide some explanation of the reasons why⁵⁴⁵.

Investigator Lewis says that whilst he would not necessarily agree that his ability to play a crucial role in the identification of Mr Bayoh had been undermined by the fact that he had still not spoken to Mr Bayoh's family by approximately 10:30 on the morning of 4 May 2015, the time constraints "created a challenge that I don't think needed to be there"⁵⁴⁶. When he is asked whether he feels that, had he had the opportunity to speak with Mr Bayoh's family or Ms Bell, the misunderstanding around the identification of Mr Bayoh's body could have come to light and action could have

mortem]. This was refused regarding formal identification as mother was travelling from England with family elders.

⁵⁴⁰ SBPI-00246 para 14

⁵⁴¹ SBPI-00259 para 55. An excerpt from part of para 55 reads as follows: "My operational notes, at page 9, state that 'Ade stated the family had discussed matters, and no representatives were willing to do the identification until family members, including the now deceased's mother, attended... She was travelling with a group, including elders from England'. My understanding of this was that the family were refusing to do the identification in the timescale outlined. I don't think it was the intention that it would be the mother that would do the identification, but that they were not willing to participate in that process until she arrived... I have been asked if the family understood that it was the [COPFS's] decision as to the timing of the post mortem. Yes, I think so. I'd explained specifically it was the [COPFS's] decision. My statement records that Mr Johnson wasn't willing to be more specific on the expected arrangements of the arrival of the family members etc. That part of the conversation was closed down".

⁵⁴² 78/127/19 to 78/128/5

⁵⁴³ 78/128/5 to 78/128/8

⁵⁴⁴ 78/136/13 to 78/136/24

⁵⁴⁵ 78/138/9 to 78/138/18.

⁵⁴⁶ 78/155/10 to 78/155/20

been taken to accommodate the family's wishes, he says "... had I had that interaction, and spoken to the family I am confident I would have resolved that issue"⁵⁴⁷.

Deputy Senior Investigator Little is asked about his telephone call to Mr Green⁵⁴⁸, advising him of the family's position regarding the post mortem. He says he explained to Mr Green that "the family did not wish to engage with the PIRC". I cannot recall exactly what was said but he told me that the post-mortem would continue with identification to be confirmed via fingerprints and a visual ID from the police and PIRC staff involved in the recovery of the body. It was a [COPFS] decision to identify Mr Bayoh in that way, as I have said previously the holding of a post mortem and the timing of the post mortem is a [COPFS] decision. The family were not consulted as such; however, the family are made aware of that decision and of the timings. There was no information communicated to me regarding family's wishes regarding any religious requirements in relation to the post-mortem or concerns about the post-mortem on the grounds of the religion"⁵⁴⁹.

8.1.2 Mr Bayoh's family's perspective

Mrs Johnson says during the Inquiry hearing that when she was asked by Deputy Senior Investigator Harrower on the evening of 3 May 2015 about going to identify Mr Bayoh's body "I said", 'No', I said", "My mum is in London and we will arrange for her to come up the next day", which would have been on the Monday [4 May 2015], "And we will arrange for that, to go and identify the body, once she is here"⁵⁵⁰. She also says when asked if she had already spoken with their mother before Deputy Senior Investigator Harrower arrived on the evening of 3 May 2015 that she had spoken with her "but she was upset so we didn't talk about identifying the body at that time"⁵⁵¹. When asked if she had made it clear that she would be willing to identify Mr Bayoh's body once their mother had arrived in Scotland, Mrs Johnson says that "Yes, it was clear that we will identify the body once my mum is here. That was made clear"⁵⁵². She says that she could not remember being asked any further questions about how their mother would be travelling⁵⁵³ and when she was expected to arrive in Scotland⁵⁵⁴.

When the evidence given by Ms Bell during the Inquiry hearing⁵⁵⁵ regarding her desire to see Mr Bayoh after she gave her statement to Police Scotland is put to Investigator Lewis, he says "I am not aware of the circumstances of why Police Scotland would want that statement as urgently as that... but had myself been involved as a [family liaison officer] then it may well have presented logistical issues in relation to viewing [Mr Bayoh] but I would have done my very best to at the very least try and get it done that night, if not as early as the following morning"⁵⁵⁶. Investigator Lewis says that had

⁵⁴⁷ 78/156/15 to 78/156/23

⁵⁴⁸ SBPI-00255 para 40 – Deputy Senior Investigator Little called Mr Green on the morning of 4 May 2015 following Deputy Senior Investigator Harrower's call to Mr Johnson at 10:40 on 4 May 2015

⁵⁴⁹ SBPI-00255 para 53

⁵⁵⁰ 34/32/16 to 34/32/22

⁵⁵¹ 34/35/20 to 34/35/23

⁵⁵² 34/37/6/ to 34/37/12

⁵⁵³ 34/36/15 Mrs Johnson says that Mr Bayoh's mother was travelling to Edinburgh by plane "because that was quicker for her".

⁵⁵⁴ 34/37/13 to 34/37/16

⁵⁵⁵ 78/132/16 to 78/134/4

⁵⁵⁶ 78/134/7 to 78/134/24

he known on the morning of 4 May 2015 when he was appointed as a family liaison officer that Ms Bell wanted to identify Mr Bayoh's body, he would have made it a priority. He also says "The formal identification would then be complete, if Ms Bell and her mother, for example, wanted to do that or another member of the family. So that would have been effectively a job done, and then we could have arranged, depending on what the family wanted, additional viewing. But as I say I wasn't aware of that -- that issue in relation to the family"⁵⁵⁷.

Ms Bell is asked during the Inquiry hearing if she had been given the opportunity to see Mr Bayoh prior to the post mortem and she says that she had not, and adds "I remember on 3 May [2015] I stayed up really, really late, obviously upset, but I kept thinking, "Why have they not contacted me to go and see him yet?" And I remember saying to my mum, "I thought they were going to phone me to go and see Shek ", and then I was like, "But I don't have a number to get in contact with them, surely they'll just get in contact with us", because I had made it very, very clear to them that I wanted to see him"⁵⁵⁸.

Ms Bell also says that it was her understanding that they needed permission before the post mortem could be carried out and that she remembers "... when I was in the police station they had said they would need to be identified so nothing could go ahead without him being identified anyway"⁵⁵⁹. She also says that the only information shared with her regarding the necessary identification or the procedure in relation to the post-mortem was simply that she would get to see Mr Bayoh as he needed to be identified⁵⁶⁰ but no information was given in advance of the post mortem to let her know that it was going to be carried out⁵⁶¹. Ms Bell says that the first opportunity she was given to see Mr Bayoh was after the post mortem had actually taken place⁵⁶².

8.1.3 COPFS's perspective

When it was put to Mr Green that prior to giving her statement at Kirkcaldy Police Office on 3 May Ms Bell had said that she wanted to see Mr Bayoh⁵⁶³ and he was asked what alternative decisions he might have made had he known on 3 or 4 May 2015 that Ms Bell had expressed a very strong desire to see Mr Bayoh and to identify his body, Mr Green says he would have said that she should be allowed to do that⁵⁶⁴. Mr Green goes on to say that "none of this was known to me at all. I perhaps naively assumed that when [Deputy Senior Investigator Harrower] said he was in contact with the family, that he was in contact with all of those who one would consider from a COPFS perspective to be nearest relatives. So this is all news to me and puts a totally

⁵⁵⁷ 78/135/5 to 78/135/15

⁵⁵⁸ 40/80/18 to 40/81/3

⁵⁵⁹ 40/79/20 to 40/79/25

⁵⁶⁰ 40/80/5 to 40/80/10

⁵⁶¹ 40/80/11 to 40/80/13

⁵⁶² 40/80/14 to 40/80/17

⁵⁶³ 40/40/9 to 40/40/15 – Ms Bell says "I thought I'll do the statement and then I'll get to see [Mr Bayoh].

They've said that he would need to be identified anyway, and they had said "You will get to see him, so if you get your statement done you'll get to see him, because he needs to be identified anyway" because they had explained that he would probably need a post-mortem, I think, at that stage".

(Detective Constables Wayne Parker and Andrew Mitchell took Ms Bell's statement on 3 May 2015)

⁵⁶⁴ 90/99/11 to 90/99/18

different complexion on it. But I was never told that she was willing to identify, nor that she wished to go and see the body”⁵⁶⁵.

8.2 Arrangements for the post mortem

When asked who should make the decision about when a post mortem should take place, Deputy Senior Investigator Harrower says in his Inquiry statement that it was for the COPFS to determine but they would have to take into account the availability of pathologists⁵⁶⁶. He says that during the call with Mr Green⁵⁶⁷ in which Mr Green is reported to have said that his preference was for an “early” post mortem to take place he was not aware if Mr Bayoh’s family had been made aware of Mr Bayoh’s death at this stage. He says that “that’s very much a police responsibility, for that to be done: it is their responsibility to do that at the earliest appropriate opportunity”⁵⁶⁸.

At 15:40 on 3 May 2015, Deputy Senior Investigator Harrower received a call from Mr Green confirming arrangements for the post mortem examination to be carried out commencing at 12:00 the next day, 4 May 2015⁵⁶⁹. Mr Green says during the Inquiry hearing when asked whether he had factored in the need for Mr Bayoh’s family to be informed of his death, for FLOs to be appointed and for them to explain the need for a post mortem⁵⁷⁰, that he had made both Police Scotland and Deputy Senior Investigator Harrower aware of the arrangements and “they expressed no concern about that”⁵⁷¹. He also says that Dr Shearer did not express any concerns about the timetable for the autopsy⁵⁷².

Mr Green says that when discussing the arrangements for the post mortem with Dr Shearer he had made it clear that “this was a case that had to be done as quickly as possible given the circumstance, given that it was death in custody, and we needed to know what had caused Mr Bayoh’s death”⁵⁷³. He also says that “it mattered not that Mr Bayoh was black” and the circumstances that Mr Green was referring to which demanded urgency was that it was the death of a man in police custody and they “needed to know whether this man’s death had been brought about by acts of the police officers”⁵⁷⁴. He says that “it was essential to know as best we could from the post mortem why Mr Bayoh had died, that is the foundation stone upon which the entire investigation is built and without that it is difficult to see what you investigate or how because you simply do not have any idea why he has died”⁵⁷⁵.

Mr Green says that during the course of his call or calls with Dr Shearer he established that there would be capacity for the post mortem to be carried out the following day.

⁵⁶⁵ 90/99/19 to 90/100/3

⁵⁶⁶ SBPI-00259 para 22

⁵⁶⁷ PIRC-01468 – page 5 Deputy Senior Investigator Harrower notes a telephone call taking place at 12:30 on 3 May 2015 between him and Mr Green.

⁵⁶⁸ SBPI-00259 para 22

⁵⁶⁹ PIRC-00007: Deputy Senior Investigator Harrower statement

⁵⁷⁰ 90/49/14 to 90/49/22

⁵⁷¹ 90/49/24 to 90/49/25

⁵⁷² 90/52/15 to 90/52/17

⁵⁷³ 90/44/9 to 90/44/14

⁵⁷⁴ 90/44/20 to 90/44/25

⁵⁷⁵ 90/45/10 to 90/45/15

Mr Green also explains that given the unexplained nature of Mr Bayoh's death it is essential that the mortuary is cleaned entirely before the post mortem commences in order to preserve any evidence which might be recorded during the post mortem⁵⁷⁶.

When asked in the Inquiry hearing what Mr Green's understanding of the family's position was in relation to the identification of Mr Bayoh⁵⁷⁷ he says that he understood the family were waiting for elders to travel from England and that they would consider the request to identify Mr Bayoh when they arrived rather than the family being unwilling to identify Mr Bayoh⁵⁷⁸. He also says that there was uncertainty as to when people would arrive, when discussions would take place, when discussions might conclude, and he therefore had to make a decision. When asked if he had checked with Deputy Senior Investigator Harrower to clarify when family members would arrive and be able to identify Mr Bayoh, Mr Green says that his recollection was that Deputy Senior Investigator Harrower did not know⁵⁷⁹. Mr Green adds that that "I don't recall that part of the conversation specifically, but I do recall thinking: oh my gosh, I have no idea when this is going to occur. And that, I felt, was a problem"⁵⁸⁰. During the Inquiry hearing Mr Green says that he did not ask Deputy Senior Investigator Harrower to ask the family for more information about the timeframe and arrangements of those travelling from England given the time of night⁵⁸¹. Mr Green adds that he did ask that the family be revisited the following day in the hope that they could be persuaded to go and identify⁵⁸².

When Mrs Johnson's evidence regarding her mother's expected arrival in Kirkcaldy on 4 May 2015⁵⁸³ is put to Mr Green, he says that if "that information had been conveyed

⁵⁷⁶ 90/47/7 to 90/48/2

⁵⁷⁷ In **SBPI**00426 – para 42, Mr Green says "I ensured that the family were advised of the time and place of the autopsy and that they were asked if they would attend and identify him. There was no obligation on them to do so. I was advised that the family were not willing to attend the mortuary and that they were waiting for "elders" to travel from, I believe, London. Moreover, I was advised that the family would consider this request once they arrived. Thus, there was no time frame for this to occur nor any certainty that the family would ever attend to identify the body. In the face of this uncertainty and the necessity, in my view, of conducting the autopsy as soon as possible I decided it should go ahead as arranged. I would refer to the final page of **PIRC** 03694 which confirms the information I was given. As it turned out he was identified by his fingerprints. The decision to go ahead with the autopsy on 4th May was not an arbitrary one, rather one taken in light of the circumstances, and I believe it was the correct decision"

⁵⁷⁸ 90/57/20 to 90/58/7

⁵⁷⁹ 90/59/15 to 90/59/21

⁵⁸⁰ 90/59/21 to 90/59/24

⁵⁸¹ 90/60/6 to 90/60/9

⁵⁸² 90/60/9 to 90/60/12

⁵⁸³ 90/68/7 to 90/69/21 the following evidence of Mrs Johnson was read out to Mr Green: "[Mrs Johnson] described being visited by a person who she thought was a FLO but it was in fact Deputy Senior Investigator Harrower on the evening of 3 May:-

"Answer: He said, 'Are you ready to come down to the hospital to identify the body?' That is how he said it.

"Question: And what was your reply?

"Answer: I said 'No'. I said, 'His mother is in London and I am arranging for her to come up tomorrow', that was the Monday. I said once she is here she would want to see her son as well and we will go and identify the body.

"Question: Did you make it clear to that person that you would go the next day once [Mr Bayoh's] mother was in Kirkcaldy?

"Answer: I told them that our Mum was coming on the next day and we can arrange to see the body then, yes.

to me, while I wouldn't have done anything at 12:30 or 11:30 at night, I would certainly have used my phone from the car the following day to try to organise a post mortem for the Tuesday and put it back given that there is a clear indication that [Mr Bayoh's] mother is going to attend and that they are willing to attend the mortuary. But that was not made known to me at all"⁵⁸⁴. He adds that he does not recall any mention of Mr Bayoh's mother at all. What stuck in his mind was the use of the word "elders" during his conversation with Deputy Senior Investigator Harrower⁵⁸⁵.

