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2 **TRANSCRIPT OF THE INQUIRY**

3 Friday, 20 May 2022

4 (10.00 am)

5 LORD BRACADALE: Good morning.

6 Ms Grahame.

7 PC CRAIG WALKER (continued)

8 Questions from MS GRAHAME (continued)

9 MS GRAHAME: Thank you.

10 Good morning, Constable Walker.

11 A. Good morning.

12 Q. I would like to correct something first of all that

13 I said yesterday, to see if it makes any difference to

14 you. I said that the first thing that was said by

15 PC Paton contained some bad language, but I have

16 reviewed the PIRC statement given by PC Paton and he

17 said -- or shouted loudly "Get down on the ground", and

18 then said "Get down on the fucking ground", so to

1 suggest that the first thing he said included some bad  
2 language wasn't correct on my part and it appears that  
3 the first thing he said was "Get down on the ground" and  
4 then later said "Get down on the fucking ground".

5 A. Yes.

6 Q. Does that actually make any difference to what you said  
7 yesterday? You said that some phrases trip off the  
8 tongue and --

9 A. Yes, like I said, when you're doing the fend off  
10 position, that is the -- the standard is "Get back",  
11 "Stay back", whatever. People have the things that they  
12 say, so yes, it probably makes more sense the fact he  
13 said it first and when he has not been following that  
14 command he has then said it a bit more forcefully, in  
15 different language.

16 Q. Thank you. Thanks very much.

17 I would like to go back to what we were discussing  
18 yesterday. We had got to the stage where you had told  
19 us you were at the side of your van, at the driver's  
20 side, and you looked to your right and you saw  
21 Nicole Short running away and Sheku Bayoh chasing her.

22 A. Yes.

1 Q. And we were coming on to that stage. What I would like  
2 to begin with is to, first of all, just simply play the  
3 footage again from the CCTV, let us remind ourselves  
4 what we could see on that. You will also remember there  
5 will be a reconstruction tile on that screen and I think  
6 Ms Wildgoose or Ms Drury(?) will be bringing that up now  
7 and if we could just pause that for a second, you will  
8 see just to remind you the real time there is 7.20.24.  
9 Your van has just arrived in Hayfield Road. You can see  
10 the lights coming round there.

11 A. Yes.

12 Q. We see it on the reconstruction tile, or we have had  
13 a discussion about the position of that van, and what  
14 I would like to do now is we will play that but just to  
15 remind you personally, you have your Inquiry statement  
16 in front of you and yesterday when we got to this stage  
17 we were looking at paragraph 47.

18 A. Yes.

19 Q. So you can have that in front of you as well. Then for  
20 anyone else there is the spreadsheet that they can  
21 follow which details what we see on the footage. So are  
22 you quite comfortable that you've got everything you

1 might need?

2 A. Yes.

3 Q. Thank you. So I think we will play that footage,  
4 please, Ms Drury.

5 (Video played)

6 Thank you. We will pause that there. I would like  
7 to ask you about the series of events and maybe break  
8 that down. Would you like to see that footage again --

9 A. No, that's fine.

10 Q. -- before we go back through it. Thank you. So we can  
11 see that if we go back, please, to 7.20.46, or around  
12 about there, please.

13 (Video played)

14 Thank you, that's fine. So at 7.20.46 there seems  
15 to be a person who is standing at the rear of the larger  
16 van, your van, who moves and walks towards or behind the  
17 smaller police van in the direction of the roundabout at  
18 Hendry Road.

19 A. Mm-hm.

20 Q. So this is before the Airwaves message about "Officer  
21 injured"?

22 A. Yes.

1 Q. You told us yesterday you were at one point behind your  
2 van, on the driver's side, with you closest to  
3 Hendry Road and PC Paton to your left.

4 A. Yes.

5 Q. That's fine, I was confused yesterday as well. So at  
6 the stage you look to your right and we have PC Short  
7 and Sheku Bayoh on the road. By that stage has PC Paton  
8 pressed his emergency button?

9 A. I would be unaware of that.

10 Q. You didn't feel your phone vibrating?

11 A. No.

12 Q. So you're not able to help us when or where PC Paton was  
13 when he pressed the button?

14 A. No.

15 Q. All right, thank you. When you are looking to your  
16 right, would you be able to assist us by explaining  
17 where on Hayfield Road Nicole Short was, PC Short, and  
18 Sheku Bayoh were?

19 A. Running from -- like I said, the back of the van towards  
20 Hendry Road but making their way also towards the south  
21 side of Hayfield Road, and by the point I seen them --  
22 or certainly the point where I seen PC Short looking

1           like she was falling I would say that they were close to  
2           the centre lines in the middle of the roadway.

3           Q. And when you mention the van, you mean your van?

4           A. Yes, our van, yes.

5           Q. And when -- just to get an idea of the timescale, when  
6           PC Paton made that transmission, "Officer injured",  
7           where were you at that moment?

8           A. Which point did he make that transmission?

9           Q. Would you like to look at the spreadsheet? So he says  
10          at 7.21.02 -- it is on page 4. Did you hear it on the  
11          footage, page 4 of the spreadsheet. 7.21.02,  
12          PC Alan Paton:

13          "Officers injured, PC Short, male."

14          A. Where was I at that point?

15          Q. Yes. Do you remember?

16          A. That would have been after the event so that's probably  
17          when I'm on the ground with Mr Bayoh trying to effect  
18          arrest at that point.

19          Q. So by that moment you're actually involved in what's  
20          going on rather than --

21          A. Yes, because there's -- aye, I would say so, because  
22          there's -- I mean as soon as the injury happened was

1           when I was making my way towards to take him to the  
2           ground.

3       Q. All right, thank you. That's helpful.

4           Can we look just briefly at paragraph 47 before I go  
5           on to the other images, please. That's your statement  
6           on the screen and we're going to look at paragraph 47.

7           Thank you. So here you say you turned back to PC Paton  
8           briefly and you said yesterday you wanted to correct  
9           that to say PC Short.

10       A. Yes.

11       Q. You turned back to PC Short briefly:

12           "... as she was in mid-fall and obtained PC Paton's  
13           baton from him. I turned back towards PC Short. By  
14           this time, PC Short was lying face down in the prone  
15           position on the road, close to the south pavement.  
16           Sheku Bayoh was on the opposite side of PC Short to me,  
17           standing at right angles to her and facing towards me.  
18           I had a clear and unobstructed view of him and saw him  
19           with his right leg in a high raised position. He had  
20           his arms raised up at right angles to his body and  
21           brought his right foot down in a full force stamp down  
22           onto her lower back, the kidney area."

1           So I would like to ask you some questions about this  
2           paragraph.

3           A. Yes.

4           Q. The prone position is on her front?

5           A. Yes.

6           Q. And she was close to the south pavement, so that's the  
7           other side of the road from -- on Hayfield Road --

8           A. Yes, from (inaudible overspeaking), yes.

9           Q. -- from where you were. When you say she was prone, can  
10          you describe what position she was in? Was she flat  
11          out, or was she in a different position?

12          A. Flat out, as though somebody had fallen and went  
13          (inaudible) basically.

14          Q. Right, and you're pushing your arms towards you. Were  
15          her arms in front of her, or was that --

16          A. I mean, like, I say, it's as if someone has fallen, put  
17          their hands down and just sort of lying sort of flat on  
18          the road was how she was, flat on her front.

19          Q. Right. And where were her arms when she was flat out on  
20          the road?

21          A. I'm not sure.

22          Q. And I wonder if we can -- maybe it will be easier if we

1 get an image on the screen at this stage. So we have  
2 some images, maybe from the 2b set, 16, 17 and 18. I'm  
3 going to show you -- these are some of the images we  
4 looked at yesterday but different ones.

5 A. Mm-hm.

6 Q. So this is 16 and then can we look at 17, please, and  
7 that's looking from the roundabout up Hayfield Road?

8 A. Yes.

9 Q. And then 18, please, and that's an image of the island  
10 in Hayfield Road near to the roundabout?

11 A. (Nods).

12 Q. Can we go back to 16, please. Would you be happy to use  
13 this image to explain where you saw -- or would it be  
14 easier for you to use one that we used yesterday where  
15 your van is positioned?

16 A. No, I think that's a better bird's eye view.

17 Q. Is this better for you?

18 A. Yes.

19 Q. Right. So could you explain to us, please, where you  
20 saw PC Short falling to the ground.

21 A. Somewhere in the region of here.

22 Q. Right.

1 A. That's where I seen her sort of getting pushed and then  
2 she would be down, the time she landed, probably close  
3 to about there. (indicating).

4 Q. Right, so that's on Hayfield Road to the west of the  
5 roundabout with Hendry Road -- no, to the east --

6 A. To the east, yes, we're upside down now.

7 Q. Yes, we're upside down. To the east of the roundabout,  
8 and opposite what appears to be a reasonably small grey  
9 car, or silver. And her head -- where was her head?

10 A. She would be -- her head towards the houses.

11 Q. Head towards the houses, legs towards the trees --

12 A. The trees.

13 Q. -- and the grass. And where was Sheku Bayoh?

14 A. Standing on that side of her, right behind her.

15 Q. So he was right behind her, nearer to the roundabout?

16 A. Yes.

17 Q. And right behind her -- how close would you say he was?

18 A. Standing alongside her.

19 Q. Right side. What direction was he facing in?

20 A. Back towards me.

21 Q. Towards you at the van?

22 A. Yes.

1 Q. And were you still sort of crouched at the van at that  
2 time?

3 A. No, I was standing.

4 Q. You had stood up by this time. We will remain with this  
5 image on the screen, but just to go back to the  
6 paragraph in your statement, you have said that:

7 "Sheku Bayoh was standing at right angles to her and  
8 facing towards me. I had a clear and unobstructed view  
9 of him."