When it is put to Deputy Senior Investigator Harrower that Mr Green understood that Mr Bayoh's family were not willing to attend at the mortuary rather than that Mr Bayoh's family wished for the post mortem to be delayed until family members arrived, Deputy Senior Investigator Harrower says in his evidence that he was "fairly confident that I told [Mr Green] regarding the expected visitors travelling and that there would be no decision finally made on that until they had arrived, so basically accurately summarising the discussion with Mr Johnson in relation to the arrangement for the post mortem"⁵⁸⁶. When asked if there was any reason why he could not have asked Mr Green to delay the post mortem, Deputy Senior Investigator Harrower says "to be honest it is not for me to interfere in that process. I am unaware of how - what the availability of the appropriate people are, including the pathologist and what was available, whether that day or further ahead in the timescale on that. It is not for me. [Mr Green] was aware of all the circumstances that were relevant in relation to the scheduling of that"⁵⁸⁷. Deputy Senior Investigator Harrower also says when asked whether he could have persuaded Mr Green to delay the post mortem on the Monday that he "didn't choose to give an opinion or apply any specific request in that regard. [Mr Green] was - as I say - he was fully aware of everything I was aware of at that time and the circumstances regarding the family"⁵⁸⁸. When asked why, given that on 3 May 2015 family liaison officers had not been deployed and the family were upset, angry and frustrated, he did not give his opinion about delaying or deferring the post mortem until after Mr Bayoh's mother had arrived, Deputy Senior Investigator Harrower says that he "didn't know what the alternatives were. Again, that wouldn't be something that I would ask him. He is a very senior member of [COPFS], and I didn't feel it was my position to push for any sort of alternative. He was armed with all the relevant information on the feelings of the family in relation to that, and he has clearly

"Question: And when you explained to the person you think is from PIRC, the family liaison officer, that [Mr Bayoh's] mum would be travelling up the next day, did you make it clear that you would be willing to identify the body once she arrived in Scotland?

"Answer: Mm-hmm, yes. It was clear that we will identify the body once my mum was here. That was made clear.

"Question: So you were willing to identify the body?

"Answer: Yes, yes. We were willing to identify the body. The only thing we asked for is to wait for my Mum. That is all we asked for.

"Question: Right. Did you make that clear to the PIRC?

"Answer: Yes.

"Question: So when this conversation was concluded, what was your understanding of the position about identifying the body?

"Answer: I thought they accepted our request and they will wait for our mum to come and then we can arrange to go and see the body".

⁵⁸⁴ 9070/19 to 90/71/2

⁵⁸⁵ 90/71/20 to 90/71/22

⁵⁸⁶ 77/53/24 to 77/54/12

⁵⁸⁷ 77/55/11 to 77/55/20

⁵⁸⁸ 77/57/1 to 77/57/7

had uppermost in his mind as regards finding out medically what hopefully caused the death at that stage, which was very important for the investigation moving forward, so I chose not to pursue anything else in relation to those arrangements. He knew what the facts were"⁵⁸⁹. Mr Green says however that he was not given any timeframe for Mrs Bayoh attending⁵⁹⁰. Deputy Senior Investigator Harrower adds that whilst in his experience family members of the deceased are normally involved in the discussions around the arrangements for a post mortem he does not have any experience of family members "making a request in relation to the timing of a post mortem because of, for example, personal or religious reasons"⁵⁹¹.

Mr Green says what he considered "at the time was, having dealt with lots of Muslim deaths in the past, while I knew that they didn't wish post mortems they were accepting of them when we said that we required to do them, but the one thing they always emphasised was that they wanted it done as quickly as possible and they wanted the remains back with the family as quickly as possible, so I took account of that as well, and frankly I thought I was doing the right thing on the basis of the information I was made aware of"⁵⁹².

Mr Green says in his first Inquiry statement that he "understood that PIRC would approach the family again the following morning [on the morning of 4 May 2015] to see if they had changed their mind and would identify"⁵⁹³ Mr Bayoh.

Investigator Lewis says that whilst he was sitting beside Deputy Senior Investigator Harrower⁵⁹⁴, Deputy Senior Investigator Harrower made a telephone call to Mr Johnson (which was recorded in the FLO Log as taking place at 10:30 on 4 May 2015) and although he could not hear what Mr Johnson was saying he did hear Deputy Senior Investigator Harrower saying that the post mortem would be going ahead as planned⁵⁹⁵. Investigator Lewis says that "not to my knowledge" had Ms Bell been contacted on the morning of 4 May 2015 regarding the post mortem arrangements⁵⁹⁶.

Deputy Senior Investigator Little says he was "advised during the events on 3 May the immediate family had intimated to [Deputy Senior Investigator] Harrower that they did not wish the post mortem process to proceed at this stage and asked that it be deferred until relatives and elders attended from England. The family could not give a date or time of arrival of such persons. This had been passed to [COPFS] but instructions had been given that the post mortem would be taking place. The family intimated that they would not be engaging in this process"⁵⁹⁷.

Deputy Senior Investigator Little further says that although family liaison officers from PIRC had been identified on the morning of 4 May 2015, he asked Deputy Senior Investigator Harrower to contact Mr Bayoh's family again on the basis that he had

⁵⁸⁹ 77/57/16 to 77/58/7

⁵⁹⁰ 90/75/3

⁵⁹¹ SBPI-00259 para 23

⁵⁹² 77/75/21 to 77/76/5

⁵⁹³ SBPI-00227 page 6, para 5

⁵⁹⁴ SBPI-00432 para 55

⁵⁹⁵ 78/149/18 to 78/149/22

⁵⁹⁶ 78/150/6 to 78/150/9

⁵⁹⁷ SBPI-00255 para 40

already met them and they knew who he was⁵⁹⁸. He “didn’t want the [family liaison officers] calling the family directly when they have had no introduction, they don’t know -- somebody just phoning up saying “Hiya’ I’m Alistair Lewis’ I’m from the police investigation, I’m your FLO”, that is not applicable”⁵⁹⁹.

Deputy Senior Investigator Little says that his understanding was that Deputy Senior Investigator Harrower would explain to the family during his phone call with them on the morning of 4 May 2015 that COPFS had decided the post mortem would take place and ask again if the family would engage with PIRC in respect of identification. Deputy Senior Investigator Little says that if the family had said to Deputy Senior Investigator Harrower during that phone call that they were willing to take part in the identification of Mr Bayoh’s body, Deputy Senior Investigator Little would have then immediately dispatched family liaison officers to meet with the family and brief them as to what would happen at the post mortem and what was to be expected when they went to identify the body. Deputy Senior Investigator Little says that he also asked Deputy Senior Investigator Harrower to introduce Investigator Lewis as the lead family liaison officer during that phone call⁶⁰⁰.

Deputy Senior Investigator Little notes in his first Inquiry statement that following Deputy Senior Investigator Harrower’s call to Mr Johnson on the morning of 4 May 2015 “What I got back from Deputy Senior Investigator Harrower was ‘No, they’re not engaging. They don’t want the post mortem to go ahead.’ I phoned Mr Green at [COPFS] about that”⁶⁰¹. When asked during the Inquiry hearing if he had been made aware on the morning of 4 May 2015 that Mr Bayoh’s mother and other family members were travelling that day or when they were likely to arrive, Deputy Senior Investigator Little says that he was not⁶⁰².

When Deputy Senior Investigator Little is asked during the Inquiry hearing whether he thought, following Deputy Senior Investigator Harrower’s report that “No, they’re not engaging. They don’t want the post mortem to go ahead”, that Mr Bayoh’s family’s position had changed from what they had intimated on 3 May 2015 i.e. that they wished for Mr Bayoh’s mother and other family members to arrive, Deputy Senior Investigator Little says that he did not think that their position had hardened⁶⁰³. He adds that “I phoned Dave Green again to advise him of the family’s position and that is all I can do. All I can do is advise Dave Green: look, the family are unwilling to attend for the time you have scheduled this post mortem. Now, his viewpoint was that the post mortem is going ahead. That presents a number of challenges. First of all, in relation to the post mortem process, it presents the challenges how do we identify Mr Bayoh’s remains? ... You then have the other part which impacted again is the relationship with the family, because the family have made a request, not unreasonable when you look at it in fullness, absolutely not unreasonable, and we’re going ahead and doing the post mortem. The family have had no contact with [COPFS] at that time.’ It’s not a police process’ it’s not a PIRC process’ it’s a [COPFS] process and the [COPFS] have said: no, it’s going ahead. Their rationale why, that is something that will obviously be

⁵⁹⁸ 79/101/1 to 79/101/2

⁵⁹⁹ 79/100/21 to 79/100/25

⁶⁰⁰ 79/101/6 to 79/101/20

⁶⁰¹ SBPI-00255 para 40

⁶⁰² 79/104/12 to 79/104/20.

⁶⁰³ 79/105/25 to 79/106/16

explored. But, as I said, this presented challenges and I tried to alleviate that by having [Deputy Senior Investigator Harrower] phone again; let's see what we can do"⁶⁰⁴.

During the Inquiry hearing Deputy Senior Investigator Little is asked if he was under the impression that COPFS had made the decision that the post mortem would be taking place on 4 May 2015 regardless, Deputy Senior Investigator Little says "I don't know about the word "regardless" but it was certainly that it was -- [COPFS] had made the decision, for whatever reason, that it was taking place. But following [Deputy Senior Investigator Harrower's] conversation with the family, I contacted [Mr Green] and I outlined the family's position in respect of the post mortem"⁶⁰⁵. Deputy Senior Investigator Little attended Edinburgh City Mortuary on 4 May 2015⁶⁰⁶.

Investigator Lewis says that it would be COPFS who would make the decision in relation to the time of the post mortem. However "in circumstances where there is some sensitivity around the date, for example on one occasion the post mortem was scheduled to take place on the deceased's birthday. We would highlight that just make sure [COPFS] and the pathologist is aware of the issue... We make [COPFS] aware, but it's [COPFS's] decision as to when and where the post mortem is going to take place"⁶⁰⁷.

Investigator Lewis says in his Inquiry statement that PIRC would ordinarily inform COPFS if the family had made a request for the post mortem to be delayed. He also says that there was nothing that had been said to him as family liaison officer querying if it could be delayed until a specific date"⁶⁰⁸. He adds that if he had received such information he would have "fed that back into the process" but his understanding was that COPFS, specifically Mr Green, who was head of SFIU at the time, made the decision that the post mortem was going ahead on [4 May 2015]⁶⁰⁹.

Mr Green says that on 4 May 2015 he "had no contact or calls in relation to Mr Bayoh's death and it follows that I issued no instructions"⁶¹⁰. When it is put to him that both Deputy Senior Investigator Little and Commissioner Frame had called him on 4 May 2015 he says that he has no recollection of those calls but that no new information had been put to him regarding when Mr Bayoh's mother and other family members

⁶⁰⁴ 79/106/21 to 79/107/19

⁶⁰⁵ 79/102/7 /79/102/15

⁶⁰⁶ PIRC-00370 page 3 "About 12.45 hours same date, I attended Edinburgh City Mortuary, Cowgate, Edinburgh. I was made aware by Dr Kerry Ann Shearer Lead Pathologist and Dr Ralph Boulaidar Pathologist, that whilst they had been fully briefed on the circumstances by Investigator John Ferguson, they were still awaiting a Sudden Death report from Police Scotland. I subsequently contacted Detective Superintendent Campbell and made arrangements for this document to be faxed directly to Edinburgh City Mortuary. Hospital records and medical records from the deceased's general practitioner were not available. I was aware that a number of tapings had been obtained from the deceased's body prior to it being recovered from Kirkcaldy Victoria Hospital, however after discussion with Mr Bernard Ablett Procurator Fiscal, Dr Shearer was instructed to obtain swabs from the nose and mouth and hair samples prior to the commencement of the post mortem. No requirement was made for sexual invasive samples. I was present throughout the post mortem which concluded about 17.50 hours same date. Cause of death was unascertained pending further examination which included toxicology and neurology examination".

⁶⁰⁷ SBPI-00246 para 16

⁶⁰⁸ SBPI-00246 para 17

⁶⁰⁹ SBPI-00246 para 17

⁶¹⁰ SBPI-00227 page 7, para 1

would arrive. With regard to the call Mr Green received from Deputy Senior Investigator Little, he says "I certainly do not recall that conversation. But if it happened, it wasn't something that was going to cause me to change my instruction. Because there was still no suggestion of a time or a certainty that they would -- that they would attend to identify"⁶¹¹. With regard to the conversation that Commissioner Frame says she had with Mr Green on the morning of 4 May 2015, Mr Green says that "I have no reason to doubt that the conversation took place. What I would say is that again on the information that you have given me, I am not being given any additional information about when this -- when the family might be available, when the post mortem might take place. I think it is entirely conceivable that I did say to [Commissioner Frame]: no, there is no certainty here' it's going ahead as arranged because how long is this week going to be? How long is a piece of string, in effect? I was -- as I have indicated earlier, I was exceptionally conscious of the need to find out why Mr Bayoh had died"⁶¹².

Mr Green says that had he delayed the post mortem given the knowledge that he had on 3 May 2015 he might have been criticised for that. He says that he came to the conclusion that "the proper thing to do in the interests of justice was to carry on with the post mortem as discussed, organised and agreed"⁶¹³.

Investigator Ferguson adds that at approximately 18:00 on 3 May 2015 during a discussion on joint recovery of evidence from Mr Bayoh, amongst other things⁶¹⁴, the issue of "cultural considerations" had been raised by him. He says that clarification on "cultural considerations" was sought from COPFS. He says that this resulted in the agreement that the recovery of evidence would be sensitively carried out and further discussion may be required at the mortuary with the pathologist. He adds that the matter was COPFS directed and there was nothing that would impinge on the recovery of evidence at this time⁶¹⁵.

Investigator Lewis says that he was concerned at the lack of opportunity to speak with Mr Bayoh's family as part of his role as a family liaison offer was to explain to Mr Bayoh's family why a post mortem was necessary and also to explore if there were any cultural or religious beliefs which might impact on the post mortem⁶¹⁶. He says that he cannot remember whether it was in the morning, but that he was aware on 4 May 2015 that Mr Bayoh was a Muslim⁶¹⁷. When asked why he didn't speak to senior management or COPFS to ask if the post mortem could be delayed until he was able to speak to Mr Bayoh's family given that he said that the timing was outwith his control⁶¹⁸.

⁶¹¹ 90/85/4 to 90/85/9

⁶¹² 90/87/24 to 90/88/10

⁶¹³ 90/58/16 to 90/59/14

⁶¹⁴ PIRC-00363 page 4. He also notes that in addition to cultural considerations the following matters were discussed/considered, namely "Photos (SPA evidential, and PIRC independent briefing photos); Tapings of head hands; Recovery of T- shirt in nylon bag for Pava /CS recovery; Body recovery kit and contents; and Undertaker".

⁶¹⁵ PIRC -00363 page 4

⁶¹⁶ 78/159/25

⁶¹⁷ 78/160/14 to 78/160/18

⁶¹⁸ 78/164/8

8.3 The post mortem

Deputy Senior Investigator Little says that as a lead investigator he would not normally attend a post-mortem. However on the basis of the briefing given by Deputy Senior Investigator Harrower that Mr Bayoh had been struck with police batons and that Investigator Ferguson⁶¹⁹ had reported to Deputy Senior Investigator Little there appeared to be substantial blood in Mr Bayoh's ears, he was "worried that a head trauma injury was what had caused him to die, and I needed to know whether there was any indication of that from the post mortem as soon as possible.....I needed to know right away if blunt force trauma has killed this man. We go back to the status of the officers as witnesses – if blunt force trauma had been the cause of death then the investigation would absolutely be, whether the actions of the police officers were justified, proportionate and necessary."⁶²⁰

Deputy Senior Investigator Little adds that "When you go to the post-mortem, there would be a briefing with the pathologist(s) prior to the post-mortem. There will always be a fiscal there, on this occasion it was Bernie Ablett, and in these circumstances it would be a two-doctor post-mortem because it's an unexplained death. The principal briefing was given to the pathologist by [Investigator Ferguson] for continuity. [Investigator Ferguson] had been there since the beginning of PIRC's involvement; [Investigator Ferguson] had been through for the quasar along with Police Scotland Crime Scene Manager. There should have been a sudden death report; however, it wasn't available before the post mortem. It was Police Scotland responsibility to produce this. Ideally you also want the deceased's medical records from the GP and the hospital so that they can be examined by the pathologist. The police tried to obtain the hospital records without success and we also tried to find the hospital records to cover the treatment the deceased had in hospital. It transpires that [Mr Bayoh's] name was not on the records as the staff didn't know his name, so we actually had to search through all the medical records, it was days later before we found the hospital medical records. Further, because no [family liaison officers] had been appointed, I had no information as to who [Mr Bayoh's] family doctors were, because ideally you would go and get the medical records and you would take them to the post-mortem. So we're at the post-mortem with no sudden death report, no hospital records, no general practice records. The thing we can do something about is the Police Scotland's sudden death report⁶²¹. [Detective Chief Inspector Hardie] chased this up. I imagine he's delegated somebody to do the report and was surprised it wasn't there. So [Investigator Ferguson] provided a verbal briefing. I'm asked if I remember whether the pathologist was given a paper briefing in advance of the post mortem. No, I'm not aware of that. Certainly, I don't recall that we prepared a briefing to give to the pathologist but [Investigator Ferguson] may have done this. In my experience, it's not something you prepare to give to the pathologist; you give them a verbal briefing"⁶²².

⁶¹⁹ Investigator Ferguson had been involved in the process of Mr Bayoh's body being moved from Victoria Hospital in Kirkcaldy to the Edinburgh City mortuary.

⁶²⁰ SBPI-00255 para 54

⁶²¹ SBPI-00255 para 57 – Deputy Senior Investigator Little says that he contacted Detective Superintendent Campbell and made arrangements for the sudden death report to be faxed directly to the mortuary and his recollection was that the faxed copy was received during the course of the post-mortem.

⁶²² SBPI-00255 para 55

Deputy Senior Investigator Little continues saying that “At the end [of the post mortem] you get a verbal briefing off the pathologist of what’s happened and this happened in this case. During this briefing I made notes within my daybook, I also later typed up a officers note⁶²³ on the initial findings of the post mortem, this was for the attention of [Director of Investigations Mitchell] and also so there was a record of what had transpired at this post mortem pending the pathologist report”⁶²⁴.

8.4 Notification of the Sierra Leone High Commission

Investigator Lewis is asked about the contact PIRC made with the Sierra Leone High Commission on 4 May and if he was aware of that contact being made. He says that he cannot remember if it was senior management at PIRC who made contact or whether it was Police Scotland. Investigator Lewis says that he was aware of it going on in the background.

Ms Bell recalls that she was in Mr Anwar’s office when “somebody in that room” received a call from the Sierra Leone Embassy saying that they had had a phone call about Shek, that Shek had died and “Would they accept his body because he didn’t even have family here?”⁶²⁵. During the Inquiry hearing Ms Bell also says “I think I remember on the back of that it was asked how he’d died and then I think it went silent. But I almost feel like, like I was in disbelief, because I was thinking, “They’ve just done the post-mortem and now they’re trying to ship his body back to Sierra Leone, why are they doing that?” And I just remember thinking, “They’re trying to take him away from us, why are they trying to take his body away from us?” And that’s what I remember. I just remember after the phone call coming in, a lot of kind of hysteria in the room, a lot of upset and anger”⁶²⁶.

8.5 Impact of the post mortem on Mr Bayoh’s family

Ms Bell says that not being able to see Mr Bayoh prior to the post-mortem had a profound impact on her. She says it was “Really bad. I think because I didn’t get to say goodbye, I didn’t get to see him, even now I think maybe they still got it wrong, like I know they didn’t get it wrong, I know it was Shek, but I often find myself thinking, “Maybe they did get it wrong, maybe it wasn’t actually him”. I often have nightmares and things about it, that I’ll be walking down a beach on holiday and Shek’ll be coming towards me, and I think it’s just I didn’t have that closure and I didn’t have that time to say goodbye, because it was so sudden, and then not being able to see him, it’s had a massive impact on me”⁶²⁷.

When Investigator Lewis is asked to comment on the impact that being unable to see Mr Bayoh prior to the post mortem had on Ms Bell, Investigator Lewis says “I fully understand that – that – her feelings and her emotion and probably anger as well.

⁶²³ PIRC-04148

⁶²⁴ SBPI-00255 para

⁶²⁵ SBPI-00247 para 46

⁶²⁶ 40/83/11 to 40/84/2

⁶²⁷ 40/81/19 to 40/82/7

All I can say is had I known that, had I been involved at an earlier stage I would have facilitated that request -- I wouldn't say with ease but it would have been done"⁶²⁸.

9. Treatment of family and friends

9.1 Delivery of the death message

Deputy Senior Investigator Little says in his Inquiry statement that "the delivery of a death message is the responsibility of Police Scotland, this does not have to be a FLO as it should be done sooner rather than later and Police Scotland may not have a FLO in place timeously so it may be another officer who delivers this message. PIRC staff will not deliver a death message. Even though we have a death in custody, we're the investigating body. Police Scotland will deliver a death message because families need to know sooner rather than later. Police Scotland are best placed to do so. If the responsibility lay with PIRC there would a delay in the death message getting to the family"⁶²⁹.

Investigator McGuire is referred to the statement of Detective Chief Superintendent Boal⁶³⁰ and is asked if he agreed with her assessment that there was an absence of strategy at the meeting at 13:30 on 3 May 2015. Investigator McGuire says that there was not any agreed strategy as far as he could recall but that the meeting was a general discussion and following this meeting there were various further meetings arranged.

9.1.1 To Collette Bell

Deputy Senior Investigator Dodd is referred to the statement taken by Investigator Stewart from Detective Sergeant Dursley, one of the attending officers, on 11 June 2015⁶³¹ and the specific reference which DS Dursley made to the death message delivered to Ms Bell. Deputy Senior Investigator Dodd was present whilst the

⁶²⁸ 78/136/7 to 78/136/12

⁶²⁹ SBPI-00255 para 50

⁶³⁰ PS00669 – the portion of her statement referred to reads as follows: "At about 1330 hours [Deputy Senior Investigator Harrower] and other PIRC investigators attended a briefing, which provided the same information as provided at the Gold Meeting was provided. It was confirmed at this time that [Mr Bayoh's] sister was his next of kin and that she lived [redacted]. I highlighted to Detective Superintendent Campbell that, given the information and chronology established along with identification by photograph, there was an urgent need to notify her of the death... I suggested that, in the interim, each police lead would draw up a strategy, for example, a forensic strategy, house-to-house strategy etc., and obtain [Deputy Senior Investigator Harrower's] agreement and sign off prior to implementation. This didn't receive clear endorsement. The only real information provided was that there would be PIRC investigators deployed to the hospital to undertake body transfer to the mortuary; a couple of PIRC investigators would be deployed at the main scene at Hayfield Road, Kirkcaldy, and Family Liaison would be handed over to PIRC at an early juncture."

⁶³¹ PIRC-00137 at page 2, Detective Sergeant Dursley is noted as saying "When [Ms Bell] was within Kirkcaldy Police Office, I spoke to [Detective Inspector Robson], and whilst I did think it was [Mr Bayoh] who was dead, at that time there was no formal identification so between me and [Detective Inspector Robson] we delegated [Detective Constable Parker] to tell [Ms Bell], words to the effect that, "a black male had been found dead and we suspected that it may be her partner". We based this on the fact that there was a black male dead and that a gold coloured mobile phone was found at the locus. [Ms Bell] had previously that morning told [Detective Constable Parker] that [Mr Bayoh] had an unusual gold coloured mobile phone. The wording of the death message is not recorded anywhere in any format"

statement was taken. Deputy Senior Investigator Dodd is asked what consideration, if any, was given to questioning Detective Sergeant Dursley further about the direction to Detective Constable Parker to tell Ms Bell: “words to the effect that, ‘a black male had been found dead...” and whether this form of words had the potential to be misleading. Deputy Senior Investigator Dodd says that “a statement was noted to clarify a number of points in [Detective Sergeant Dursley’s] previous statement and this was carried out. I do not recall giving any consideration to the other matters”⁶³². He also says that he was not involved in any decisions as to whether or not Detective Sergeant Dursley should be re-interviewed to explore further his involvement in the provision of information to members of Mr Bayoh’s family on 3 May 2015 in relation to delivery of the death messages after PIRC’s terms of reference were expanded on 12 June 2015⁶³³.

9.2 Contact with PIRC and FLOs

9.2.1 General

When Ms Bell is asked during the Inquiry hearing about a comment that she makes in her Inquiry statement⁶³⁴, she says that “I didn’t really want anything to do with the police or PIRC, because I thought they’re all made up of ex police officers and they’re supposed to be independent, but how independent can you be if it’s all ex-officers that are, that make up PIRC? It’s not really transparent, if it’s the police investigating the police”⁶³⁵.

Investigator Lewis is asked if he was made aware on 4 May 2015 of any issues with Police Scotland and the family’s relationship. He says that although he could not remember whether it was Deputy Senior Investigator Harrower or Deputy Senior Investigator Little that spoke to him about it, he was aware that different messages had been delivered to Ms Bell, to Mr Johnson and to Mrs Johnson. He says “that was very much part of the PIRC investigation from the very outset. I was very much aware of different versions of events which had been relayed to the family by different police officers within Police Scotland”⁶³⁶.

Investigator Lewis says that he and Investigator Clerkin had been deployed as family liaison officers by Deputy Senior Investigator Little shortly after 09:00 on 4 May 2015⁶³⁷. During his Inquiry Hearing evidence Investigator Lewis briefly describes the role of a family liaison officer as being an “officer that takes the role of communication,

⁶³² SBPI-00451 para 92

⁶³³ COPFS-04010(a) – “Allegations by the family that they were provided with misleading and erroneous information concerning the death of Mr Bayoh to family members and a concern as to why they were provided with that information”.

⁶³⁴ SBPI-00247 para 48 – Ms Bell says “... I think I was very wary because we were aware that PIRC were made up of ex-police officers. I remember not really liking them, but I was very defensive after what has happened. I remember going to a meeting with [Commissioner] Frame, the head of PIRC. I feel those meetings went really badly. I remember being very, very angry. I remember them almost being blasé about what had happened and me being really angry and defensive because they didn't seem to show any emotion or care”.

⁶³⁵ 40/84/25 to 40/85/14

⁶³⁶ SBPI-00432 para 54

⁶³⁷ PIRC-00341 page 2

you are the conduit between the family and the senior investigating Officer of any investigation. So it's to establish the parameters of that role, and to liaise with the family and to pass information to the family, and back to the SIO. And also to engage with the family from an involvement – public – family involvement point of view”⁶³⁸. He adds that the role of a family liaison officer deployed by Police Scotland is identical to the role of one deployed by PIRC – the training course that the family liaison officer will go on is the same⁶³⁹.

He also says that Mr Johnson was the single point of contact for the family. He says that he was present when Deputy Senior Investigator Harrower called Mr Johnson at 10:30 on 4 May 2015 regarding arrangements for the post mortem and that COPFS had directed that the post mortem would be taking place as planned on 4 May 2015. Investigator Lewis says that Deputy Senior Investigator Harrower asked to attend Mr and Mrs Johnson’s home to introduce Investigator Lewis and Investigator Clerkin who would be the PIRC family liaison officers. Investigator Lewis says that Mr Johnson advised Deputy Senior Investigator Harrower that he was in consultation with a solicitor and the solicitor would contact PIRC on behalf of the family. Details of this telephone call were also noted in the PIRC Family Liaison Log⁶⁴⁰.

During his Inquiry hearing evidence, Investigator Lewis is referred to the PIRC Family Liaison Policy document⁶⁴¹ and says that policy requires PIRC to keep the family informed and in cases such as this which was a COPFS-directed investigation make the family aware of the extent of the role that PIRC have been asked to carry out by COPFS⁶⁴².

9.2.2 After the post mortem

Investigator Lewis says in his Inquiry statement that he recorded in the Family Liaison Log that at 17:48 on 4 May 2015 he advised Mr Anwar of the result of the post mortem⁶⁴³. He says that there is also a further entry at 14:20 on 5 May 2015 noting a call between him and Mr Anwar in which Mr Anwar advised that he had spoken with the Lord Advocate and the post mortem would be put on hold. Investigator Lewis says that “one of the reasons you may take a FLO log is that it’s not uncommon with solicitors and family members, particularly in the circumstances to think “You never told me that”, and you have to refer back and remind them of a conversation. It doesn’t matter who it is, what their background is, where they come from, or their race or religion: their world has been destroyed, and they are having to cope with that, and you’re having to manage their distress, anger and their emotions together with all the

⁶³⁸ 78/31/7 to 78/31/14

⁶³⁹ 78/31/15 to 78/31/23

⁶⁴⁰ PIRC-04150 page 11

⁶⁴¹ PIRC-04460, page 1 which under the heading “Underpinning philosophy” says “In the event of a death of a human being, where there is a PIRC investigation, PIRC have a positive duty to communicate effectively and inclusively with the bereaved family”

⁶⁴² 78/34/19 to 78/34/22

⁶⁴³ PIRC-04150, Family Liaison Log page 14 (page 18 of 54 of pdf) notes the detail of conversation: “Advised Aamer Anwar of result of post mortem – unascertained death subject to toxicology and brain tissue exam. Asked who the pathologist had been. Unaware at that time. At the time of the call Aamer had his children with him. Also asked if he could obtain GP details for the PIRC to obtain medical records of [Mr Bayoh] for Pathologist”.

questions. So, similarly I did have to remind them that we'd had the conversation and about the post-mortem and that they were advised it was going ahead"⁶⁴⁴.

Investigator Lewis is asked if he recalls anything further being said during that phone call with Mr Anwar. He says "No, there was no other comment on it. It was as it is written down there"⁶⁴⁵.

Mr Anwar says "I had already been told on the 4th May by the family that they wished the post-mortem to be put on hold and [Mr Johnson] had told the PIRC that they wished it delayed until [Mr Bayoh's mother] had arrived and she had seen [Mr Bayoh]"⁶⁴⁶. Mr Anwar adds that "In conversation with [Investigator Lewis] this was reiterated by myself on the 4th May 2015, that the post-mortem would be on hold - for him to claim that he told me the post-mortem had gone ahead makes no sense"⁶⁴⁷.