10 How -- what was the distance between you at the van,  
11 standing at the van and Sheku Bayoh?

12 A. I think at that point it was 100 feet I think I put in  
13 my original statement. I actually think I checked on  
14 Google Maps at the time, so it was about 100 feet away.

15 Q. Right. And you saw him with his right leg in a high,  
16 raised position?

17 A. Yes.

18 Q. And you said he had his arms raised up at right angles  
19 to his body and brought his foot down.

20 Before I ask you -- I'm going to ask you to  
21 demonstrate that for us, like yesterday, but before I do  
22 that, can I ask you to look at a vest. You have said

1           that the stamp was to the lower back of PC Short and  
2           that it was in her kidney area, and I wonder if you can  
3           maybe show on the vest, which is a police -- it is body  
4           armour with a high visibility vest over it and we may  
5           hear that that's actually what she was wearing.

6           A. Right, okay.

7           Q. Not the actual one, but that's the same as the one she  
8           was wearing.

9           A. Okay.

10          Q. Can you explain to me -- you said lower back, kidney  
11          area, can you show us what area you're talking about?

12          A. That would be in the vicinity here.

13          Q. Could you hold that vest up so we can see it?

14          A. Yes, so (indicating).

15          Q. That area down at the bottom?

16          A. Yes.

17          Q. Beneath the police logo. Thank you.

18          A. Yes, so (indicating).

19          Q. That area, thank you. So that's on what would have been  
20          her right-hand side?

21          A. Yes.

22          Q. Thank you. Now could I ask you to come out again. Now,

1 I must say there's no audio in that area because the  
2 microphone is on your desk, so I will ask you to do  
3 things, but you don't have to reply because we won't be  
4 able to record that.

5 A. Right, all right.

6 Q. So if you would mind coming out and standing at the  
7 plastic tape, as you did yesterday, and remember the  
8 recording is up there. So if you could stand and, first  
9 of all, I would like you to demonstrate how he had his  
10 arms raised up at right angles to his body.

11 A. (Inaudible - too far from microphone).

12 Q. Up like that. So bent at the elbows and if you could  
13 now demonstrate his right leg in a high, raised  
14 position. Thank you. And then he brought his right  
15 foot down in a full force stamp and I would like you to  
16 demonstrate the force that he used, if you can.

17 A. (Inaudible - too far from microphone).

18 Q. Thank you very much. Would you return to your seat and  
19 I will ask you some questions.

20 You have said it was a full force stamp; was it one  
21 stamp that you saw?

22 A. Yes.

1 Q. Thank you. Right, we're looking at the image here. As  
2 you were watching the events take place in Hayfield Road  
3 with PC Short, what was -- where was PC Tomlinson?

4 A. I have no idea where he was, but he arrived at Mr Bayoh  
5 from the trees direction. My focus was on Mr Bayoh and  
6 I was just aware of PC Tomlinson coming in from my  
7 right-hand side and engaging with Mr Bayoh at that  
8 point.

9 Q. And when you say the trees, could you point out the area  
10 you mean?

11 A. Yes, the trees so it would be down here (indicating).

12 He came in from that side. I'm not saying he came in  
13 from the tree area but he just came into my vision from  
14 the right-hand side.

15 Q. And talking about your vision, you said yesterday you  
16 had some droplets of PAVA spray in your eyes and how  
17 were your eyes feeling at this point?

18 A. They were totally clear by that point because it was  
19 only two or three little drops -- it was enough for me  
20 to react to it, but not enough to incapacitate me for  
21 a great deal of time.

22 Q. So by the time you watched this, your eyes were

1 functioning?

2 A. Yes.

3 Q. I would like you to tell us what you saw when

4 PC Tomlinson came from the tree area.

5 A. He engaged with the male, went in close and Mr Bayoh

6 turned his attention towards him and there appeared to

7 be some altercation between the two of them. I couldn't

8 see exactly what was going on, but both their arms were

9 in the air and there was exchanges.

10 Q. So when you say "Engaged", is that what you mean, their

11 arms were in the air?

12 A. Yes, they were ... I'm not saying fighting with each

13 other, but they were in an exchange of some sort,

14 pushing, shoving, striking, whatever. I'm not 100%

15 sure. It was just arms I was aware of.

16 Q. Did Sheku Bayoh move from the position that you've got

17 indicated there around the number 2 circle?

18 A. I believe he might have done. He might have started

19 making his way back or stepping back from PC Tomlinson

20 towards the houses.

21 Q. Right. And when he moved back, what distance was he

22 from you?

1 A. By that point I was starting to run towards him, so  
2 I was making my way towards him at this point watching  
3 what was going on.

4 Q. When PC Tomlinson engaged with Sheku Bayoh on  
5 Hayfield Road, what direction was he facing in at that  
6 stage?

7 A. When who was facing, sorry?

8 Q. Well, what direction was Sheku Bayoh facing? When  
9 PC Tomlinson came out from the tree area did Sheku Bayoh  
10 turn?

11 A. His attention at that point was on PC Short and as soon  
12 as PC Tomlinson sort of engaged with him, he turned and  
13 faced -- so he would be facing towards the trees at  
14 number 3, and PC Tomlinson's facing towards the houses  
15 and they were face-to-face with each other.

16 Q. So they were face-to-face with each other?

17 A. Yes.

18 Q. And you didn't see exactly what happened there at that  
19 point. Tell us what you did when you realised that  
20 PC Tomlinson and Sheku Bayoh had engaged in some way?

21 A. Well, by that point I was already -- like I say, I had  
22 taken PC Paton's baton from him and I had already

1 started to run towards where they were, with the  
2 intention of restraining him and getting involved in the  
3 restraint, and I made a couple of decisions whilst we  
4 were -- whilst I was running along there that eventually  
5 resulted in me shoulder-charging Mr Bayoh to the ground.

6 Q. What were the decisions you were making?

7 A. Initially the -- because I had witnessed the stamp and  
8 I had Alan Paton's baton I was going to go in with a  
9 heavy baton strike but I opted against that as I got  
10 closer just because PC Tomlinson was nearby and I just  
11 decided that the baton wasn't the best option and that  
12 to get him on the ground to get some sort of control  
13 over him would have been the best option, so I dropped  
14 the baton and proceeded with the shoulder charge.

15 Q. What was your concern if you used the baton when  
16 Sheku Bayoh and PC Tomlinson were engaged?

17 A. There's obviously the risk of hitting PC Tomlinson  
18 because he was on his right-hand side and I'm  
19 right-handed, so the baton strike would have come in on  
20 the side that PC Tomlinson was on and just in  
21 general ... I wasn't convinced if the baton would make  
22 any difference, given the fact that the PAVA and that

1           hadn't worked at that point and -- I mean personally,  
2           this is my personal choice, getting somebody onto the  
3           ground and getting handcuffs is better than trying to  
4           have a stand up fight with batons. The ultimate goal  
5           and for officer safety is to get somebody to the ground  
6           and get handcuffs on them, if they're being violent.

7           Q. Can I ask you to look for a moment -- we will come back  
8           to this footage, but can we look for a moment again at  
9           your statement, paragraph 51. So you say you -- we will  
10          get this on the screen. Thank you. Towards the end of  
11          that paragraph you say:

12                 " ... I made the instantaneous decision to discard  
13                 the baton and take Mr Bayoh to the ground by bodily  
14                 force."

15                 Now, in your self-penned statement that you handed  
16                 to PIRC -- that's PIRC 00265, can we look at that for  
17                 a moment, page 4, paragraph 3. This is the statement  
18                 that you handed to PIRC on 4 June 2015 and it's  
19                 paragraph 3. Again, we don't see a very clear division  
20                 between the paragraphs, but actually I wanted to --  
21                 I will read out the section that I'm interested in:

22                 "I therefore decided not to strike with the baton

1 and have instead continued running at the male and  
2 charged him, striking his chest area with my forearms.  
3 This caused the male to fall to the ground backwards.  
4 I have [also fallen] at this time landing to the side of  
5 the male dropping the baton. I immediately reached over  
6 the male in an attempt to gain control of him."

7 You can see that two-thirds of the way down the page  
8 or maybe three-quarters, you will see at the end it  
9 says:

10 "... continued running at the male and charged him  
11 striking his chest area with my forearms."

12 Do you see that?

13 A. Yes.

14 Q. And then can we look at PIRC 264, please, so this is the  
15 actual statement that you gave to PIRC on 4 June 2015,  
16 and we're looking at page 7, please, and paragraph 2,  
17 and there you say in line 3:

18 "So I just brought my left arm across my body and  
19 shoulder-charged him with my left shoulder, with a fair  
20 bit of force."

21 So in front of the Chair we have your descriptions  
22 of this and it's -- you took him to the ground by bodily

1 force, you charged him striking his chest area with your  
2 forearms, and you shoulder-charged him with [your] left  
3 shoulder, and I just wondered if you could maybe  
4 demonstrate to the Chair what you actually did because  
5 I'm wondering about charging him to his chest area with  
6 your forearms and shoulder-charging; they sound slightly  
7 different.

8 A. Basically running towards him, I just dropped my arm  
9 down and went through him like -- to take him to the  
10 ground, just to continue the momentum.