Mr Anwar says that it would have been normal for him to request the name of the pathologist so he could advise the independent pathologist that the family wished to instruct, in order that the independent pathologist could make arrangements to attend the post mortem⁶⁴⁸. Mr Anwar said that he would agree that Investigator Lewis had requested details of Mr Bayoh's GP during the telephone call⁶⁴⁹ but suggests that entry in the FLO log recording details of their telephone call on 4 May 2015 "is either false or it [*sic*] the following day when he calls and the family then have to be told that pm has gone ahead"⁶⁵⁰.

Mr Anwar adds that had he been told by Investigator Lewis during the telephone call on 4 May 2015 that the post mortem had already taken place, Mr Anwar would not have sent a text message to the then Lord Advocate, Frank Mulholland, KC at 9.48 on 5 May 2015⁶⁵¹. Mr Anwar says that this was followed that morning with a telephone call to Lord Mulholland asking if the independent pathologist that the family wished to appoint could attend the post mortem and if the post mortem could be delayed until Mr Bayoh's mother was able to attend. Mr Anwar says that Lord Mulholland confirmed that there was no problem with Mr Anwar's request⁶⁵². Mr Anwar further adds "It makes no sense at all, as is wrongly claimed that I had been told by the PIRC the evening before a PM had taken place, why then would I be texting the LA in the morning and following it up with a telephone discussion with the LA"⁶⁵³.

⁶⁴⁴ SBPI-00246 para 19

⁶⁴⁵ SBPI-00432 para 94

⁶⁴⁶ SBPI-00453 para 1(i)

⁶⁴⁷ SBPI-00453 para 1(ii)

⁶⁴⁸ SBPI-00453 para 2

⁶⁴⁹ SBPI-00453 para 4

⁶⁵⁰ SBPI-00453 para 6

⁶⁵¹ SBPI-00453 para 7(iii). The contents of the text message referred to by Mr Anwar were as follows: "Hi Frank, I'm acting for the family of Sheku Bayoh, who died on 3rd May Kirkcaldy, I have spoken to PIRC, real concerns about investigation and what happened, I'm conscious this could go tits up but I am meeting with the family later today and It would be good to touch base with sum1 friendly at [COPFS] dealing with it, I understand Dave Green Mayb in charge but probably can't stand the sight of me since the old days of Chhokar, plus family want an independent post mortem or rather our pathologist to be present before it goes ahead"

⁶⁵² SBPI-00453 para 7(v)

⁶⁵³ SBPI-00453 para 7(vi)

Mr Anwar says that it was not until 5 May 2015 when Mr Bayoh's family were in his office that he was told that the post mortem had gone ahead⁶⁵⁴. Mr Anwar says that "some members of the family became visibly upset and angry. [Investigator Lewis] was unable to provide a satisfactory explanation as to why they had not awaited the family, he never once said that he had advised me of the PM the previous day"⁶⁵⁵.

Investigator Lewis is asked whether during the meeting that he and Investigator Clerkin had with the family at 18:30 on 4 May 2015, Mr Bayoh's family had outlined any concerns that race had played a role in the encounter between Mr Bayoh and the police. He says that "there was nothing mentioned about race at that time"⁶⁵⁶.

Investigator Lewis goes on to say that the only time he remembers that concerns about the impact of race had been discussed with him whilst he was acting as family liaison officer was when Mr Anwar mentioned it at the meeting with Commissioner Frame on 3 September 2015. He says "I think [Mr Anwar] referred to it as "the elephant in the room," but throughout my part of the investigation, I never read anything, saw anything or heard anything that made me think that race played a part in the interaction between the police officers and Sheku. Had anything like that been raised to me at any point whatsoever, it would have been a priority to raise that at senior management level and to establish the circumstances in relation to that"⁶⁵⁷.

Investigator Lewis also says that, in relation to the briefing given by Deputy Senior Investigator Little at 08:30 on 5 May 2015⁶⁵⁸, he could not recall specifically what was said but that Deputy Senior Investigator Little "did talk about diversity"⁶⁵⁹. Investigator Lewis goes on to say "I explained to [Deputy Senior Investigator Little] I had many years of experience of dealing with, or liaising with families from all sorts of backgrounds, race, religion, gender. I knew exactly what he was talking about because of the circumstances, and I think I knew by that time that [Mr Bayoh] was a Muslim and, it was a case of, is he a practicing Muslim. I was already assessing what sort of information do I need to have in order to assist in relation to that as far as liaising is concerned with the family. Whilst he did highlight that, I had been thinking about that from the very moment I was appointed as the FLO. In the past, I have had to go to a member of the community and get advice from them. I am no expert on religion, but I like to think that I have a working knowledge of the information in that I require for such deployments"⁶⁶⁰.

In his Inquiry statement, Investigator Clerkin is also referred to the briefing given by Deputy Senior Investigator Little at 08:30 on 5 May 2015 and asked what was meant by the statement in the briefing notes "Diversity support required for PIRC FLOs to take forward interactions with family"⁶⁶¹. He says "Police Scotland used to run a monthly diversity event at the police college in Tulliallan. There would have been

⁶⁵⁴ SBPI-00453 para 7(vii)

⁶⁵⁵ SBPI-00453 para 7(vii)

⁶⁵⁶ SBPI-00432 para 87

⁶⁵⁷ SBPI-00432 para 88

⁶⁵⁸ PIRC-04156 – Deputy Senior Investigator Little provided an update and it is noted "Diversity support required for PIRC FLOs to take forward interactions with family".

⁶⁵⁹ SBPI-00432 para 53

⁶⁶⁰ SBPI-00432 para 53

⁶⁶¹ PIRC-04156

various attendees from a variety of stakeholder organisations, PIRC included.”⁶⁶². He continues by saying “I'd imagine that maybe influenced [Deputy Senior Investigator Little] in including that was the fact that there had been a focus on the issue and the subject material of diversity. It had been established by this stage that [Mr Bayoh's] background was in Sierra Leone, they were of African descent, Muslim, in my understanding that was the consensus faith amongst the family, but not necessarily in its entirety. I think what [Deputy Senior Investigator Little] was focusing on there was maybe the need to grasp some understandings about how religiously and how culturally that might impact on how [Investigator Lewis] and myself would have done our job in terms of speaking with the family. Clearly, it didn't apply in all circumstances given that Ms Bell and... her mother, to the best of my understanding, they were Scottish. There would have been no special reasons to consider their ethnic background or religious background, whereas in the case of [Mr Bayoh's] extended family, perhaps there would have been. I imagine that that's what [Deputy Senior Investigator Little] was referring to there. I do remember discussion about this generally and indeed with Police Scotland, but in respect of this specific meeting I couldn't say that it was mentioned or otherwise”⁶⁶³.

9.3 Family relationship with PIRC

9.3.1 General

Investigator McGuire says that whilst serving in the British Transport Police⁶⁶⁴ he had had contact with Detective Superintendent Campbell prior to the investigation into the death of Mr Bayoh⁶⁶⁵. Investigator McGuire says he had had no contact with any of the attending officers prior to the investigation into Mr Bayoh's death⁶⁶⁶.

Deputy Senior Investigator Little is asked in his Inquiry statement whether at the time that he was working on the PIRC investigation into the death of Mr Bayoh he knew any of the attending officers or the wider team of Police Scotland officers involved in the investigation. He says that he knew of Detective Superintendent Campbell but that he had never worked with him. He says that he never came across the attending officers or other Police Scotland officers involved in the investigation before his involvement in the investigation into Mr Bayoh's death⁶⁶⁷.

Deputy Senior Investigator Dodd is asked if he had had any contact with the Police Scotland officers he encountered in the course of the PIRC investigation into the death of Mr Bayoh. He says that he knew Detective Superintendent Campbell from his time with Strathclyde Police but never worked directly with him in any capacity, and only attended meetings he was at. He says that they were not friends as at May 2015⁶⁶⁸. He adds that he was not aware of any policy or guidance for PIRC staff who were

⁶⁶² SBPI-00446 para 110

⁶⁶³ SBPI-00446 para 111

⁶⁶⁴ SBPI-00457 para 2 - Investigator McGuire retired from the British Transport Police in 2011.

⁶⁶⁵ SBPI-00457 para 25

⁶⁶⁶ SBPI-00457 para 23

⁶⁶⁷ SBPI-00255 para 7

⁶⁶⁸ SBPI-00451 para 4

acquainted with a Police Scotland officer that they encountered in their role, or who was the subject of a PIRC investigation⁶⁶⁹.

Deputy Senior Investigator Dodd also says that he believes that PIRC is sufficiently independent. The Commissioner is appointed by Scottish Ministers and must not have a policing background. PIRC are also instructed by COPFS⁶⁷⁰

Investigator Sinclair says when asked if PIRC were sufficiently independent from Police Scotland says that in his opinion “PIRC is sufficiently independent from Police Scotland. I personally have not been involved in a situation where I have felt that PIRC and Police Scotland differed in an opinion”⁶⁷¹. When he is further asked what impact, if any, that the continued involvement of Police Scotland in the management of scenes following a death in custody or death following police contact has on PIRC's actual or perceived independence he says that “there is no negative impact on PIRC's actual or perceived independence Any decision made regarding the scene is discussed at length between the Police Scotland CSM and PIRC scene manager. This ensures the integrity of the scene is not compromised in any way”⁶⁷².

Deputy Senior Investigator Little also says that “part of the role in a PIRC investigation is explaining who we are as an organisation This is because it's important for the family to know who we are, what we do, what our role is. People don't know who we are unless they or their family have been involved in a similar circumstances. Nobody knows who PIRC are. We've got an unfortunate name as well, Police Investigation Review Commissioner. We sound as if we're the police. The IPCC is better – the first word is independent - something that right away grabs people's attention. In general, we go to people's houses and say the name of our organisation and all they hear is “Police.” I've had doors shut on me as a consequence of that”⁶⁷³.

Commissioner Frame is asked if PIRC was sufficiently independent from Police Scotland. She says that “there was no chain of command to any policing body or, in other words, there was no chain of command between any PIRC employee and the Chief Constable. They were employed by and accountable to the Commissioner. The test, which has been recognised, requires there to be no hierarchical or institutional connection or practical connection between those carrying out an investigation and those who were implicated in events. Not only were the investigators not in a chain of command to any policing body, in the [investigation into Mr Bayoh's death], I'm not aware that any of the investigators had, in fact, even worked with the officers involved”⁶⁷⁴.

9.3.2 Meeting on 3 September 2015

Ms Bell describes her impressions of the meeting with Commissioner Frame, Director of Investigations Mitchell, Deputy Senior Investigator Little, Investigator Lewis and Head of Communications Tait on 3 September 2015 as follows:

⁶⁶⁹ SBPI-00451 para 5

⁶⁷⁰ SBPI-00451 para 46

⁶⁷¹ SBPI-00424 para 46

⁶⁷² SBPI-00424 para 45

⁶⁷³ SBPI-00255 para 46

⁶⁷⁴ SBPI-00447 para 137

"I remember going to a meeting with [Commissioner Frame], the head of PIRC. I feel those meetings went really badly. I remember being very, very angry. I remember them almost being blasé about what had happened and me being really angry and defensive because they didn't seem to show any emotion or care. I just remember being very angry because I remember we had been told all about his injuries when we were at the meeting with [Commissioner Frame]. I remember them saying that there was no evidence to suggest that they would have to look at the measures that were used, the way that he was restrained. I remember shouting at her, "If this was a member of the public who had all these injuries, somebody would be held accountable for it," and then I remember her saying that the injuries that Shek had received were kind of normal. I remember thinking, "What?" and I remember saying, "If Shek hadn't got in contact with the police that day, he'd still be here." I remember [Commissioner Frame] almost laughing at my anger, which made me more angry. She just seemed very ignorant and arrogant to it all. I felt a lot of the time with PIRC that they were insinuating that everything had all been Shek's fault and that the restraint and things that were used were his fault"⁶⁷⁵.

Commissioner Frame says that "in relation to her comment that she was told that there was no evidence to suggest that we would be looking at the way he was restrained, that actually formed part of the inquiries that were being pursued with medical experts, so it's difficult to reconcile that view with the work that was actually being progressed. Until there was a clarity from the medical experts, it was impossible to know whether the way that Mr Bayoh was restrained played a part in his death or not"⁶⁷⁶. She adds "in relation to her comment about laughing, I didn't find any part of that meeting entertaining. I had expressed my sympathy to the family individually at the commencement of the meeting and I was specifically keen to update them on the progress of the investigation and address their concerns and, in the face of considerable hostility both towards the PIRC investigation and to individual members of staff who were present, I allowed Ms Bell in particular the opportunity to express her views and frustrations without interruption"⁶⁷⁷. Furthermore she says "in relation to her comment about insinuating that everything had been Mr Bayoh's fault, that was not the case. It was repeatedly made clear throughout the meeting that the investigators were continuing to follow every line of inquiry, in particular through the expert medical evidence, to get to the truth of what had happened"⁶⁷⁸.

Mrs Johnson is asked about her general interactions with PIRC and any meetings that she had attended with them and with reference to the meeting on 3 September 2015 she says "we had a meeting with PIRC and Kate Frame was the senior there at the time. The meeting was not fruitful for me. When we went to the meeting it was all superiority, that's what we got from her. We didn't get any clear information. We didn't get any clear support from her, yet she just explained how things go, what their role was, and things like that. For me it was all about her and her organisation rather than any remorse. Where is the sympathy? What are you going to do to support this family? There was nothing there. They lacked compassion towards the family"⁶⁷⁹.

⁶⁷⁵ SBPI-00247 para 48

⁶⁷⁶ SBPI-00447 para 518

⁶⁷⁷ SBPI-00447 para 520

⁶⁷⁸ SBPI-00447 para 521

⁶⁷⁹ SBPI-00236 para 18

When Mrs Johnson's comments were put to Commissioner Frame, she says that "Before the meeting started, I personally welcomed all the family members to the meeting. I expressed my condolences to them and acknowledged their loss. I was conscious that the family wanted information both in relation to the role of the PIRC and the investigation, and as is recorded in the family liaison log, I shared that with them. I spent some time discussing the role, to provide them with an understanding of our independence from Police Scotland. Clearly, Mrs Johnson feels that there was too much information or time spent on that instead of support for the family. As regards support, we repeatedly invited the family to engage directly with the FLOs who as part of their role may have been able to signpost relevant support"⁶⁸⁰. When she is further asked to comment on the remarks made by Mrs Johnson regarding this meeting Commissioner Frame says "it is disappointing, because as well as spending time at the beginning of the meeting personally speaking to family members, I recall speaking to Mrs Johnson at the end of that meeting too and expressing my sympathy for her loss. She didn't express any lack of support at that time or seek support from the FLO who was present at the meeting. She clearly was very upset at her loss"⁶⁸¹.

When it is also put to Commissioner Frame that Ms Bell feels that Commissioner Frame could have been a little more understanding and Mrs Johnson says she felt that if Commissioner Frame could have shown some empathy it would have made a difference, Commissioner Frame says "I and a number of the PIRC staff did make considerable efforts to explain as clearly as we could what steps we were taking in the investigation and, as I've said, I particularly spoke to Mrs Johnson and showed empathy towards her, so it's disappointing that she feels that way"⁶⁸².

She adds that "it seemed as though there was a level of hostility by some members of the family on arrival and it was always going to be hard to explain in a way which they understood or accepted why the officers had not been detained. Perhaps it might have assisted to hear the family's concerns at the beginning rather than explaining the role of PIRC and the investigation at the outset"⁶⁸³.

Commissioner Frame says during the Inquiry hearing that "the view within PIRC was that they were originally really concerned in relation to the independence aspect and there had been various media articles to that effect"⁶⁸⁴ but on reflection it was potentially a mistake to open the meeting by discussing the independence of PIRC rather than listening to the concerns of the family⁶⁸⁵.

⁶⁸⁰ SBPI-00447 para 515

⁶⁸¹ SBPI-00447 para 516

⁶⁸² SBPI-00447 para 532

⁶⁸³ SBPI-00447 para 533

⁶⁸⁴ 89/95/9 to 89/95/18

⁶⁸⁵ 89/96/4 to 89/96/6

9.4 Seizure and search of houses

9.4.1 Mr Bayoh and Ms Bell's address

Investigator Lewis is asked if he and Investigator Clerkin attended a meeting at 19:30 on 4 May 2015, with Police Scotland and PIRC staff, at which the decision was taken to release Ms Bell's address back to the family. Investigator Lewis says that he does not remember being at this meeting. He says that he and Investigator Lewis had returned to Kirkcaldy after meeting with Mr Johnson and family. He says that he was sure that Deputy Senior Investigator Little was in a meeting with Detective Superintendent Campbell and other senior officers from Police Scotland. Investigator Lewis says that he did not interrupt the meeting but did step in and speak directly with Deputy Senior Investigator Little to discuss "the circumstances about the scene of Ms Bell's house"⁶⁸⁶.

Deputy Senior Investigator Little refers to a meeting at 20:05 on 4 May 2015 with Detective Superintendent Campbell, Detective Chief Inspector Hardie and Detective Inspector Wilson at Kirkcaldy Police Office during which Ms Bell's property was discussed⁶⁸⁷. He is asked in his Inquiry statement if he had any understanding of why Ms Bell's property was treated as a crime scene by Police Scotland and he says he could understand why it would have been examined by a scene manager and photographs taken on the basis that "there had been an altercation with [Mr Bayoh] and his friend in the vicinity of that house. My understanding, the house was in a bit of a state of disrepair within, and I think that's clear from the telephone call that his partner made to the police"⁶⁸⁸.

Deputy Senior Investigator Little is also asked to comment on Chief Superintendent McEwan's statement regarding his first visit to Mr and Mrs Johnson's home on the evening of 3 May which states that Mr Bayoh's family had asked why they had been denied access to Mr Bayoh's home⁶⁸⁹. Deputy Senior Investigator Little says "I recall that whilst I was still at the mortuary, I received a call from Investigator Alasdair Lewis on this matter. I cannot recall the exact conversation but generally, Police Scotland wanted to know if [Ms Bell] could get or the family could get permission to go into [Ms Bell's] house as she needed items out of the house for her young baby. I remember saying to Alistair Lewis, "But that's their decision (i.e. Police Scotland's decision), that's not for me" and he said, "Oh I know" Ultimately, I did proffer an opinion to Alistair Lewis saying, "Well if the police have recovered what they wanted to recover out of that house, what is the danger of letting Collette into the house?" If they that they feel there is a danger letting Collette or whoever into the house, then find out what is needed and go and in and get it for her. But that was Police Scotland's responsibility"⁶⁹⁰.

⁶⁸⁶ SBPI-00423 para 93

⁶⁸⁷ PIRC-00370 – Deputy Senior Investigator Little's statement notes that in relation to Ms Bell's property "it transpires that the partner of the deceased required access to the house situated at 20 Arran Crescent Kirkcaldy, which had been seized by the police. The events within this house at that time did not fall under the terms of reference of the PIRC, however I was involved in the discussion that lead to this house being returned to the family following visual examination by a Police Scotland scene manager and the obtaining of general still photographs".

⁶⁸⁸ SBPI-00255 para 42

⁶⁸⁹ SBPI-00255 para 44

⁶⁹⁰ SBPI-00255 para 44

Deputy Senior Investigator Dodd took a statement from Detective Constable Wayne Parker and in the statement Detective Constable Parker refers to the seizure of Ms Bell's home⁶⁹¹. Deputy Senior Investigator Dodd is asked in his Inquiry statement whether Detective Constable Parker was asked to clarify the legal basis upon which Ms Bell's property was seized. Deputy Senior Investigator Dodd says he "did not believe that Detective Constable Parker was asked to clarify the legal basis upon which the property was seized as this was not relevant to the action I was allocated"⁶⁹².

9.5 Zahid Saeed

Deputy Senior Investigator Dodd is referred to the fact that, on 11 September 2015, he was present when DCs McGregor and Telford were advised by Deputy Senior Investigator Little that Zahid Saeed had made an allegation that he had been assaulted by them on 3 May 2015 and that PIRC had been instructed by COPFS to investigate this allegation. Deputy Senior Investigator Dodd says that he was not involved in the decision-making process regarding the officers being advised⁶⁹³. Deputy Senior Investigator Dodd is asked if it was standard practice for officers to be advised in person that they were subject to a criminal investigation, and he says "I do not believe that it was standard practice and I am unaware of why it was necessary on this occasion. In my experience, normal practice is to inform officers that they are subject of criminal allegations through Police Scotland Professional Standards Department"⁶⁹⁴.

9.6 Dick and MacLeod

Deputy Senior Investigator Dodd took a statement from Miss MacLeod on 6 May 2015⁶⁹⁵ and Mr Dick on 8 May 2015⁶⁹⁶. In his Inquiry statement, Deputy Senior Investigator Dodd is asked what consideration was given to obtaining statements from the police officers that seized Ms Macleod and Mr Dick's property to clarify the legal basis upon which it was seized. Deputy Senior Investigator Dodd says that the seizure of property was a matter for Police Scotland who were carrying out initial enquiries on 3 May 2015. He also says that he was not aware of what consideration had been given to obtaining statements from the officers who seized property⁶⁹⁷.

In his Inquiry statement Deputy Senior Investigator Dodd is referred to Minutes of the PIRC briefing on 30 June 2015 in which it was noted, "Still not been able to get hold

⁶⁹¹ PIRC-00024 page 3 – the relevant portion of the statement reads "About 1030 hours Detective Sergeant Dursley informed [Detective Constable Parker] that the [Ms Bell's address] was to be secured and protected as a crime scene. [Detective Constable Parker] explained to Ms Bell that there had been an incident in the morning that might be related to the insecure property".

⁶⁹² SBPI-00451 para 68

⁶⁹³ SBPI-00451 para 110

⁶⁹⁴ SBPI-00451 para 111

⁶⁹⁵ PIRC-00052

⁶⁹⁶ PIRC-00031

⁶⁹⁷ SBPI-00451 para 52

of the witnesses who can speak to the drugs, so will consider door stepping⁶⁹⁸ them later this afternoon⁶⁹⁹. Deputy Senior Investigator Dodd says that he was attempting to contact Mr Saeed, Mr Dick and Miss McLeod. PIRC wished to establish from these witnesses if they had knowledge of Mr Bayoh abusing Alpha PVP and MDMA on the night of the incident, frequency of use and potential supply chain.

Miss MacLeod says in her Inquiry statement that “I remember PIRC hounding us and trying to get another statement from Martyn and Zahid. They chapped on door and left messages. They were phone calls trying to speak to Martyn. It was all just really crap the way it was handled⁷⁰⁰. When Deputy Senior Investigator Dodd is asked in his Inquiry statement for his view on the comment that PIRC were “hounding” these witnesses he says “PIRC investigators had actions to speak to witnesses and made efforts to speak to them. I do not believe that these attempts were “hounding” in nature⁷⁰¹.”

9.7 Database searches

On 19 August 2015, Detective Sergeant Thompson was instructed to by Deputy Senior Investigator Little⁷⁰² to carry out an audit of police database systems to establish who had accessed the records of Mr Anwar and the family and friends of Mr Bayoh⁷⁰³ between 3 May 2015 and 18 August 2015, and in particular to establish if any of the attending officers had accessed any of the records and, if so, to establish if this was for a legitimate policing purpose⁷⁰⁴. The audit indicated that none of the attending officers carried out a search on or accessed any record pertaining to Mr Anwar or the family and friends of Mr Bayoh⁷⁰⁵.

A letter was sent from Mr Brown to Commissioner Frame stating that under s.33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006, COPFS was instructing PIRC to carry out an investigation in relation to several matters raised in a letter from Mr Anwar dated 31 July 2015 addressed to Police Scotland, including an allegation that “PC Alan Paton and his colleagues had regularly accessed the police databases and other Crime file systems to check up on the personal data of individuals without the consent of the data controller namely the Chief Constable, without there being a “policing purpose”⁷⁰⁶.”

⁶⁹⁸ SBPI-00451 para 103 – Deputy Senior Investigator Dodd says that the phrase “door stepping” involves attending at the address unannounced. It is not commonly used but was necessary in this case as the witnesses did not respond to phone calls and messages made by PIRC.

⁶⁹⁹ SBPI-00451 para 102

⁷⁰⁰ SBPI-00220 para 34

⁷⁰¹ SBPI-00451 para 105

⁷⁰² SBPI-00421 para 217

⁷⁰³ PIRC-00004 page 239 (page 34 of pdf) – the individuals whose data that the attending officers were alleged to have unlawfully accessed were Ms Bell, Ms Bell’s mother, Mrs Aminata Bayoh, Mr Johnson, Mrs Johnson, Mrs Kosna Bayoh, Mrs Adama Jalloh, Mr Dick, Mr Saeed, Miss Macleod, Mr James Hume, and Mr Anwar

⁷⁰⁴ PIRC-00004 page 241 (page 36 of pdf)

⁷⁰⁵ PIRC-00004 page 241 (page 36 of pdf)

⁷⁰⁶ COPFS-02768(a) para 6

On 30 October 2015, Police Scotland were requested to conduct another audit with regard to the records, if any, held in respect of Mr Bayoh to check if the attending officers had accessed police database systems in respect of Mr Bayoh, and if they had, to confirm the lawful purpose for such accessing⁷⁰⁷.

On 5 November 2015 Police Scotland were further tasked with carrying out an audit in respect of Mr Anwar. Detective Sergeant Stephen Clark conducted this audit for the period 3 May 2015 to 2 November 2015. This audit identified that none of the attending officers conducted a search of police systems in relation to Mr Anwar⁷⁰⁸.

A search of the systems identified that three other officers had accessed some parts of the police database systems pertaining to Mr Anwar⁷⁰⁹. Following the provision of this information, Police Scotland were asked to provide statements from every serving police officer and member of staff in relation to each of the checks identified through all the audits giving their reason for undertaking the checks in accordance with the Data Protection Act 1998. Statements were not requested from those officers now retired who had carried out checks, nor from officers/members of staff from organisations not members of Police Scotland. This resulted in the submission of sixty-nine statements. Examination of the statements raised some concerns regarding the justification of the checks outlined below, as an immediately apparent reason for officers or staff undertaking the checks or accessing the records was not evident⁷¹⁰.

Senior Investigator McSporran is asked about a meeting on 28 January 2016 that he and Deputy Senior Investigator Little had with Detective Chief Superintendent Cuzen, Detective Superintendent Kenneth Dewar and Superintendent Audrey McLeod regarding the data protection aspect of PIRC's investigation and the information received in relation to the various checks made against individuals on the police database systems. He says that the meeting was to "discuss the COPFS instruction to investigate allegations of breaches of the Data Protection Act, particularly material which was retained in the Scottish Intelligence Database in relation to Mr Anwar"⁷¹¹. Detective Superintendent Dewar was identified at that meeting as the person who would provide PIRC with an overarching statement in respect of the data protection aspect of PIRC's investigation. Senior Investigator McSporran says that "[Detective Superintendent Dewar] did not do so as he retired in early February 2016. Overall, I got the impression ... that some officers were trying to avoid providing statements in respect of the reasons for gathering and storing of intelligence on Mr Anwar"⁷¹². When Deputy Senior Investigator Little is asked whether he felt that Police Scotland were appropriately and promptly assisting PIRC with their investigation, he says that "the matter was not being dealt with promptly or appropriately"⁷¹³.

⁷⁰⁷ PIRC-00004 page 245 (page 40 of pdf)

⁷⁰⁸ PIRC-00004 page 246 (page 41 of pdf)

⁷⁰⁹ PIRC-00004 page 247 (page 42 of pdf)

⁷¹⁰ PIRC-00004 page 247 (page 42 of pdf)

⁷¹¹ SBPI-00361 para 133

⁷¹² SBPI-00361 para 134

⁷¹³ SBPI-00421 para 268

It is also noted that on 29 January 2016, PIRC asked Police Scotland⁷¹⁴ to “supply additional statements from [the officers/members of staff who conducted checks against individuals on the police database systems] in order to clarify concerns”⁷¹⁵.

Senior Investigator McSporrán is asked about meeting Detective Superintendent Dewar’s successor, Detective Chief Inspector Elaine Simpson on 17 February 2016. He says that at this meeting which was also attended by Deputy Senior Investigator Little and the meeting was to repeat the request for an overarching statement about this particular matter. It was not necessary to take notes⁷¹⁶.

In a letter dated 1 March 2016, in response to the request made by PIRC on 29 January 2016, Superintendent McLeod stated that Police Scotland would not be approaching the officers or members of staff for clarification as to why they carried out various checks against individuals on the police database systems for the following reasons:

“1. The officers and staff were not provided with the audit record to allow them to give more precise information about their policing purpose. A number of the systems require a reason code to be input which provides the policing purpose and would have assisted in the compilation of the statements. Staff provided statements without this information.

2. Officers and staff are not routinely required to provide statements justifying their access and there is no policy which requires them to keep a record of each check they make, therefore it is not surprising that individuals who work on numerous systems on a daily basis have no recollection of why the checks were made. This does not infer that they have acted criminally.

3. There is no allegation or evidence that any member of staff has acted illegally in accessing systems and none of the audit checks reasonably infer that any checks have been other than for a policing purpose. There are, therefore, no grounds to interview under caution or indeed make an approach for further statements. Indeed any approach would be unfair as the officers are neither subject officers nor witnesses.

4. If PIRC considers that there are any ulterior motives for the checks being carried out, then further statements cannot be obtained from staff and instruction will be required from CAAPD to interview the individuals under caution, in the same way PSD would deal with an "on duty inference of criminality." From the information already gleaned there are no grounds, in my opinion, to interview anyone under caution”⁷¹⁷.

When asked whether he felt that Police Scotland had appropriately assisting PIRC with their investigation in relation to the absence of a policing purpose confirming why each officer or member of police staff had conducted such a check on police database systems, Senior Investigator McSporrán says that in the letter dated 1 March 2016

⁷¹⁴ 81/81/2 to 81/81/12 – during the Inquiry hearing, Deputy Senior Investigator Little says that he cannot remember whether it was himself or Senior Investigator McSporrán who requested the additional statements from Police Scotland.