11 Q. Could you stand up and just show the Chair what you're  
12 doing with your arm there?

13 A. Yes, so just running towards him and just dropped the  
14 shoulder.

15 Q. Right, so you're pulling your right arm across your own  
16 chest --

17 A. Yes, to go in shoulder-first.

18 Q. And then leading with your right shoulder?

19 A. Yes.

20 Q. Thank you. When you did that, what part of  
21 Sheku Bayoh's body did you connect with, with your right  
22 shoulder?

1 A. It would be his right side upper torso. As I was  
2 running towards him I was aware that PC Short was on the  
3 ground so I could remember just before contacting with  
4 Mr Bayoh I had actually jumped up, so I was off the  
5 ground as I made contact with him, and obviously just as  
6 a natural reaction before I hit him I closed my eyes, so  
7 I'm not 100% sure, but yes, it has been the upper part  
8 of his body with my shoulder.

9 Q. So when you started running towards PC Tomlinson and  
10 Sheku Bayoh, where was Nicole Short at that point? Did  
11 she remain on the ground?

12 A. Yes, she was at his feet at that point.

13 Q. She was still on the ground?

14 A. Yes.

15 Q. When you made contact with your right shoulder, where  
16 was she?

17 A. She was off to that side, my right side, because, like  
18 I say, Mr Bayoh and PC Tomlinson had started to move  
19 towards the other side, but I don't know if there was  
20 movement or whatever, but something just gave me the  
21 urge, the instinct to jump, to clear something that was  
22 in my way, and I was off the ground at the point when

1 I made contact with Mr Bayoh.

2 Q. You were both feet off the ground at that point?

3 A. Yes.

4 Q. Did you -- when you say you jumped, did you jump over  
5 PC Short?

6 A. I'm not sure, I'm not sure.

7 Q. Right. When you were approaching Sheku Bayoh and  
8 PC Tomlinson, were you trying to avoid PC Short who was  
9 on the ground?

10 A. I was aware of the fact that I wasn't going to be  
11 running over her, but like I say, unless there was some  
12 sort of movement -- but yes, something gave me the  
13 instinct to avoid whatever was on the ground. I really  
14 didn't know what it was at that point.

15 Q. And immediately before you made contact with your right  
16 shoulder, Sheku Bayoh and PC Tomlinson had been  
17 face-to-face?

18 A. Yes.

19 Q. And having made contact I think you said in your Inquiry  
20 statement that he fell on his back?

21 A. Yes.

22 Q. Was that flat on his back?

1 A. Yes.

2 Q. Can we go back to the image that we were looking at  
3 a moment ago, if that's possible, and you have told us  
4 where PC Short and PC Tomlinson and Sheku Bayoh were.  
5 After you made contact with your right shoulder can you  
6 point to the area where Sheku Bayoh fell onto the  
7 ground?

8 A. Yes, I think he landed somewhere about there  
9 (indicating). Roughly.

10 Q. So is that -- did he land on the roadway or on the  
11 pavement, or was he straddling both?

12 A. He was straddling both but it's a lowered kerb at that  
13 point.

14 Q. So it's quite flat?

15 A. Yes, aye.

16 Q. Where was PC Tomlinson?

17 A. Behind me, probably still standing where he was when he  
18 was engaging with Mr Bayoh. I have no idea.

19 Q. Okay. And you have said in paragraph -- we will just  
20 remain at the image, but in paragraph 53 of your Inquiry  
21 statement, you say after tackling Mr Bayoh to the ground  
22 you landed on the pavement next to him:

1 "I was on my knees while he was on his back and  
2 I made an attempt to get over the top of his shoulders  
3 and hands to get him under my control."

4 Could you explain that manoeuvre to the Chair,  
5 please?

6 A. Yes, basically so Mr Bayoh's on his back, he has reached  
7 across -- the whole point was to try and reach across,  
8 get a hold of his hands and just pin them down, and then  
9 from that point, get cuffs on him.

10 Q. Is that pinning him down to his chest?

11 A. Just any way possible, just to get hold of both of his  
12 arms so that we could arrest him at that point. It was  
13 just -- there were no plan at that point, it was just a  
14 case of get a hold of his arms and try and get him  
15 handcuffed.

16 Q. And where were his arms when he landed on his back?

17 A. By his side.

18 Q. Both arms down by his side?

19 A. Yes.

20 Q. And were you able to secure his arms?

21 A. When I went to grab a hold of him that's when we  
22 started -- there was an exchange of punches on the

1 ground. He started to lash out and punch towards me.

2 Then there's been a couple -- I threw a couple of

3 punches back again. I managed to get hold of one arm

4 and then as -- it was an ongoing situation from there

5 just trying to get him under enough control to get

6 handcuffs on him.

7 Q. You have said in your statement you were on your knees?

8 A. Yes.

9 Q. Which side of Sheku Bayoh were you on?

10 A. So if he was on his back, I was on his right side.

11 Q. You were on his right?

12 A. His right.

13 Q. And where were your knees? Which part of the body -- of

14 his body were they close to or --

15 A. Probably this part (indicates).

16 Q. His --

17 A. Yes, lower torso.

18 Q. Lower torso. And what sort of force and pressure were

19 you using at that time in trying to secure his hands, or

20 his arms? Were you struggling?

21 A. Yes, I was struggling with him. As I say, I was trying

22 to get hold of his hands, he was lashing out and he was

1 punching two or three times at me.

2 Q. Okay. Where did his punches connect?

3 A. I think it was mainly my stab vest and that.

4 Q. Is that the black body-armour type vest that we have  
5 seen?

6 A. Yes.

7 Q. So to your body?

8 A. Yes.

9 Q. And where did your punches connect?

10 A. The three punches that I threw was to his face, to his  
11 right side -- left side of his face.

12 Q. The left side of his face?

13 A. Yes.

14 Q. Was that with your right hand?

15 A. Yes.

16 Q. And then in your Inquiry statement -- we will stay on  
17 that picture -- you say:

18 "He raised his shoulders and tried to punch me with  
19 his right-hand. As I lent over I then struck him  
20 a couple of times with a clenched fist somewhere around  
21 his left cheek bone area."

22 On his face?

1 A. Yes.

2 Q. "He continued to struggle and lashed out with his arms  
3 and continued to try and punch me again."

4 Do you remember how many times he connected, the  
5 punches connected with you?

6 A. No.

7 Q. No.

8 "The punches I'm describing were not full force  
9 punches, rather they were pulled punches delivered  
10 tactically in an attempt to make Sheku Bayoh bring his  
11 hands away from his body or side and up to his face."

12 Is that you describing your punches?

13 A. My punches, yes.

14 Q. Can you explain to the Chair, when you describe them as  
15 "pulled punches delivered tactically", what do you mean  
16 by that?

17 A. Not full force punches, not looking to hit him hard  
18 enough to kind of break any bones or knock him out or  
19 anything like that, it's just -- it's a tactic that was  
20 mentioned a few years ago in OST that if you could get  
21 somebody -- if you could make contact with somebody's  
22 face the automatic reaction is to bring your hands up

1           and that presents the hands with the wrist area so you  
2           can apply cuffs.

3           Q. Which is what you're trying to achieve?

4           A. Which I'm trying to -- I'm just trying to get his hands  
5           so I can get him under control.

6           Q. You then go on to say:

7           "  This will allow me to apply handcuffs to his wrists  
8           and I used this technique due to the difficulty we were  
9           having in applying the cuffs."

10          So at that stage you have not managed to get the  
11          cuffs on --

12          A. I have not managed to get his hands, never mind the  
13          cuffs.

14          Q. And you say:

15          "  As Sheku Bayoh was actively resisting with extreme  
16          force and was himself throwing punches at this point,  
17          I felt this tactic was a reasonable use of force in the  
18          circumstances."

19          A. Yes.

20          Q. And so you feel that the force that you used at this  
21          point was reasonable?

22          A. Yes, justifiable and proportionate.

1 Q. And you feel the shoulder-charge and bringing him to the  
2 ground at that stage was reasonable?

3 A. Yes.

4 Q. And the -- would you -- in terms of the behaviour that  
5 you have been describing from Sheku Bayoh, is it this  
6 stamp in the road that is the most extreme behaviour  
7 that you have described?

8 A. The fact that he -- I mean the fact that he has chased  
9 PC Short in the first place was scary enough but yes,  
10 the fact that he has then knocked her to the ground and  
11 then turned his attention towards her, I've witnessed  
12 the stamp and then when PC Tomlinson has then tried to  
13 engage with him he appears to have then started to  
14 resist that officer as well, so he's certainly shown  
15 violent behaviour at that point.

16 Q. When you were on the ground, on your knees, trying to  
17 get Sheku Bayoh's hands, where was PC Tomlinson?

18 A. No idea.

19 Q. Do you know what he was doing at that stage?

20 A. No.

21 Q. No. So is it just you and Sheku Bayoh at that point?

22 A. Just me, yes.

- 1 Q. And how long was it just the two of you?
- 2 A. It's hard to put timescales on things like that, but the
- 3 next person who arrived would be PC Paton again, so yes,
- 4 I was struggling with his arms for ... I really couldn't
- 5 put a time on it.
- 6 Q. So the next person you're aware of is actually PC Paton?
- 7 A. Yes.
- 8 Q. You weren't aware of PC Tomlinson at that stage?
- 9 A. No.
- 10 Q. Okay. Now, you have talked about Sheku Bayoh being on
- 11 his back?
- 12 A. Mm-hm.
- 13 Q. How long did he remain on his back?
- 14 A. Until I managed to get a hold of his right arm. I then
- 15 moved his right arm across his body and pinned it down
- 16 against his left arm so that I had both his hands
- 17 restrained at that point and then he went from being on
- 18 his back to on his side.
- 19 Q. Would that be his left-hand side?
- 20 A. Yes.
- 21 Q. Did you remain on his right?
- 22 A. Yes.

- 1 Q. Was he on his front at any time?
- 2 A. He might have been not on his side -- it depends what  
3 you mean by on his front. This is what we had the  
4 discussion about before when I was doing this. He might  
5 have been face-down but not on his front, so he has went  
6 across from -- over to here (indicating), so he is  
7 face-down but he was never fully on his front, his arm  
8 was always underneath him.
- 9 Q. Right. I wonder if you could demonstrate that for me  
10 please. I appreciate that will have -- you will have to  
11 come out and you won't be able to speak, but it may be  
12 of assistance. This is important.
- 13 A. Yes.
- 14 Q. Thank you. If you simply demonstrate what you mean.
- 15 A. (Inaudible - too far from microphone).
- 16 Q. Just demonstrate and I will get you to speak later when  
17 you're at the microphone. So correct me -- you're  
18 imagining he is on the ground, you've got your right arm  
19 pulled over to your left and your right knee is off the  
20 ground?
- 21 A. (Inaudible - too far from microphone).
- 22 Q. Turned around. So would the right knee be on the ground

1 or would the right knee be on the left leg?

2 A. (Inaudible - too far from microphone).

3 Q. I will ask you questions -- all right. Come back to the  
4 microphone, please, and I will go through that when it  
5 can be recorded.

6 (Pause)

7 So just so that this can all be recorded because we  
8 don't have audio in that space --

9 A. Yes.

10 Q. -- you were standing, imagining that your left shoulder  
11 was on the ground.

12 A. Yes.

13 Q. And you had your right arm pulled over to your left arm?

14 A. Yes.

15 Q. And I was unclear about the position of the legs at that  
16 point. I think this is quite important so could you  
17 describe to me how you were -- how you were positioning  
18 or demonstrating the position of the legs?

19 A. I have no idea what position his legs were in. I was,  
20 like I say, at the torso looking up towards his hands.

21 I have no idea where his legs were.

22 Q. Right, so that's not something you can help us

1 demonstrate?

2 A. No, no.

3 Q. But as far as you were concerned, his shoulders were  
4 turned, his right shoulder was off the ground --

5 A. Yes.

6 Q. -- his left shoulder was on the ground?

7 A. Mm-hm.

8 Q. And he had -- you had his right-hand towards his left  
9 hand?

10 A. Yes, to try and control both of them together on the  
11 ground.

12 Q. But you couldn't see where his legs were or what they  
13 were doing?

14 A. No, because I wasn't concentrating on that part at the  
15 time.

16 Q. Did you remain on your knees at that point?

17 A. Yes, I had my knees tucked in behind his back so he  
18 couldn't turn back and break free.

19 Q. Right. What pressure were you applying to retain his  
20 right-hand towards his left hand?

21 A. Enough to keep them on the ground.

22 Q. Is it -- at any stage did you lie on Sheku Bayoh?

1 A. I think as part of having to reach across him I had  
2 to -- the upper part of my body was on his shoulder.

3 Q. You're pointing to your right shoulder. Do you mean his  
4 right --

5 A. His right shoulder, yes.

6 Q. Right. So your upper body -- what's your upper body,  
7 just from the waist up?

8 A. Yes, because I was on my knees at that point reaching  
9 across him.

10 Q. And that weight was placed on his right shoulder?

11 A. Shoulder and his hands, because obviously I'm reaching  
12 across to put my hands on his hands and I'm reaching  
13 across him so I could reach that far.

14 Q. And that was at the point that he was on the ground on  
15 his left shoulder, lying -- the top half of his body  
16 lying to the side?

17 A. Yes.

18 Q. Thank you. Then in paragraph 54 you say that you  
19 managed to take hold of his right wrist which forced his  
20 arm across his body:

21 "I put pressure from my chest area onto his right  
22 shoulder, pushing him onto his left side. My body was

1 in a crouched position over him with my knees on the  
2 pavement against his back so he couldn't turn back  
3 towards me to lash out."

4 And is that what you have described?

5 A. Yes.

6 Q. So the crouched position, can you come out and  
7 demonstrate that crouched position, please.

8 A. (Inaudible - too far from microphone).

9 Q. Thank you, and if you come back, thank you, and we will  
10 talk it through the microphone.

11 LORD BRACADALE: It might be better if he came further out.

12 MS GRAHAME: Yes, other people can't see behind the tables.

13 LORD BRACADALE: You can stand, if you like, to gather round  
14 this area because it is more open. If you just come in  
15 front of the desk here.

16 MS GRAHAME: Thank you. Again, if you come back to the  
17 microphone, thank you.

18 So at that stage you have -- you are leaning on your  
19 knees on the ground at Sheku Bayoh's back, that's what  
20 you were demonstrating.

21 A. Yes.

22 Q. And you are leaning over with -- you put your hands on

1 the ground in front of you --

2 A. Yes.

3 Q. -- as you leaned over. Were your hands on the ground

4 holding onto the hands of Sheku Bayoh?

5 A. Yes, my hands would be on top of his hands, keeping his

6 hands onto the ground.

7 Q. And your body was leaning over his upper body?

8 A. Yes.

9 Q. And where were your feet?

10 A. At that point when I'm on my knees they would be

11 underneath me.

12 Q. Were they in line with Sheku Bayoh's feet or were they

13 at an angle?

14 A. No, I was reaching across him so, aye, I would be at

15 90 degrees to his body.

16 Q. So they would be at an angle?

17 A. Yes.

18 Q. You will know, constable, that there are other

19 statements that have been given to the Inquiry and

20 a number of people suggest that Sheku Bayoh was on his

21 front and prone. Are you able to explain why there

22 seems to be a difference?

1 A. Like I was saying, there's a difference between on his  
2 front and prone. I'm not denying the fact that we had  
3 him over, so he wasn't flat on his back, but he was  
4 never in the prone position because his hand was always  
5 underneath him, that's why he ended up handcuffed to the  
6 front because we weren't able to handcuff him to the  
7 rear, but again, like I have covered in here, that's the  
8 nature of witness statements: everybody sees a situation  
9 differently and they will report it differently.

10 Q. So what's your understanding of "prone", just to be  
11 clear, so that the Chair knows this?

12 A. Prone position for me would be -- or certainly how it is  
13 described at OST is with when you've got somebody flat  
14 on their front with their hands handcuffed behind them,  
15 when the full body weight is on the chest and abdomen  
16 area.

17 Q. So someone who would be prone is flat on their front,  
18 their arms are either side and perhaps handcuffed to the  
19 rear?

20 A. Yes. I think the definition for prone is to be flat on  
21 your front and I think if your arms are underneath you,  
22 you're not flat on the front, but that's just my

1 understanding.

2 Q. Right. So your position is he was not prone at any  
3 time?

4 A. Yes.

5 Q. Because he always had his left arm --

6 A. Underneath him.

7 Q. -- underneath him, on the ground.

8 A. Yes.

9 Q. Can we go back to the image that we have on the screen.

10 So you have described how you were struggling and trying  
11 to secure Mr Bayoh's hands. Did you manage to get  
12 handcuffs on him at that point?

13 A. At one point I managed to get -- well, the next stage  
14 that I could remember was I got a cuff on his right arm  
15 and then when I went to try and secure it onto his left  
16 hand he broke free because obviously I want to release  
17 the pressure to apply the cuffs and he managed to break  
18 free.

19 Q. Where are your cuffs?

20 A. They are the opposite side to my radio, up here  
21 (indicating).

22 Q. So your right shoulder?

1 A. Yes.

2 Q. How -- and you are right-handed?

3 A. Yes.

4 Q. So having removed the cuffs from your shoulder, how did  
5 you retain Mr Bayoh's hands together?

6 A. I must have went down to one hand at one point to be  
7 able to remove the cuffs.

8 Q. Were you still on your own at that stage or was  
9 PC Paton --

10 A. PC Paton was there at that point when the cuffs were  
11 applied, I think.

12 Q. Where was PC Paton in relation to you? You have  
13 described your position --

14 A. He was on my left-hand side.

15 Q. He was on your left?

16 A. Yes.

17 Q. Was he closer to Sheku Bayoh's head?

18 A. Yes.

19 Q. And what was he doing?

20 A. He was assisting in the restraint. He had got  
21 a baton -- I'm not sure if he just picked up his own  
22 baton, but when he arrived, he had a baton in his

1           possession and he passed it through Mr Bayoh's left arm  
2           and was trying to assist -- because like I say,  
3           initially we were trying to get him handcuffed to the  
4           back so he was trying to assist in getting the hand out  
5           from underneath, so we could get both hands to the back  
6           to apply handcuffs.

7           Q. Right. I thought you were holding Mr Bayoh's hands to  
8           the front?

9           A. Yes, over his body.

10          Q. Yes. But you just said there that you were trying to  
11          handcuff him to the back?

12          A. Yes, that was -- once we had him we were trying to  
13          get -- once we had his hands under control, we were  
14          trying to get his hands out from under him so we could  
15          handcuff him to the back.

16          Q. I see. And when you say his hand out from under him, do  
17          you mean his left hand?

18          A. His left hand that he was lying on, yes.

19          Q. So you were trying to move his left hand out from under  
20          him; how were you doing that?

21          A. I can't mind if I had the cuff on the right-hand at that  
22          point or no, but then it was a case of just try to pull

1 the arm out from underneath him and get it round to his  
2 back.