⁷¹⁵ PIRC-00004 page 247 (page 42 of pdf)

⁷¹⁶ SBPI-00361 para 136

⁷¹⁷ PIRC-00004 page 247 (page 42 of pdf) to page 248 (page 43 of pdf)

Superintendent McLeod “provided a generic explanation as to why this had not been recorded and thereafter provide an explanation of each of the statements which had not identified a policing purpose. I did feel that this explanation from Superintendent McLeod addressed this matter”⁷¹⁸.

On 29 March 2016 Deputy Senior Investigator Dodd accompanied Deputy Senior Investigator Little to collect the audits from Police Scotland which they had carried out. He says that “I had no involvement in this part of the investigation or knowledge of what the audits related to”⁷¹⁹.

On 1 April 2016, Deputy Senior Investigator Little was advised by Chief Superintendent Carole Auld, Head of Professional Standards Division, that Detective Inspector Anderson of the National Intelligence Bureau would provide an overarching statement regarding this matter. Later that day PIRC Investigator Little contacted Detective Inspector Anderson and made him aware of the information required, at which point he declined to provide such a statement⁷²⁰. Chief Superintendent Auld was again contacted and asked as a matter of urgency to nominate an officer who would provide the overarching statement⁷²¹. When Deputy Senior Investigator Little is asked for his view of the actions of Police Scotland at this time he says that “Quite simply that no person of suitable authority was prepared to provide a statement which explained their actions in raising and holding intelligence on Mr Anwar”⁷²². When he is also asked if there was any avenue for escalating this matter within Police Scotland Deputy Senior Investigator Little says that he could not recall if any action was taken but he “along with Senior Investigator McSparran and Director of Investigations Mitchell were already dealing with the Head of Professional Standards and had previous meetings with their Head of Intelligence on this matter”⁷²³. When Deputy Senior Investigator Little is then asked if there was any avenue for escalating this matter within PIRC or COPFS he says that “the challenges being faced on this area was already known to Director of Investigations Mitchell and Commissioner Frame who would attend the briefings when this was being discussed. I had previously raised the issue of refusal from Police Scotland to hand over telephone data with Mr Brown at COPFS but he had dismissed any consideration of a warrant by directing me back to the Commissioners powers, what powers he thought the Commissioner had I do not know”⁷²⁴.

On 14 April 2016, a statement was received from Detective Inspector Ramsay Wilson, who is based at Fettes Police Office, Edinburgh. In this statement Detective Inspector Wilson intimates that he has been instructed by PIRC to review the statements relative to the use of the Scottish Intelligence Database as provided in the statements by [three particular police officers]⁷²⁵, with a particular focus on the reason for creating the intelligence and viewing of intelligence log(s) and/or the record held in the name of Mr

⁷¹⁸ SBPI-00421 para 279

⁷¹⁹ SBPI-00451 para 113

⁷²⁰ PIRC-00004 page 250 (page 45 of pdf)

⁷²¹ PIRC-00004 page 250 (page 45 of pdf)

⁷²² SBPI-00421 para 289

⁷²³ SBPI-00421 para 290

⁷²⁴ SBPI-00421 para 290

⁷²⁵ PIRC-00004 page 251 (page 46 of pdf) – the identities of these three particular officers have been redacted.

Anwar⁷²⁶. In his statement Detective Inspector Wilson confirms that the intelligence log created by one of the officers meets the standard grounds for recording and disseminating intelligence material. He notes that this intelligence log has been badged as 'Refract', which is the general term used when submitting all counter terrorism intelligence, and states that it is not clear whether the subject term 'Refract' should have been used. He qualifies this by stating "From the information provided to me, I am unable to offer opinion as to who included 'REFRACT' in the relevant header or as to whether this was appropriate"⁷²⁷. With regard to the two other officers, Detective Inspector Wilson concluded that he considered that both officers were "justified in carrying out the type of systematic research described" and noting further that one of them "would have been justified in carrying out the type of research described only if the research was for a specific policing purpose and met the 'need to know' threshold"⁷²⁸. When Deputy Senior Investigator Little is asked if he was satisfied with the statement received from Detective Inspector Wilson, he says that "my recollection on this matter is that we were not happy with the initial statement provided by Detective Inspector Wilson, I do recall that Senior Investigator McSporran and I had a meeting with Detective Inspector Wilson on this matter, this resulted in an additional statement being provided by Detective Inspector Wilson"⁷²⁹.

On 29 April 2016 an additional statement was received by PIRC from Detective Inspector Wilson, in the form of an addendum to his original statement⁷³⁰. He states that "he has not been provided with rationale given by [the officer who included] 'Refract' in the relative subject header of the intelligence log. There is no requirement to document such rationale. [Detective Inspector Wilson] states that, whilst Police Scotland publishes Intelligence Requirements that describe the type of information sought relative to counter terrorism, there is no definitive guidance which constitutes counter terrorism intelligence"⁷³¹. Detective Inspector Wilson further adds that "where it is not clear whether intelligence falls into this subject, the term 'Refract' should be included and clarification sought... The reason for including the 'Refract' header is not recorded on [Scottish Intelligence Database]. Although the subject matter is valid, there is no apparent justification for [the officer] having linked the [intelligence] log to terrorism. Consequently, the REFRACT header and link has now been removed"⁷³².

When Deputy Senior Investigator Little is asked if he was satisfied with this additional statement he says that "this statement confirmed that the information had been incorrectly recorded as intelligence. Details were included in the final report to COPFS. They later instigated further enquiries to be undertaken by the Information Commissioner so it would appear that they did not think it was a satisfactory response"⁷³³.

⁷²⁶ PIRC-00004 page 251 (page 46 of pdf)

⁷²⁷ PIRC-00004 page 251 (page 46 of pdf)

⁷²⁸ PIRC-00004 page 251 (page 46 of pdf)

⁷²⁹ SBPI-00421 para 292

⁷³⁰ PIRC-00488

⁷³¹ PIRC-00004 page 253 (page 48 of pdf)

⁷³² PIRC-00004 page 253 (page 48 of pdf); PIRC-00488, page 4, paragraph 1

⁷³³ SBPI-00421 para 294

10. **Media**

10.1 **Decisions made in relation to media briefings**

Ms Bell speaks about how the portrayal of Mr Bayoh in the media and by the police, as a violent man, had a big impact on her mental health “I feel like I’ve got this massive weight on my shoulders because I have to try and let everybody else know what a wonderful man that Shek was because it’s been put in the press that he was horrible... he was a gentleman all the time, he was really friendly. He wasn’t a zombie”⁷³⁴.

Ms Bell says in her statement “I felt like they kind of went after us to try and paint a picture that would help them”⁷³⁵. She clarifies in the Inquiry hearing that she means Police Scotland, the PIRC and COPFS, “I kind of just put them under one big umbrella. I don’t trust any of them... I feel like they made it out that what happened to Shek was his own fault. I feel like they haven’t taken any blame as to what happened”⁷³⁶.

Ms Bell speaks about a tweet by Calum Steele, of SPF, which related to the incident, saying she felt “disgusted and so angry”⁷³⁷. She also speaks of Peter Watson making a statement saying that Mr Bayoh “presented a violent interface with the police”⁷³⁸.

Head of Communications Tait says when asked if there was an agreed media strategy at PIRC following Mr Bayoh’s death, he says that “the strategy in terms of this particular case, it was a very sensitive case at the time. My view was that we had to be very careful about what we did and said because of the high-profile nature of the case. There was a lot of coverage coming from what we’d maybe call both sides of the issue, and my view was that, as a public organisation and the main investigator team, we had to be really careful what we said and that we were not going to get involved in any war words publicly and that view was generally shared”⁷³⁹. He adds that “there was a clear strategy that we had to be very cautious in what we said. If you ever had to put a statement together, you were pouring over every single word. Even one word wrong could give the wrong idea or create an issue. What I would stress as well is that, particularly in this case, in fact all cases which we were given direction by [COPFS], we would have to get the words signed off by them as well. There was a two-stage signing-off process. As well as having the words signed off at PIRC’s end, we also had to send stuff over to [COPFS] for them as well to make sure that we weren’t seeing anything that was going to cause an issue for them”⁷⁴⁰.

When asked who would be responsible for the creation of a media strategy within PIRC, Head of Communications Tait says that it would be a collaboration between the communications team and the investigations team. If it was a case where there was a death, family liaison would have a part to play as well⁷⁴¹.

⁷³⁷ 40/108/15

⁷³⁸ SBPI-00247, 40/109/15

⁷³⁹ SBPI-00418 para 19

⁷⁴⁰ SBPI-00418 para 20

⁷⁴¹ SBPI-00418 para 28

When he is asked if [COPFS] were in charge of media strategy for the investigation into the death of Mr Bayoh, Head of Communications Tait says that he would not describe it like that. He adds that "it was more of a partnership in the sense that enquiries or issues would come into ourselves, we would decide, from our point of view, how best to handle that, but we were very conscious that there was a system in place that, if we wanted to go out and say something about the case at the time, we just had to..... double-check with [COPFS] comms that they were comfortable about what we were saying"⁷⁴².

Head of Communications Tait is also asked if PIRC's media strategy evolved during the investigation following the incident involving Mr Bayoh and he says that "it maybe changed a little bit, a few months in, where, reputationally, there was a lot of criticism of the organisation, so on occasion we were a little bit more proactive"⁷⁴³. He adds that PIRC also assessed how they were being perceived in the media at the time and the criticism they were receiving⁷⁴⁴. When asked who was criticising PIRC, he says "it was mainly from the lawyer for the family, Aamer Anwar"⁷⁴⁵. He adds that from a media perspective "the issue over interviewing the [attending] officers, and that became a bit of an issue. That was something I wanted to be kept apprised of. I suppose there were actually two parts to it: because it was a media issue, but also because of the intricacies of it in terms of our powers. I wanted to make sure I understood what powers we had and what we were able to do"⁷⁴⁶.

When asked about a media statement released by the SPF on 14 May 2015⁷⁴⁷ Director of Investigations Mitchell says that it was "Completely unhelpful. We're in the very early stages of an investigation where it hasn't been determined what the facts were, and I don't think that type of release does anything but stir annoyance in some areas. That sounds as if that's an absolute fact"⁷⁴⁸. He adds that "my position is that that release wasn't appropriate in any case, regardless of where we were. I just don't think it is, because it's pre-judging an investigation that's ongoing. It's making statements which have not been challenged by the investigation team. I don't know what overall effect it had in our investigation. It's very difficult to judge what effect in public minds that type of comment has"⁷⁴⁹.

⁷⁴² SBPI-00418 para 58

⁷⁴³ SBPI-00417 para 62

⁷⁴⁴ SBPI-00418 para 62

⁷⁴⁵ SBPI-00418 para 63

⁷⁴⁶ SBPI-00418 para 64

⁷⁴⁷ SPF-00010(a) – the portion of the statement which Director of Investigations Mitchell is referred to reads "A petit [*sic*] female police officer responding to a call of a man brandishing a knife was subject to a violent and unprovoked attack by a large male. The officer believed she was going to die as a result of this assault".

⁷⁴⁸ SBPI-00423 para 387

⁷⁴⁹ SBPI-00423 para 389

When asked about a portion of the media statement issued on behalf of the SPF on 2 June 2015 responding to criticism levelled at SPF by Mr Anwar⁷⁵⁰, Head of Communications Tait says that he does not recall that press release⁷⁵¹.

He says that whilst he “can’t say one hundred percent certain” he is “pretty sure” that, even though it was his first day working for PIRC, he would have been involved in a statement issued to the media by PIRC⁷⁵² on 4 June 2015⁷⁵³. He adds that the purpose of this statement was to set out what PIRC’s understanding of the position was and in particular “...as of this time when we put that statement out, this is what our understanding of the situation was in regard to the interviewing of the officers”⁷⁵⁴.

Commissioner Frame says during the Inquiry hearing that it was appropriate for PIRC to respond to the media statement by the SPF on 2 June as it “related to a factual inaccuracy” in relation to the conduct of the Inquiry by PIRC rather than to evidence of what actually took place on Hayfield Road on 3 May 2015⁷⁵⁵.

Head of Communications Tait is also asked if he remembers any comments being made by the SPF in response to this press release by PIRC, and he says that whilst he is unsure if the investigation team had further dealings with them he certainly did not⁷⁵⁶. When Head of Communications Tait is further asked about his overall view of the SPF’s engagement with the media during the investigation into Mr Bayoh’s death, he says that “it wasn’t helpful. I could understand their motivation. They were trying to represent their members, but it did feel like there was that extra level of commentary and getting into the ins and outs of what, for us, was a live investigation, ... didn’t help us to do our job”⁷⁵⁷.

Head of Communications Tait is also referred to the PIRC Family Liaison Policy which states that “The FLO should actively discourage the family from issuing statements to the media that are independent of the investigation and could impact on the investigative process. To achieve this it is important for the family to be involved in a partnership approach with the SI together with the PIRC Media Officer and FLO to develop and agree the PIRC/family media strategy. This is particularly important when media appeals involve publishing a photograph or video and specific information

⁷⁵⁰ SPF-00019 – the portion of the statement which Head of Communications Tait is referred to reads “The officers involved have never refused to provide statements. It was agreed at the outset with PIRC that they would revert to us when they wanted statements and when they were clear on the basis that statements were to be given. PIRC emailed me this morning at 10:46am asking for our assistance to organise interviews and we answered at 11:29am confirming we would be pleased to assist. Those are the facts”.

⁷⁵¹ SBPI-00418 para 68

⁷⁵² PIRC-03925 page 31 - the portion of the statement which Head of Communications Tait was referred to reads “The PIRC has been leading on the investigation into the death in custody of Sheku Bayoh and since the hours following his death on Sunday 3 May 2015 has made several attempts to secure statements from the arresting officers. Those officers have now agreed to provide statements to the PIRC and now that PIRC is in the process of gathering the material, it will be considered along with the information already gathered throughout the course of the investigation to date”.

⁷⁵³ SBPI-00418 para 70

⁷⁵⁴ SBPI-00418 para 72

⁷⁵⁵ 89/70/22 to 89/71/15

⁷⁵⁶ SBPI-00418 para 77

⁷⁵⁷ SBPI-00418 para 80

regarding the victim or family”⁷⁵⁸. He is asked what impact the family’s direct engagement with the media had on the investigation being conducted by PIRC. He says that “it wasn’t ideal that we didn’t have that relationship with the family because then we weren’t aware of things that they might say to the media or whatever. Things would be appearing in the media, and we weren’t aware of it. It could generate media interest, and we would get media calls on the back of that. So that wasn’t ideal because, potentially, the aspects of the investigation or whatever could be mentioned”⁷⁵⁹. When he is asked if any attempt was made to discourage Mr Anwar’s liaison with the media he says that “I was never involved in it. I’m not aware of anyone else in the organisation having that kind of chat”⁷⁶⁰.

When asked about the “opinion piece” appearing in the Sunday Mail on 25 July 2015⁷⁶¹, and if it was intended to boost public awareness of PIRC, Head of Communications Tait says that “They approached us to provide what I would call an opinion commentary piece to go in that weekend’s paper. We decided it was a really good opportunity to explain a bit more about who the PIRC were, what we could do, and just try and get something over to the readers of Sunday Mail and potentially beyond that”⁷⁶².

Following the meeting with the family and Ms Bell on 3 September 2015, Commissioner Frame says that “the family left and offered their comments on their view of the meeting outside. I think their legal representative read out his statement to the media. It was disappointing, given the level of effort that was being put into the Investigation”⁷⁶³.

Head of Communications Tait says that immediately after the meeting outside of PIRC’s office Mr Anwar delivered to the media “a pre-prepared statement which, as far as we were concerned, was not reflective of the meeting itself, so that was particularly frustrating”⁷⁶⁴. Commissioner Frame says when she is asked if Mr Anwar’s remarks were representative of the meeting she says that she cannot remember them now. Further as to whether Mr Anwar’s comments were indeed “pre-prepared” Commissioner Frame says that she could not say if they were pre-prepared as she was not there. She adds that “[COPFS] staff had advised us that following his meeting with them, Mr Anwar delivered a pre-prepared script to the media and suggested that this was his normal practice”⁷⁶⁵.

Head of Communications Tait says that Mr Anwar’s statement was “frustrating”⁷⁶⁶ since it was a very “positive, constructive meeting with [Mr Anwar] and the family”⁷⁶⁷. He acknowledges “the tensions that existed”⁷⁶⁸ but adds that “a huge effort was made on our part to answer questions from the family members and their lawyer and provide

⁷⁵⁸ SBPI-00418 para 122

⁷⁵⁹ SBPI-00418 para 123

⁷⁶⁰ SBPI-00417 para 126

⁷⁶¹ PIRC-03925 page 27

⁷⁶² SBPI-00418 para 47

⁷⁶³ SBPI-00447 para 535

⁷⁶⁴ SBPI-00418 para 127

⁷⁶⁵ SBPI-00447 para 538

⁷⁶⁶ SBPI-00418 para 127

⁷⁶⁷ SBPI-00418 para 128

⁷⁶⁸ SBPI-00418 para 129

reassurances that a thorough and independent investigation was being carried out as quickly as possible. There appeared to be some level of acceptance from some of the family members and Mr Anwar of the points being made. I can recall that some of the family, including Collette, were not receptive"⁷⁶⁹.

When asked why Head of Communications Tait was present at this meeting with Mr Bayoh's family. Commissioner Frame says that "he was there as Mr Anwar had advised media outlets in advance of the meeting that he would issue a further statement at the conclusion of the meeting. That is what he had done following meetings with other organisations and we wanted to be in a position to provide an immediate response"⁷⁷⁰.

When Head of Communications Tait is asked if he can remember what Mr Anwar said in his statement, he says that he cannot recall. He adds that "it wasn't ideal for ourselves anyway, so that's why we felt that we had to then respond"⁷⁷¹. He adds that he recalls that he prepared the statement⁷⁷² in response and then read it out to the media not long afterwards outside of PIRC's office⁷⁷³.

Head of Communications Tait is also asked about a number of press releases that were issued by PIRC⁷⁷⁴ in the weeks following the meeting with Mr Bayoh's family, and what PIRC was trying to achieve in its liaison with the media. He says that the Press releases were reactive, some of which in response to comments made by Mr Anwar. He adds "the media were asking us to provide comment or respond to whatever it was, whether it was a letter or a comment or something from Mr Anwar. In an ideal world, we wouldn't have said anything during these two weeks. Unfortunately, the nature of the queries and the coverage; we felt we had to respond to try and reiterate where the investigation was, what we'd done to date and what we're trying to achieve"⁷⁷⁵.

When Head of Communications Tait is asked if, in 2015, it was PIRC's standard practice to notify families in advance before media releases were published, he says that it was⁷⁷⁶. When he is also asked if Mr Bayoh's family were generally informed in advance that PIRC were going to be issuing press releases, he says that he cannot recall that they were⁷⁷⁷. He is also asked if this approach of issuing press releases without the family's prior knowledge would have had a negative impact on the family's perception of PIRC. He says that "the situation was that pretty much most of the time we were reacting to what was coming out from Mr Anwar and the family anyway... If it had been flipped on its head, where we were the proactive organisation, constantly putting stuff out and the family were left on the back foot, then I think that would have been a very valid point, but it was the other way around"⁷⁷⁸.

⁷⁶⁹ SBPI-00418 para 129

⁷⁷⁰ SBPI-00447 para 538

⁷⁷¹ SBPI-00418 para 135

⁷⁷² PIRC-03925 – pages 21-22

⁷⁷³ SBPI-00418 para 135

⁷⁷⁴ PIRC-03925

⁷⁷⁵ SBPI-00418 para 138

⁷⁷⁶ SBPI-00418 para 145

⁷⁷⁷ SBPI-00418 para 147

⁷⁷⁸ SBPI-00418 para 148

Commissioner Frame is also referred to a letter dated 28 October 2015 addressed to her from Aamer Anwar & Co⁷⁷⁹ which contained a question “In the past, if you were issuing a press release, you would contact us or provide us a copy of your release in advance of doing so. Can you advise why this practice has ceased?”⁷⁸⁰ Commissioner Frame is referred to her response dated 6 November 2015 addressed to Mr Anwar⁷⁸¹ which reads “It is not common practice for me to share all media releases during investigations, in advance, with the families”, and she says that she does not “know which media releases are being discussed here, what their content is or whether there was potentially a direct impact for the family”⁷⁸².

Head of Communications Tait is asked if he has any observations about the media coverage of the investigation, in particular whether he feels that any of the media coverage was influenced by Mr Bayoh’s race. He says that “it probably was to an extent... I didn’t have much experience of it when I joined but then, over the subsequent years, I dealt with several other deaths in custody. Some of them were quite contentious cases and quite potentially controversial and they never got the same level of coverage or scrutiny as this case. When you look back and you think of all the cases you dealt with subsequent to that, that one easily stands out as the one that received the most media coverage, a lot of which was very prominent⁷⁸³. In fact, even when I left PIRC, I was still dealing with the odd enquiry, and that was five, six years down the line, whereas a lot of the other cases, some of them were quite contentious and complex, but they never received the same level of coverage, so you can read into that what you will”⁷⁸⁴.

11. **Lines of accountability, data monitoring and quality assurance**

11.1 **Lines of accountability**

When Commissioner Frame was asked who was ultimately responsible for the successful completion of the investigation into Mr Bayoh’s death, she says that the day to day responsibility lay with Senior Inspector McSporran. Senior Investigator McSporran was in turn under the supervision of Director of Investigations Mitchell. She adds that as commissioner, she was “responsible for the work of the entire organisation”⁷⁸⁵.

When Deputy Senior Investigator Little is asked how he would describe the division of responsibilities between himself and Senior Investigator McSporran, he says that “I believe that [Senior Investigator McSporran] and I had a good working relationship, initially we agreed that I would manage the investigation on a day to day basis and [Senior Investigator McSporran] would deal with the more strategic aspects which included maintaining policy book and media duties. We met several times a day and agreed on tactics, resourcing priorities. Initially I was allocated as the Lead

⁷⁷⁹ PIRC-01852(a), page 2, point (vi)

⁷⁸⁰ SBPI-00447 para 590

⁷⁸¹ PIRC-01856 (a) page 2

⁷⁸² SBPI-00447 para 591

⁷⁸³ SBPI-00418 para 237

⁷⁸⁴ SBPI-00418 para 238

⁷⁸⁵ SBPI-00447 para 32

Investigator with [Senior Investigator McSporrán] to provide oversight but as the investigation developed in its infancy [our respective roles] developed into [Senior Investigator McSporrán] being the [senior investigating officer] and I his deputy. This was a structure that we both had experience of in major investigations we had undertaken in our previous roles in policing”⁷⁸⁶.

11.2 Data monitoring

Deputy Senior Investigator MacIntyre says that around 09:00 on 5 May 2015 he was appointed as the Office Manager within an incident room created for the PIRC investigation, regarding the circumstances surrounding the death of Mr Bayoh.

He says that “this role involved utilising the Clue 2 computer management system to provide the Lead Investigator, Deputy Senior Investigator Little, with an accurate record of all relevant information relating to the PIRC investigation, together with the enquiries made and results obtained...I was involved in reading all statements and documents, and indicating content to be indexed and identifying Actions to be raised. I was responsible for filing documents and Actions when satisfied that had been processed correctly”⁷⁸⁷.

When he is asked how often he had performed the role on office manager within an incident room prior to 3 May 2015, Deputy Senior Investigator MacIntyre says that he had not fulfilled that role within an incident room at PIRC however he had performed the role whilst at Strathclyde Police. Those investigations included murder investigations where on average there were one hundred witnesses⁷⁸⁸. Deputy Senior Investigator MacIntyre also says that the role of office manager was not required in all PIRC investigations however senior management decided that “the role was required for this investigation as it was anticipated to be a high profile investigation due to the circumstances of Mr Bayoh's death. It was expected that during the course of the investigation a large amount of information would be received from numerous sources and that the investigation would receive significant media interest”⁷⁸⁹. He adds that he was “kept informed of the priorities and progress of the investigation by having regular contact with [Deputy Senior Investigator] Little and [Senior Investigator] McSporrán and attending briefings which would take place on a daily basis”⁷⁹⁰.

When he is asked about how he shared information with Deputy Senior Investigator Little and how he determined which pieces of information were “relevant” to the investigation, Deputy Senior Investigator MacIntyre says that “I was responsible for ensuring that information received by the incident room was correctly evaluated to allow [Deputy Senior Investigator] Little to control and direct the investigation. I would be in daily contact with [Deputy Senior Investigator] Little who would indicate his investigative priorities. I would have regular discussions with [Deputy Senior Investigator] Little where I would update him on all information received by the incident room, in particular, with regard to actions, statements and messages”⁷⁹¹.

⁷⁸⁶ SBPI-00421 para 46

⁷⁸⁷ PIRC-00353 page 2, paras 2 and 3

⁷⁸⁸ SBPI-00470 para 11

⁷⁸⁹ SBPI-00470 para 12

⁷⁹⁰ SBPI-00470 para 16

⁷⁹¹ SBPI-00470 para 15

Deputy Senior Investigator MacIntyre is asked who was responsible for reviewing the record he compiled on the Clue 2 computer management system and issuing instructions as to further investigatory steps required. He says that “I was responsible for allocating actions relating to the investigation. An action is a written instruction to carry out a task in connection with the investigation. I would discuss the allocation of all actions with [Deputy Senior Investigator] Little to ensure they were in line with his investigative policy. Each action would contain sufficient information to enable the enquiry investigator to complete it. Completed actions would be signed and endorsed with the time and date I would discuss the completed actions with [Deputy Senior Investigator] Little to ensure that he was content with the result provided. Details of all actions were recorded within the clue 2 information management system”⁷⁹².

Deputy Senior Investigator MacIntyre adds that he “was responsible for initially reading and checking statements relating to the investigation would identify if any urgent actions required to be raised in respect of the statement. It was the job of the incident room to record all relevant information from documents in such a manner that it could be retrieved easily. If I was satisfied that the statement had been correctly dealt with, I would approve the statement for filing. I would discuss all statements with [Deputy Senior Investigator] Little who would have the final decision whether any further action was required”⁷⁹³. He also says this review of completed actions allowed him to satisfy himself that all necessary investigatory steps had been undertaken following a statement's completion and that all necessary lines of questioning had been explored with witnesses within their statements⁷⁹⁴.

When Deputy Senior Investigator MacIntyre is asked if any documents or evidence was reviewed for a second time after the terms of reference for PIRC's investigation had been expanded, he says that he was no longer working in the role of office manager.

Deputy Senior Investigator MacIntyre is asked if he felt that there was sufficient staffing and resources within the incident room team to complete the work he had been tasked with. He says that “during the early part of the investigation I came aware that there was insufficient staffing within the incident room. I realised that we were struggling to cope with the large volume of information being received. This impacted on our work as it slowed down the processing of documentation relating to the investigation. However, although the documentation process was slowed I believe that the priority actions pertaining to the investigation were being progressed”⁷⁹⁵.

11.3 Quality assurance

Deputy Senior Investigator MacIntyre is asked if there were safeguards to ensure that every necessary investigatory step was raised as a result of a statement or other piece of evidence. He says that “there was regular dialogue between [Deputy Senior Investigator] Little, [Senior Investigator] McSporran and the incident room regarding

⁷⁹² SBPI-00470 para 17

⁷⁹³ SBPI-00470 para 18

⁷⁹⁴ SBPI-00470 para 19

⁷⁹⁵ SBPI-00470 para 14

ongoing actions. In addition, enquiry teams involved in taking statements and recovering evidence received sub-briefings along with the regular daily briefings, which allowed discussion on any issues arising from the actions of the investigators. The lead investigator was also aided by the clue 2 investigation management system which assisted in recording, organising, and managing information received during in the investigation. Clue 2 also enabled the efficient retrieval of relevant material when required”⁷⁹⁶.

Deputy Senior Investigator Little is asked about an entry in the Clue 2 system which reflects a planned line of questioning for a statement to be taken from Chief Superintendent McEwan regarding a suggestion from Mr Bayoh’s family that Chief Superintendent McEwan had said that Mr Bayoh had been in possession of a “machete”. Chief Superintendent McEwan’s statement to PIRC⁷⁹⁷ did not refer to this and Deputy Senior Investigator Little is asked why Chief Superintendent McEwan was not asked about Mr Bayoh’s family members’ accounts of what they were told by him on 3 May 2015. Deputy Senior Investigator Little says that “due to the passage of time I am unable to recollect if I provided any prior briefing to the investigators attending to take this second statement from Mr McEwan. This may have been provided by [Senior Investigator] John McSporran or the Incident room as identified on the Action”⁷⁹⁸.

Commissioner Frame is asked how she could be confident in the completeness and thoroughness of the investigation, and the associated report, if she had not been involved in all aspects of the investigation. She says that from her “discussions and briefings on various aspects of the investigation and from my experience of the consistency of the quality of other investigative work undertaken by experienced and skilled staff I considered that the investigation and report to be accurate and complete”⁷⁹⁹. She also says that she “placed significant reliance on colleagues to ensure that the report was accurate and complete. She adds that “[Director of Investigations Mitchell], [Senior Investigator McSporran], the Senior and Deputy Senior investigators and several other members of that team were highly experienced and skilled in investigating serious matters and were well aware of the need for accuracy and completeness”⁸⁰⁰.

Commissioner Frame says that Senior Investigator McSporran compiled the draft report to COPFS with input from members of the Investigation Team and then passed it to Director of Investigations Mitchell for assessment⁸⁰¹. His role was to review and revise the report as part of a quality assurance process and the report was thereafter passed to Commissioner Frame⁸⁰². Commissioner Frame said that whilst she reviewed and sought clarity on any areas of the report which she thought were either unclear or required further clarification⁸⁰³, she cannot recall if there were any specific areas which required clarification or amendment, or if there were any major issues which required to be addressed⁸⁰⁴.