3 Q. So you were pulling his left hand out under his body?

4 A. Yes, and we couldn't get it.

5 Q. At that point, was he moved into a prone position?

6 A. No, he was still on his side.

7 Q. How were you going to manage to pull his left hand out  
8 from under him to get it to the back without moving him  
9 on to a prone position?

10 A. Well, if we'd managed to get his arm out from underneath  
11 him then he would have ended up in a prone position, but  
12 we need to get the arm out from under him first before  
13 we roll him over, because then he would just lie on the  
14 arm.

15 Q. Would it not be easier to move him into a prone position  
16 and then have his left arm pulled out from under him?

17 A. Well, we need to control his arms as we're doing that.  
18 Yes, it's ... I mean what you're suggesting is letting  
19 go of his arms and rolling him over, at which point he's  
20 got both arms free again to start lashing out and  
21 punching.

22 Q. Well, you've got -- you have -- you've securely caught

- 1 his right-hand and --
- 2 A. I wouldn't say securely caught it but, yes, he's --
- 3 Q. You've got the handcuffs on?
- 4 A. I'm stopping -- no.
- 5 Q. No, you don't have it on. But you've got his
- 6 right-hand?
- 7 A. Aye, that's --
- 8 Q. You've got both hands together at one point.
- 9 A. Yes.
- 10 Q. And you want to secure his left hand and get it out from
- 11 under him. Is the easiest way of doing that not just
- 12 simply rolling him onto his front and bringing the left
- 13 hand out?
- 14 A. Rolling him -- rolling him over onto his front would
- 15 result in him landing on top of the arm that we're
- 16 trying to get out, and we would need to release the grip
- 17 that we've got on him, so having secured him, or got
- 18 partial control on him, we're not going to let go of
- 19 that and allow him to strike out.
- 20 Q. So how were you going to get the left hand out from
- 21 under him, even though it's at the front, how were you
- 22 going to move his left arm from his shoulder so that you

1           could get it round behind his back?

2           A. That's when you come in and work as two, so I would keep  
3           a hold of his right arm and PC Paton would take a hold  
4           of his left arm and we would get both arms round the  
5           back and get cuffs applied. We'd take an arm each.

6           Q. I'm just thinking about my own shoulder. If I was lying  
7           on my shoulder on my left, I had my arm out, and I want  
8           to move my arm behind my back, I have to move the  
9           shoulder and move the arm underneath the left side of  
10          the body.

11          A. Mm-hm.

12          Q. So I'm just trying to work out how -- what technique you  
13          and PC Paton were going to use that would allow you to  
14          move a hand, a left hand that's on the ground in front  
15          of a person to the back of the person without moving it  
16          under that part, the left-hand side of their body. What  
17          technique were you using that would allow you to do that  
18          without at the same time either lifting the person so  
19          that the arm was released and the shoulder released, or  
20          pushing them onto their front so that their arm would be  
21          released and the shoulder released? Is there  
22          a technique that allows you to do that?

1 A. I mean, you can just pull somebody's arm out from under  
2 them and control (inaudible), aye.

3 Q. Is that what you did?

4 A. That's what we attempted, but we weren't able to do so  
5 and eventually we just thought it safer just to handcuff  
6 him to the front.

7 Q. Right. So you tried to pull his left arm out from under  
8 him as he remained lying on his left-hand side?

9 A. Yes.

10 Q. And what technique did PC Paton use to attempt that?

11 A. He passed a baton through his arm.

12 Q. Which arm?

13 A. His left arm, his left upper arm, and I think he tried  
14 to use the baton to try and lever the hand out from  
15 underneath him as well.

16 Q. Is that a recognised technique that you're taught at  
17 OST?

18 A. Yes.

19 Q. But that wasn't successful, you said?

20 A. No, no.

21 Q. Were you able to assist with that technique from your  
22 position?

1 A. I mean, you're trying to assist but at the same time  
2 trying to keep control, it's -- every situation is  
3 different. It's how somebody lies and how they're  
4 fighting with you, so you can only deal with what's in  
5 front of you, but yes, I mean, ultimately we were trying  
6 to work together to get him handcuffed to the rear.

7 Q. But you remained in charge of the right arm at that  
8 stage, did you?

9 A. Yes, just trying to -- well, trying to keep anything  
10 under control, yes.

11 Q. How long were you trying to do that, trying to get the  
12 left arm out from under him?

13 A. Like I say, it's impossible to put timings on that sort  
14 of situation.

15 Q. Where's PC Tomlinson?

16 A. Still no idea.

17 Q. All right. So you weren't aware of PC Tomlinson at any  
18 point up until then?

19 A. No.

20 Q. When did you first realise that PC Tomlinson was there?

21 A. Probably once we had him under full restraint, we rolled  
22 him over onto his back and I realised at that point that

- 1 leg restraints and that had been applied.
- 2 Q. So you're still facing the top half of Sheku Bayoh?
- 3 A. Yes.
- 4 Q. You don't know what's going on behind?
- 5 A. No.
- 6 Q. Do you know other people have arrived?
- 7 A. The next person I'm aware of arriving is PC Alan Smith.
- 8 Q. Right, so you're not aware of PC Tomlinson at all?
- 9 A. No.
- 10 Q. But you're aware of PC Alan Smith arriving?
- 11 A. Yes.
- 12 Q. What was he doing?
- 13 A. He has approached Mr Bayoh from the opposite side of me.
- 14 Q. So it would be Mr Bayoh's left-hand side?
- 15 A. Yes, which is the direction he was facing at that point,
- 16 and he came across and administered a warning that if
- 17 Mr Bayoh didn't stop resisting, that he would spray him
- 18 with CS spray.
- 19 Q. What was the warning?
- 20 A. Pretty much what I said, "If you don't stop resisting,
- 21 you will be sprayed".
- 22 Q. Did someone reply to that comment?

- 1 A. Yes, I did.
- 2 Q. What did you say?
- 3 A. That it doesn't work and that we would just end up, like
- 4 I said earlier, with CS spray we would just end up
- 5 contaminating everybody other than Mr Bayoh, so I told
- 6 him not to bother.
- 7 Q. What did PC Smith do?
- 8 A. Put his baton away -- sorry, not his baton, his CS spray
- 9 back in its holder at that point.
- 10 Q. And what did he then do after he had put that away?
- 11 A. I'm not sure of his exact involvement, what he was
- 12 involved in. As I say, it was -- it happened that
- 13 quick, in quick succession. You know, we got him to the
- 14 ground, there was a struggle, we tried to get cuffs on,
- 15 tried to get cuffs to the back, failed, got cuffs to the
- 16 front, got him under control and then by that point
- 17 I realised that the whole station was there and that he
- 18 had leg restraints on him.
- 19 Q. When you got the cuffs on him to the front, was it you
- 20 that applied both cuffs?
- 21 A. Yes.
- 22 Q. And once that happened, you have said you took charge of

1 the -- you got control of him, did you say? Is that the  
2 words you just used?

3 A. Yes, when you've got handcuffs on him you've got better  
4 control of him, yes.

5 Q. So what did you do at that point?

6 A. Once I was happy that he was cuffed and secured, as  
7 I say, that's when I sort of stopped reaching across him  
8 onto his hands, sort of sat up and was aware that  
9 everybody else was -- had arrived.

10 Q. Tell us who was there?

11 A. The first person I was really aware of was the DS,  
12 Samantha Mann.

13 Q. Samantha Davidson?

14 A. Sorry, Davidson, yes.

15 Q. Where was she?

16 A. She was at -- on the roadway at the feet of Mr Bayoh.

17 Q. Right. Could you point sort of the -- I appreciate that  
18 the circles are bigger than people would be in the  
19 scene, but when you say on the roadway, where do you  
20 mean?

21 A. So sort of just down there to the feet.

22 Q. Right. So at number 1, would you say that circle would

1 encompass yourself, PC Paton at Sheku Bayoh's head, and  
2 Sheku Bayoh himself?

3 A. Yes.

4 Q. And Samantha Davidson arrived in Hayfield Road and was  
5 to the -- towards Sheku Bayoh's feet?

6 A. Mm-hm.

7 Q. Who else was there?

8 A. That I was aware of or ..?

9 Q. Yes, you said you became aware the whole station was  
10 there?

11 A. No, I was just aware of there being vast numbers -- more  
12 people than just me and Alan.

13 Q. Well, do you remember anyone else being there?

14 A. I mean throughout the course of the whole event I spoke  
15 to DS Davidson and Sergeant Maxwell and I was aware that  
16 DC Connell was also there but other than that ...

17 Q. Okay.

18 A. Nobody specific.

19 Q. What I would like to do now then is go back to the  
20 footage. I'm going to play a slightly later part of the  
21 footage, and we will just watch that through first of  
22 all and then we will come back to it and I will ask some

1 questions, so maybe we could start at 7.20.23, or around  
2 about that, that's absolutely fine. You will see on the  
3 footage now that we have gone back to -- this is where  
4 your van parks in Hayfield Road.

5 A. Yes.

6 Q. And then we will take it through to around 7.21.38,  
7 please.

8 (Video played)

9 Pause it there for a moment. So looking at that  
10 now -- and you've got the spreadsheet in front of you --  
11 you can see that from the minute your van parks, looking  
12 at the timings it's about 75 seconds, or 1 minute  
13 15 seconds before the man is restrained on the ground  
14 and PC Smith has an Airwaves transmission about that.

15 A. Mm-hm.

16 Q. "Man secure". Looking at that timing now, does it make  
17 you reflect and looking back think "That was all over in  
18 75 seconds"? Do you think that's maybe too short? You  
19 didn't spend enough time carrying out your assessment,  
20 or you didn't spend enough time trying to communicate  
21 with Mr Bayoh?