⁷⁹⁶ SBPI-00470 para 20

⁷⁹⁷ PIRC-00181

⁷⁹⁸ SBPI-00421 para 189

⁷⁹⁹ SBPI-00447 para 762

⁸⁰⁰ SBPI-00447 para 763

⁸⁰¹ SBPI-00447 para 754

⁸⁰² SBPI-00447 para 756

⁸⁰³ SBPI-00447 para 754

⁸⁰⁴ SBPI-00447 para 755

Annex 1 – List of Witnesses

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|----------------------------|-------------------|---|---|
| | | | | |
| 4 | PC | Alan Paton | Now retired | Attending Officer |
| 4 | PC | Craig Walker | None | Attending Officer |
| 4 | PC | Nicole Short | Now retired | Attending Officer |
| 4 | PC | Ashley Tomlinson | None | Attending Officer |
| 4 | PC | Alan Smith | None | Attending Officer |
| 4 | PC | Kayleigh Good | None | Attending Officer |
| 4 | PC | Daniel Gibson | None | Attending Officer |
| 4 | PC | James McDonough | None | Attending Officer |
| 4 | Sergeant | Scott Maxwell | None | Attending Officer (Acting Sergeant) |
| 5 | Superintendent | Craig Blackhall | Retired from Police Scotland in 2019. His rank had not changed when he retired | Professional Standards Department within Police Scotland. |
| 5 | Mr | David Green | Procurator Fiscal for Homicide and Major Crime in Scotland | Head of the Scottish Fatalities Investigation Unit of Crown Office and Procurator Fiscal Service (COPFS) |
| 5 | Deputy Senior Investigator | Keith Harrower | Promoted to Senior Investigator | PIRC Deputy Senior Investigator who attended KPO on 3 May 2015 |
| 6 | Senior Investigator | Richard Casey | Senior Investigator | PIRC Senior Investigator |
| 6 | Head of Investigations | Irene Scullion | Now retired from PIRC. Prior to her retirement her role had not changed | Advised of the incident at Hayfield Road on the morning of 3 May 2015 by Senior Investigator Casey. After 3 May 2015, was responsible for allocating resources to the investigation |
| 6 | Commissioner | Kate Frame | retired from role of Commissioner (PIRC) in 2019 | Commissioner (PIRC) |
| 6 | Detective Superintendent | Patrick Campbell | Promoted to Detective Chief Superintendent prior to giving his evidence to the Inquiry. | Senior Investigation Officer |
| 7 | Ms | Collette Bell | n/a | Partner of Sheku Bayoh; house was seized; provided statement at KPO to Police Scotland on 3 May 2015 |
| 7 | Assistant Chief Constable | Ruaraidh Nicolson | Now retired from Police Scotland. Prior to his retirement he had been | Assistant Chief Constable – Gold Commander |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|--------------------------------|-----------------|--|---|
| | | | | |
| | | | promoted to Deputy Chief Constable | |
| 7 | Investigator | John Ferguson | Investigator Ferguson sadly passed away before any statement regarding his role could be taken by the Inquiry. | Crime Scene Manager who dealt with Mr Bayoh's body at Victoria Hospital, Kirkcaldy and thereafter transferring Mr Bayoh's body to the City Mortuary, Edinburgh. |
| 7 | Investigator | Garry Sinclair | None | Crime Scene Manager who dealt with the scene at Hayfield Road |
| 7 | Investigator | Alex McGuire | Now retired from PIRC. His position had not changed when he retired | Assisted Deputy Senior Investigator Harrower on 3 May 2015 to act as his driver and also to take notes of meetings |
| 7 | Investigator | Maurice Rhodes | Now retired from PIRC. His position had not changed when he retired | Crime Scene Manager who dealt with the scene at Hayfield Road |
| 7 | Trainee Investigator | Stuart Taylor | Investigator | Crime Scene Manager who dealt with Mr Bayoh's body at Victoria Hospital, Kirkcaldy and thereafter transferring Mr Bayoh's body to the City Mortuary, Edinburgh |
| 8 | Detective Chief Superintendent | Lesley Boal | Now retired but her rank had not changed when she retired | Senior Officer – attended gold group meetings |
| 8 | Chief Superintendent | Garry McEwan | Now retired from Police Scotland. When he retired he had been promoted to National Policing Commander. | Senior Officer – Local Policing Commander for Fife |
| 9 | Detective Chief Inspector | Stuart Houston | promoted to Chief Superintendent prior to giving his Inquiry Statement | Detective Chief Inspector coming from Edinburgh Division to assist. Asked to be the Crime Scene Coordinator to manage the various crime scene managers. |
| 9 | Chief Inspector | Nicola Shepherd | promoted to Superintendent prior to giving her evidence to the Inquiry | Inspector at Kirkcaldy police office / Local Area Commander for Glenrothes and Kirkcaldy |
| 9 | Detective Inspector | Colin Robson | Promoted to Detective Chief Inspector prior to giving his | Dealt with Immediate post incident management |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|----------------------------|-------------------|---|--|
| | | | evidence to the Inquiry. | |
| 9 | | Kate Findlay | unknown | Media Officer, Police Scotland. Attended the Gold Group meeting at 14:05 on 3 May 2015. |
| 9 | Detective Chief Inspector | Keith Hardie | Retired – his rank had not changed when he retired | Part of Major Incident Team |
| 9 | Detective Constable | Brian O'Neill | Unknown | Crime Scene Manager at Hayfield Road |
| 9 | Detective Constable | Peter Grady | Promoted to Detective Sergeant prior to giving his evidence to the Inquiry | Reported to Detective Chief Inspector Houston Crime Scene Manager |
| 10 | SPA Scene Examiner | Gordon Young | Unknown | Scene Examiner and supervisor of Judith Harley (took notes whilst Judith Harley photographed the body of Mr Bayoh and injuries to PC Nicole Short) |
| 10 | SPA Scene Examiner | Judith Harley | Unknown | Scene Examiner (photographed the body of Mr Bayoh and injuries to PC Nicole Short) |
| 10 | Detective Constable | Ryan Balsillie | Unknown | Attended at Victoria Hospital, Kirkcaldy on 3 May 2015 and remained with Mr Bayoh's body in a side room adjacent to the resuscitation ward within the Accident and Emergency department until about 19:30. |
| 10 | Detective Constable | Andrew Brown | Unknown | Attended at Victoria Hospital, Kirkcaldy on 3 May 2015 and remained with Mr Bayoh's body in a side room adjacent to the resuscitation ward within the Accident and Emergency department until about 19:30. |
| 11 | Mr | Adeyemi Johnson | n/a | Mr Bayoh's brother-in-law |
| 11 | Mrs | Kadijartu Johnson | n/a | Sister of Mr Bayoh |
| 12 | Deputy Senior Investigator | William Little | Promoted to Senior Investigator prior to giving his evidence to the Inquiry | PIRC Deputy Senior Investigator who attended KPO on 4 May 2015 |
| 12 | Investigator | Alistair Lewis | Promoted to Deputy Senior Investigator prior to giving his | Allocated role of PIRC Family Liaison Officer on 4 May 2015 |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|--|-------------------|--|---|
| | | | evidence to the Inquiry | |
| 12 | Investigator | John Clerkin | Left PIRC in 2018 | Allocated role of PIRC Family Liaison Officer on 4 May 2015 |
| 12 | Deputy Senior Investigator | Brian Dodd | none | Allocated role of house to house co-ordinator on 4 May 2015 |
| 13 | Mr | Aamer Anwar | n/a | Solicitor for Mr Bayoh's family |
| 13 | Director of Investigations | John Mitchell | Retired from PIRC in March 2018 | Responsible for smooth-running and oversight of all PIRC investigations. |
| 13 | Dr | Kerryanne Shearer | None | Consultant Forensic Pathologist. Lead doctor conducting post mortem of Mr Bayoh |
| 13 | Dr | Ralph Bouhaidar | None | Forensic Pathologist participating in, noting, and assisting <u>Dr Kerryanne Shearer in post mortem of Mr Bayoh</u> |
| 13 | Detective Constable | Wayne Parker | Promoted to Police Sergeant prior to giving his statement to the Inquiry | Dealt with Collette Bell; delivered death message to Mrs Johnson |
| 13 | Detective Constable | Andrew Mitchell | Promoted to Police Sergeant prior to giving his statement to the Inquiry | Dealt with Collette Bell; death message to Mrs Johnson |
| 14 | Director of Serious Casework | John Logue | Promoted to Chief Executive of COPFS prior to giving his evidence to the Inquiry | Responsible for the strategic oversight of all High Court Prosecutions, the investigation of serious and complex criminal cases and the investigation of sudden, unexpected deaths. Involved in oversight of the investigation into Mr Bayoh's death from 3 to 7 May 2015 |
| 14 | Procurator Fiscal Major and Fatalities Investigation | Stephen McGowan | Deputy Crown Agent for Litigation | Responsible for the day to day running within COPFS for the High Court Division, Appeals Division, Health and Safety Division, Scottish Fatalities Investigation Unit (SFIU) and had a role on media relations. Line Manager of Mr David Green. Was advised by Mr Green of events at Hayfield Road at about 9:30 on 3 May 2015. |
| 15 | Detective Inspector | Stuart Wilson | Unknown | Appointed on 4 May 2015 as a Point of Contact for Police Scotland in connection with the PIRC lead investigation into the death of Mr Bayoh. Had daily contact with and provided investigative updates to PIRC investigators. |
| 15 | Senior Investigator | John McSporrán | Promoted to Head of Investigations in 2017 | Appoint as the Senior Investigator in PIRC on 5 May 2015 |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|---|-----------------------|--|--|
| | | | (succeeding Irene Scullion) | |
| 16 | Deputy Chief Constable | Neil Richardson | | Had oversight of Police Scotland's Professional Standard's Unit |
| 16 | | Ashley Wyse | N/a | Lived on Hayfield Road and witnessed restraint |
| 16 | Deputy Senior Investigator | Margaret-Ann Headrick | None | Carried out various investigative tasks as part of the PIRC investigation. Line Manager for Investigator Sinclair |
| 17 | Professor | Peter Watson | none | Provided legal advice to the attending officers |
| 18 | Investigator | Kevin Rooney | Unknown | PIRC Investigator |
| 18 | Investigator | John McAuley | Unknown | PIRC Investigator |
| 19 | Mr | Les Brown | Procurator Fiscal for South Strathclyde | Head of Criminal Allegations Against the Police Unit (CAAPD) at COPFS |
| 20 | PC and Deputy General Secretary of the Scottish Police Federation | David Kennedy | General Secretary of the Scottish Police Federation | Liaised with Professor Peter Watson, and Director of Investigations Mitchell to confirm that |
| 20 | | Brian Docherty | Unknown | Chairman of Scottish Police Federation |
| 22 | PC | Amanda Givan | Retired from Police Scotland a few days after giving her evidence to the Inquiry | Scottish Police Federation representative who attended KPO and gave advice to officers |
| 22 | Mr | Zahid Saeed | n/a | Friend of Sheku Bayoh who was with him on the evening of 2 May and morning of 3 May. Son of Saeed Ahmed and brother of Saadia Rashid. |
| 22 | Dr | Jason Payne-James | Unknown | Forensic Physician – opinion on effects of drugs consumed, CS/PAVA Sprays and the restraint and how these contributed to Mr Bayoh's death |
| 22 | Dr | Steven Karch | Unknown | Cardiac pathologist and toxicologist – Reported on the heart of Mr Bayoh and opinion on other expert reports |
| 23 | Detective Sergeant | Katrina Thompson | Unknown | instructed by PIRC to carry out an audit of the police database systems to establish who had accessed the records of named individuals between 3 May 2015 and 18 August 2015 |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|----------------------------|-----------------|---|---|
| 23 | Head of Communications | Michael Tait | Now left PIRC | Joined PIRC in June 2015. Dealt with media engagement and gave advice in relation to press and other public statements on behalf of PIRC |
| 23 | Detective Constable | John McGregor | None | Major Incident Team (MIT) – Instructed to find Zahid Saeed and take a statement from him |
| 24 | Detective Constable | Simon Telford | None | Major Incident Team (MIT) – Instructed to find Zahid Saeed and take a statement from him |
| 26 | Deputy Senior Investigator | Ian MacIntyre | Retired from PIRC in 2023. Prior to his retirement his position had not changed | Incident Office Management |
| 44 | Mr | Kevin Nelson | n/a | Lives on Hayfield Road and witnessed the restraint of Mr Bayoh |
| 45 | Mr | Martyn Dick | Now married to Kirsty MacLeod | Friend of Sheku Bayoh; house was searched by Police Scotland; attended KPO |
| 45 | Miss | Kirsty MacLeod | Now married to Martyn Dick | Partner (now wife) of Martyn Dick. Was in house when Sheku Bayoh came over with Zahid Saeed; home searched by Police Scotland; statement taken by Police Scotland. |
| 47 | Detective Constable | Derek Connell | None | Attended at Hayfield Road arriving whilst restraint was underway. Found a knife on a grassy area on the north side of Hayfield Road and photographed the knife with his mobile phone. Accompanied paramedics in the ambulance with Mr Bayoh and remained with him until he was later relieved by Detective Constable's Brown and Balsillie. |
| 54 | PC | Richard McMurdo | Unknown | House to House Coordinator. Attended at KPO on 4 May 2015 and met with Detective Inspector Wilson and tasked with setting up house to house enquiries at Mr Bayoh's address and at Hayfield Road. |
| 57 | Chief Inspector | Conrad Trickett | promoted to Chief Superintendent prior to giving his evidence to the Inquiry | Post Incidence Manager under the Post Incident Procedure |
| 62 | Miss | Ashley Wyse | n/a | Lives on Hayfield Road and witnessed the restraint of Mr Bayoh recording parts of the incident on her mobile phone |
| 83 | Detective Sergeant | Graeme Dursley | Promoted to Detective Inspector prior to giving his | Detective Sergeant came in from Levenmouth to assist in Kirkcaldy. |

| Page no | Rank/ Title | Full name | Changes/ Promotion | Role/Description |
|---------|--------------------------------|----------------|--------------------------------------|---|
| | | | evidence to the Inquiry | |
| 95 | Detective Sergeant | Stephen Clark | unknown | instructed by PIRC to conduct an audit of police database systems to establish if any of the attending officers had accessed the records of Mr Bayoh and also the records of Mr Anwar. |
| 95 | Detective Chief Superintendent | Clark Cuzen | unknown | Met with PIRC in relation to audit of access to police database systems |
| 95 | Detective Superintendent | Kenneth Dewar | Retired from Police Scotland in 2016 | Head of the National Intelligence Bureau of Police Scotland. Met with PIRC in relation to audit of access to police database systems |
| 95 | Superintendent | Audrey McLeod | unknown | Professional Standards Division. Met with PIRC in relation to audit of access to police database systems |
| 96 | Detective Chief Inspector | Elaine Simpson | Detective Superintendent | Succeeded Detective Superintendent Dewar as Head of the National Intelligence Bureau of Police Scotland. Met with PIRC in relation to audit of access to police database systems and provision of an overarching statement. |
| 97 | Chief Superintendent | Carole Auld | Unknown | Head of Professional Standards Division. Involved in discussions with PIRC in relation to audit of access to police database systems and provision of an overarching statement |
| 97 | Detective Inspector | Anderson | Unknown | National Intelligence Bureau |
| 97 | Detective Inspector | Ramsay Wilson | Unknown | Instructed by PIRC to review the use of the Scottish Intelligence database by three particular officers. |
| 99 | Mr | Calum Steele | Unknown | General Secretary of the Scottish Police Federation |