22 A. No, I think we covered that quite fully yesterday, that

1 we tried everything and it was -- no.

2 Q. No, that's fine. Can we carry on playing some of this  
3 footage, please. I would like to continue until we see  
4 the Snapchat footage from Ashley Wyse's phone.

5 (Video played)

6 You will see on the footage now that we now have  
7 Snapchat footage overlaid onto the other footage and we  
8 can see the area of the restraint. Looking at that, are  
9 you able to identify who the officers are that we can  
10 see?

11 A. I could say with certainty who three of them are.

12 Q. Could you tell us then -- could you point to who you can  
13 see and who you can identify?

14 A. That would be PC Alan Smith, PC Alan Paton and then  
15 that's myself lying on the ground (indicating).

16 Q. So you don't know who the officer is who is standing up  
17 at the feet?

18 A. I can't see him clearly enough, no.

19 Q. And there's an officer beside a lamp post or a light who  
20 is standing up on the other side; do you recognise him?

21 A. It's not clear, but at a guess I would say it's maybe  
22 James McDonough, PC James McDonough, but it's not clear

- 1           enough to say.
- 2           Q. Right. So you see PC Smith at the top, he is number 1?
- 3           A. Yes.
- 4           Q. And I think you said he was on the left side not -- was
- 5           he at the top of the left side?
- 6           A. Yes, aye.
- 7           Q. And then PC Paton was here at -- you said he was at
- 8           the head of Sheku Bayoh?
- 9           A. Yes, when he first arrived. I mean this is obviously
- 10          a couple of seconds into the restraint, so there has
- 11          been some sort of dynamic movement but, yes, they are
- 12          still in the same order.
- 13          Q. So he has moved around?
- 14          A. Possibly, yes.
- 15          Q. And then you're, you said, lying on Sheku Bayoh at
- 16          number 3?
- 17          A. Yes, that's me lying at number 3. I wouldn't say I was
- 18          lying on him at that point.
- 19          Q. You were lying on him --
- 20          A. No, you said that; I wouldn't say that.
- 21          Q. All right, sorry. But you were there at number 3?
- 22          A. Yes.

1 Q. Right. Can we carry on playing this for a few seconds,  
2 please.

3 (Video played)

4 And then stop it there. So the person who was at  
5 the feet, who was standing, has now crouched down  
6 towards the feet. Do you -- did you recognise him?

7 A. No.

8 Q. No. And the person who was standing, you didn't get any  
9 further idea who that was, right.

10 Can we look, please, at an image that we will look  
11 at, which is number 22, which is in the 2c section of  
12 the other images.

13 Now, this is an image that's been prepared by  
14 Advanced Laser Imaging. You have not seen this before.  
15 It has been prepared from the Ashley Wyse Snapchat  
16 footage and you will see that people are all in  
17 different colours. You can see the red, the green, the  
18 brown sort of colour.

19 A. Mm-hm.

20 Q. Tell me if I'm wrong, but what you're saying is that --  
21 would you be number green? Sorry, colour green.

22 A. The dark green with the two legs or the light green?

1 Q. You're the dark green. Well, first of all, let's look  
2 at the dark blue colour. So this is a person who is  
3 crouching at the feet.

4 A. Mm-hm.

5 Q. Do you see that person? Do you know who that was?

6 A. No, that's the person I couldn't identify.

7 Q. You can't identify. And is the brown person you thought  
8 might be PC McDonough but you weren't sure?

9 A. Yes.

10 Q. And then there's somebody crouched down what would be on  
11 Sheku Bayoh's left-hand side, maybe a sort of purple  
12 colour. Do you know who that was?

13 A. No.

14 Q. And then the red person, do know who that was?

15 A. That, I would say, would be Alan. Wait a minute ... if  
16 that's taken from the Snapchat footage then, aye, that's  
17 when sort of people have moved around a bit so that  
18 would be PC Smith, yes.

19 Q. You said there had been some movement?

20 A. Yes.

21 Q. So that's PC Smith is red?

22 A. Yes.

1 Q. People haven't been allocated individual colours, it's  
2 just -- so you think that's PC Smith. So he is on his  
3 knees, sort of crouched down at the -- there. And then  
4 the lighter green colour, someone kneeling, who was  
5 that?

6 A. Alan Paton.

7 Q. PC Paton. And then as you have correctly identified,  
8 there's dark green legs and you said you were lying on  
9 the ground, I think that's what it says on the  
10 transcript?

11 A. Yes.

12 Q. So which ones are your legs?

13 A. I think it's impossible to tell. I think the imaging  
14 people said that as well, that there wasn't enough  
15 detail to work out --

16 Q. They said they couldn't tell, but can you tell?

17 A. From the way that I would be lying, it would have to be  
18 those legs, I'm guessing.

19 Q. The ones closer to me?

20 A. Yes.

21 Q. And the further away legs closer to Hayfield roundabout,  
22 the roundabout at Hendry Road, they would be

1 Sheku Bayoh's legs?

2 A. Yes.

3 Q. So the closer legs are yours and the further away legs,  
4 looking at it, would be Sheku Bayoh's?

5 A. Yes.

6 Q. Thanks. Can we have a look, please, at some enhanced  
7 footage from the Snapchat. It's SBPI 110, and this is  
8 a short clip of footage. You will see it twice, so the  
9 first time you see it, it will be the Ashley Wyse  
10 Snapchat footage that you saw layered over on the real  
11 time clock. We will watch through that and then you  
12 will watch it again, and this time it will be -- the  
13 second time it is 400% bigger, so it has been zoomed,  
14 and the speed is 25% slower.

15 A. Right.

16 Q. And we can watch this more than once if that's easier,  
17 but let's watch it through once entirely and then we  
18 will see where we get to. Thanks.

19 (Video played)

20 Right. I appreciate that's the first time you have  
21 been able to see that, so I think it might be useful to  
22 go through it again, just to let you see it a second

1 time. You will see it is a short passage, so let's  
2 watch that again. The first one, as I say, you will see  
3 is the Snapchat footage extracted from the combined ...

4 (Video played)

5 Can we go back to the beginning, please, and we will  
6 pause it during the first section, if that's all right.

7 Right. Where were you?

8 A. It's highlighted, there.

9 Q. You're lying on the ground, you said?

10 A. Yes.

11 Q. Where's your head?

12 A. Somewhere behind PC Paton.

13 Q. That's PC Paton who was --

14 A. There (indicating).

15 Q. He was the lighter green-coloured person, so he's got  
16 his back to us here in this footage?

17 A. Yes.

18 Q. And your head's near him. What position were you in at  
19 this stage?

20 A. I can't recall. It would be mid-way through the  
21 struggle. I don't -- I can't recall.

22 Q. And you were in a lying position, you said.

- 1 A. From there, yes.
- 2 Q. Where are your feet?
- 3 A. Down by the pavement, down here (indicating).
- 4 Q. And can we then move on to the next section, please.
- 5 Those red circles can be removed, please, and when we
- 6 come on to the next image I'm going to pause it there,
- 7 please, so you can see there that there are separate
- 8 feet. Do you want me to rewind it? When I say myself,
- 9 Ms Drury. Do you want Ms Drury to rewind it? Can you
- 10 see that there are separate feet there visible on the
- 11 footage.
- 12 A. Mm-hm.
- 13 Q. And I would like you to keep focusing on the feet. Do
- 14 you see that the furthest away foot appears to be
- 15 pointing down, toe-down?
- 16 A. What do you mean by furthest away?
- 17 Q. The one that's on the road, furthest away from me.
- 18 There's one closer to me and there's one furthest away
- 19 from me. Do you see that?
- 20 A. Mm-hm.
- 21 Q. Right. If you can keep focusing there, and we will play
- 22 a couple of seconds just so you can watch it.

1 (Video played)

2 Stop, please. Did you see the toes appeared to be  
3 pointing downward towards the roadway or the pavement?

4 A. The feet that are moving?

5 Q. Do you want to see it again?

6 A. Mm-hm.

7 Q. I mean, I'm not -- you may not agree with me, you may  
8 not be able to see this, PC Walker so...

9 A. No, I think they're my feet that are moving.

10 Q. I was going to ask you --

11 A. Yes, I think they're mine, yes.

12 Q. Right, so can we rewind that slightly, Ms Drury, please,  
13 and we will look at it again and keep going.

14 (Video played)

15 Right, pause it. So did you see the feet moving?

16 A. Yes.

17 Q. And did you see at least one foot was pointing down,  
18 toes pointing down to the roadway?

19 A. Mm-hm.

20 Q. Whose were they?

21 A. I would have to say that they were my feet that were  
22 moving about at that point.

1 Q. So your feet were actually pointing down towards the  
2 roadway?

3 A. Yes, probably trying to get some traction with the  
4 ground because I went from a kneeling position to, like,  
5 as though my feet have slipped out from underneath me.

6 Q. So you've got moved from a kneeling position to a lying  
7 position?

8 A. Yes.

9 Q. And then I would like you to watch -- you see the  
10 gentleman -- the officer who is at the rear -- the feet  
11 area? He is leaning down as we have paused this.

12 A. Yes.

13 Q. I want you to watch what he does to the leg that he is  
14 touching, so we will watch this a couple of times.

15 (Video played)

16 Did you see him lifting that there?

17 A. Yes.

18 Q. And we will watch that again.

19 (Video played)

20 Do you see him lifting that leg up? Do you want to  
21 see it again?

22 A. No, I could see it.

- 1 Q. So he is lifting that leg upwards?
- 2 A. Mm-hm.
- 3 Q. The knee is on the ground and he is lifting the leg --
- 4 he is bending the leg at the knee, knee on the ground,
- 5 lifting it up. Is that Sheku Bayoh's leg?
- 6 A. That would -- I'm assuming so, yes. It would need to
- 7 be.
- 8 Q. Nobody lifted your leg up in that position?
- 9 A. No, no.
- 10 Q. So at some point, an officer in the area of
- 11 Sheku Bayoh's feet has bent his leg at the knee, the
- 12 knee being on the ground, and he has bent it up the way?
- 13 A. Yes.
- 14 Q. So at that point at least, Sheku Bayoh's knee is on the
- 15 ground, flat on the ground?
- 16 A. Yes.
- 17 Q. So he is not on his left-hand side at that stage?
- 18 A. His shoulders could be.
- 19 Q. So you think his knee is on the ground at the time that
- 20 his shoulders are only on the left-hand side?
- 21 A. That's possible. It's in -- it's not clear to see from
- 22 there, but it's certainly possible, yes.

1 Q. So is that a twisting position that you're imagining  
2 between his shoulders -- right shoulder up in the air --

3 A. Yes.

4 Q. -- he is on his left-hand side, but his knees are  
5 face-down on to the ground.

6 A. Yes, he is twisted round at the hips, so his feet are --

7 Q. So his knees are face-down on the ground but his right  
8 shoulder is up?

9 A. That's -- yeah, I mean that's -- how I could assume  
10 that's happened, I can't speak as to how it has happened  
11 but that's certainly a possibility for him to be on his  
12 side and for his knees to be bent upwards.

13 Q. Right, thank you. Now, what I would like to do --  
14 yesterday you were very helpful, we went through the  
15 images and you put yourself in different positions and  
16 what we would like to do now is Mr DeGiovanni from  
17 Advanced Laser Imaging has prepared images showing  
18 those. Right, yes.

19 MS GRAHAME: I would like, if possible, to have a short  
20 break to allow Mr DeGiovanni to come in and then we will  
21 allow you to see those images and comment on them?

22 LORD BRACADALE: It's 11.20 so we might as well just have

1 the morning break and then you can move on after that.

2 Would be convenient?

3 MS GRAHAME: That would be.

4 LORD BRACADALE: We will have a break now for 15/20 minutes  
5 and then we will resume.

6 (11.20 am)

7 (Short Break)

8 (11.45 am)

9 LORD BRACADALE: Ms Grahame.

10 MS GRAHAME: Thank you. Constable Walker, you were very  
11 helpful yesterday in explaining -- we looked at images  
12 and you showed us positions from the minute you arrived,  
13 and Mr DeGiovanni from Advanced Laser Imaging has been  
14 preparing further 3D reconstruction images and from the  
15 information you gave us yesterday in evidence, and  
16 I wonder -- I've got five images to show you, and  
17 I wonder if I could ask you to look at these. You will  
18 see that instead of the red circles, he has placed  
19 people, images into the scene, and I would just like to  
20 go over these with you, just briefly and check that  
21 you're happy that they are a reasonable indication of  
22 what you said to us yesterday, so this first image which

1 is on the screen, you will see the van, we heard your  
2 evidence yesterday about the van and the position, but  
3 this was -- and this is an indication of where PC Paton  
4 was, and Mr Bayoh on Hayfield Road, and then you  
5 standing at the front of the van. Does that seem  
6 reasonable to you as a snapshot?

7 A. As a snapshot, yes.

8 Q. A snapshot, yes. You don't want to make any changes  
9 with that? You're happy with that?

10 A. If anything, I would say the distance between PC Paton  
11 and Mr Bayoh is a bit too much. I would probably say  
12 Mr Bayoh was closer to him at that point.

13 Q. Right, okay, so a little bit closer -- tell us when?

14 A. A wee bit further. Probably about there.

15 Q. About there. And you're happy with that representation?

16 A. Yes.

17 Q. Is there anything else you want to change about that,  
18 the position of yourself or Mr Bayoh or PC Paton?

19 A. I would say I was closer to the front of the van.

20 Q. Closer?

21 A. Yeah, because I sort of come round -- almost touching  
22 the van as I came round the front of it.

1 Q. Okay. That sort of area or is that --

2 A. Yes, that would be --

3 Q. Are you happy with that, because it can be moved again?

4 A. No, as I say, as a snapshot, as I'm coming round that  
5 would be --

6 Q. As a snapshot. All right, excellent. Thank you very  
7 much.

8 We will move on to image 2. So again, this is  
9 a snapshot. This is, as we understand it, more akin to  
10 where PC Paton was when he used his spray, so he is in  
11 that corner of the pavement at Hayfield Road. This  
12 happens to my computer all the time, so I'm sure it will  
13 come back. I hope it will come back. It was going so  
14 well, Mr DeGiovanni.

15 (Pause).

16 So this is the second image that we have and this is  
17 an indication, or a representation of the position that  
18 PC Paton was in at the point he was about to use his  
19 spray, so ... does that seem a reasonable indication on  
20 the screen of the position that people were in at that  
21 moment?

22 A. I would say possibly they weren't maybe as far down the

1 pavement as that at that point when the actual spray was  
2 deployed, so the distance between them was probably  
3 maybe accurate, but if both of them were to get moved  
4 slightly further --

5 Q. Further back along Hayfield Road?

6 A. Yes.

7 Q. Closer to --

8 A. No, no, the other direction.

9 Q. Oh, the other direction.

10 A. Yes, and then move the same distance. Yes.

11 Q. And are you reasonably happy with that?

12 A. Yes, I would say so.

13 Q. We have a facility that allows us to see a line of sight  
14 from one of these characters, such as from yourself,  
15 PC Walker. Does that -- that would be an indication of  
16 your sort of line of sight. Does that seem reasonably  
17 accurate to you, or would you prefer to move your  
18 position as well?

19 A. No, I mean -- as a snapshot that's, aye, there or  
20 thereabouts, yes.

21 Q. That's great, thank you very much. So this will be  
22 image 3 loading up. So you gave evidence yesterday

1 about when you used your spray and you talked about  
2 being at the front of your van and Mr Bayoh coming  
3 towards you, and again, as a snapshot, as you look at  
4 the positions of the characters here, do you feel that's  
5 a reasonable indication?

6 A. Yes.

7 Q. Are you happy, or do you want to move anybody?

8 A. I mean, as an indication as to where we ended up,  
9 that's -- I'm not 100% sure if that's the point at which  
10 I deployed the PAVA, but I probably -- couldn't be  
11 certain exactly where I was relative to the van when  
12 that happened, because my focus was obviously Mr Bayoh,  
13 but yeah, we did end up close to that position at some  
14 point, yes.

15 Q. Thank you, that's excellent. Then we will go to the  
16 next one, please.

17 (Pause).

18 Now, yesterday you spoke about after you had been  
19 affected by the PAVA spray, you had walked around to the  
20 driver's side of the van and at some point PC Paton was  
21 on your left.

22 A. Mm-hm.

1 Q. Now, you may want to adjust some of these positions.

2 Can we start with you, PC Walker?

3 A. Yes, I'm facing the wrong direction on that one.

4 Q. Yes, so I think yesterday you said you had your back to  
5 the driver's side of your van?

6 A. Yes.

7 Q. So let's move you round. But I do recall I think you  
8 said you were near the rear wheel, is that correct?

9 A. Yes, aye, I think so.

10 Q. And --

11 A. Still further round, I had my back to the van --

12 Q. You had your back to the van?

13 A. -- back against the van.

14 Q. Okay.

15 A. And maybe slightly closer to the van as well.

16 Q. Closer to the van.

17 A. Yes.

18 Q. Is that a more reasonable indication?

19 A. To the best of my recollection, yes.

20 Q. I think you said -- did you say you were crouched at  
21 that point, or is that correct in the position --

22 A. It depends at which point you're going to be referring

1 to. At some point I went to crouched at front of the  
2 van, to blinking, to clearing my eyesight to be coming  
3 to be standing at that point.

4 Q. So are you happy with that image as it is?

5 A. Yes.

6 Q. And then can you help adjust PC Paton?

7 A. He would -- I think he was facing more towards the van  
8 and crouched over -- bent over at the waist.

9 Q. Bent over at the waist, all right. So his head, was  
10 that quite close to the van or was it touching the van?

11 A. He was further away from the van than I was. He would  
12 be at my sort of 10 or 11 o'clock position.

13 Q. So you're standing with your back -- or you're there  
14 with your back to the driver's side of the van?

15 A. Mm-hm.

16 Q. But he was facing towards the driver's side of the van.

17 A. That could be wrong actually, if I'm thinking about it,  
18 because he drew his baton and he handed it like that, so  
19 he must have been facing the way he was originally,  
20 sorry.

21 Q. I think yesterday you did say that he had drawn the  
22 baton --

1 A. Aye, he drew it and handed it.

2 Q. -- and handed it, so maybe on reflection he was also  
3 with his back to the van. Was he closer to the front  
4 tyre or the door, or do you remember?

5 A. I don't know. Roughly about there.

6 Q. Are you happy with that image as it is now?

7 A. Yes.

8 Q. Thank you. Let's move on to the last one.

9 DEAN OF FACULTY: My Lord, I wonder if I might briefly make  
10 an observation. Obviously, I'm not objecting to any of  
11 this, it is doubtless very helpful. The one thing that  
12 hasn't been taken account of any of this is what  
13 PC Walker said about the position of the van and as the  
14 van seems to be quite an important point of orientation,  
15 we can see from the Snapchat footage that the rear tyre  
16 of the van is on the dotted line, it's not in this  
17 picture, and I'm just wondering if account can be taken  
18 of that when we're looking at this because otherwise,  
19 given how much focus is on the positioning of the van,  
20 everything is thrown out.

21 LORD BRACADALE: Ms Grahame?

22 MS GRAHAME: Yes. I think I said at the outset, when I was

1 discussing it with Constable Walker, that we had heard  
2 his evidence yesterday about the position of the van and  
3 we will take account of that in relation to these  
4 images.

5 LORD BRACADALE: Yes, very well. The point is noted, Dean  
6 of Faculty. Thank you.

7 DEAN OF FACULTY: Obligated, my Lord.

8 MS GRAHAME: So this is the final image that I have for you  
9 today, Constable Walker, and again it's been created  
10 relying on the red circles that you have provided us  
11 with. So what we have here is you will see a blue  
12 person on the ground with the name "PC Short".

13 A. Mm-hm.

14 Q. Is that a reasonable indication of the position that you  
15 described earlier this morning, or would you wish to  
16 move that?

17 A. I think the -- Mr Bayoh and PC Short would be more  
18 towards the bottom line, so she started to take -- when  
19 she was being -- or appeared to have having been pushed  
20 she was on the white line, so she would have fell  
21 further down from that.

22 Q. Right, so we will move that southerly, towards the other

1 pavement more.

2 A. Yes. Yeah, probably.

3 Q. About there? Are you comfortable with that as

4 her position --

5 A. Yes.

6 Q. -- on the screen. And you will see that Mr Bayoh's

7 position is given to her right, standing --

8 A. Mm-hm.

9 Q. -- facing along Hayfield Road towards where you're

10 standing.

11 A. Yes.

12 Q. Are you comfortable with the position of Mr Bayoh there?

13 A. To make it match my recollection, he would need to be

14 turned counter-clockwise slightly.

15 Q. Right.

16 A. Yes.

17 Q. Right, and are you comfortable with that angle?

18 A. We moved my position in the other slide, so would that

19 not be a bit closer to the rear of the van?

20 Q. Yes, I'm going to ask you if you want to move yourself

21 so ... And subject to the Dean of Faculty's comments

22 about the van position -- so when you say you were at

1 the rear of the van, do you still mean the driver's  
2 side, towards the rear wheel?

3 A. Yes, yes.

4 Q. So really where you had been positioned in the previous  
5 slide.

6 A. Mm-hm.

7 Q. The previous image.

8 (Pause)

9 Right. Do you want to change the position of  
10 yourself, Constable Walker? You're now at the rear  
11 wheel of the driver's side. Do you want to change your  
12 position, or are you content that you were facing  
13 towards Mr Bayoh and PC Short?

14 A. My head was facing that way. I wouldn't say my whole  
15 body was, but, aye, it's fine as a representation so --

16 Q. So your body remained -- your back was towards the van?

17 A. (Inaudible overspeaking) both directions, yes.

18 Q. So I don't think there's that level of detail  
19 available --

20 A. Detail.

21 Q. -- in the images. Are you -- subject to that alteration  
22 and the comments regarding the van itself, are you

1 comfortable that the position that Mr Bayoh and PC Short  
2 are in on this image is a reasonable indication of where  
3 they were when you saw them?

4 A. Yes.

5 Q. Thank you. Thank you very much.

6 There's a couple of things you said this morning  
7 that I would like to confirm with you before we move on  
8 from this section. You have described how you were  
9 kneeling during the restraint and you also described how  
10 you were lying on the ground and I'm wondering if you  
11 can explain how you came from the kneeling position  
12 to -- you demonstrated it, kneeling, leaning over, and  
13 then how you came from that position to move into the  
14 lying on the ground position?

15 A. I was probably in loads of different positions whilst we  
16 were doing that restraint. I've probably moved round --  
17 everybody has moved round at that point, that was  
18 probably as a result of trying to get Mr Bayoh's hand  
19 out from underneath him, but, yes, we have probably  
20 changed from that position again after that but that  
21 was --

22 Q. But your weight would still be on your knees as you

1 moved?

2 A. Yes, yes, aye, you can see that. Even when I'm lying  
3 there, three-quarters of my body is on the pavement.

4 Q. And then in your PIRC statement you had referred to  
5 shoulder charging with your left shoulder, but  
6 I understood that the demonstration that you gave us and  
7 the indication in the chair was with your right  
8 shoulder. Can I just be clear which shoulder you used  
9 to shoulder charge Mr Bayoh?

10 A. In my initial PIRC statement I said left shoulder?

11 Q. Yes, in the PIRC statement -- not the self-penned one,  
12 it was the -- sorry, I don't have the number. I can  
13 find it. I will read it out. I think we've got it on  
14 the list, so it's 264, PIRC 264. We're looking at  
15 page 6 -- 7, sorry, 7, and it's the second paragraph.  
16 Right, 7, second paragraph, and you will see in the  
17 middle of that paragraph it says:

18 "So I just brought my left arm across my body and  
19 shoulder charged him with my left shoulder with a fair  
20 bit of force."

21 I think I had read that out before I spoke to you  
22 about that.

1 A. Mm-hm.

2 Q. You see that's left shoulder, but when you demonstrated  
3 it to me I think you indicated your right and I just  
4 want to be clear which shoulder you used.

5 A. I would go with obviously the statement that was  
6 supplied at the time because it would be fresher in my  
7 memory, but certainly if you were to ask me -- I'm  
8 right-handed, so I would normally always go in with my  
9 right shoulder so that's probably why I demonstrated it  
10 like that, but that statement's fresher so -- or this  
11 was fresher at the time so ...

12 Q. So which version would you prefer -- should the Chair  
13 prefer: the fresher version, or the fact that you  
14 normally lead with your right?

15 A. I would obviously go with the statement that was  
16 produced at the time. Probably the same movement but  
17 mirrored.

18 Q. Okay, so the same movement but leading with your left?

19 A. Yeah.

20 Q. Okay, thank you.

21 I would like to ask you something about -- we have  
22 not heard evidence from PC Good yet, but the Chair has

1 access to a statement she gave to PIRC on 4 June 2015,  
2 about the restraint, and I would like to read out part  
3 of that and ask you if you would like to comment on it.  
4 She describes during the restraint that -- in relation  
5 to Mr Bayoh:

6 "His arms and legs were kicking out, flaying, trying  
7 to force himself up using his arms like a press up.  
8 Several officers were trying to restrain him by pushing  
9 him to the ground."

10 Now, as I say, we have not heard from PC Good, but  
11 a press up to me is where someone is pushing their hands  
12 on the ground.

13 A. Mm-hm.

14 Q. So they're face down and they're using their hands on  
15 the ground to press up and push their back up.

16 A. Mm-hm.

17 Q. And I just wondered did you have any comment on that  
18 description about Mr Bayoh trying to do a press up?

19 A. No, like I said he was never round onto his front or  
20 would be able to put both hands flat on the ground and  
21 from -- obviously from a knowledge of the incident now,  
22 PC Good would have approached from the hospital end, off

1 Hayfield Road, so I don't think she would have had  
2 a clear view of what was happening with his upper body  
3 but that's something that you will need to confirm with  
4 her.

5 Q. Yes, we have not heard from her yet. Thank you.

6 A. Yes.

7 Q. Right, I would like to move away from the events of  
8 Hayfield Road and ask you some other questions. I would  
9 like to ask you about leg restraints, if I may, and can  
10 we look at a use of force SOP, PS10933, and I would like  
11 to look at paragraph 20.5 please.

12 Now, you have mentioned that leg restraints were  
13 used, but, as I understand it, you didn't really see  
14 what was happening at that end?

15 A. No, I had nothing to do with the leg restraints.

16 Q. Okay. Well, can I just ask you to comment on the use of  
17 force SOP please, paragraph 20.5:

18 "Ideally the leg restraints need at least two  
19 police officers/staff working together to correctly  
20 apply them. The subject should be handcuffed to the  
21 rear and placed in the prone (lying face down) position  
22 before the leg restraints are applied."

1           So were you aware of any officers asking you to  
2           place Mr Bayoh in the prone position in order that they  
3           could apply the leg restraints?

4           A. No.

5           Q. All right. When did you notice -- sorry, I should have  
6           asked this. When did you notice that Mr Bayoh had  
7           stopped struggling and become unconscious? I can show  
8           you the spreadsheet, so if you look at page 7 of the  
9           spreadsheet, you will see that there's an entry -- an  
10          Airwaves transmission by PC Alan Smith at 7.25.17. Have  
11          you got page 7?

12          A. Yes, I do.

13          Q. And he says:

14                 "Roger. This male now certainly appears to be  
15                 unconscious. Breathing, not responsive. Get an  
16                 ambulance for him."

17          When was it you noticed that he was unconscious, so  
18          he had stopped struggling and become unconscious?

19          A. It would be about the same time because the three of us,  
20          Alan Smith, Alan Paton and myself, sort of all raised at  
21          the same time that the male appeared to sort of become  
22          unconscious at that point and unresponsive.

1 Q. And at that moment when you noticed that, what position  
2 was Sheku Bayoh in?

3 A. He was on -- at that point he would be on his back.

4 Q. Okay. And then staying with this use of force SOP,  
5 which is on the screen, I wonder if we can look at  
6 paragraph 4.6 and this is further up. It should be  
7 headed -- it relates to profiled offender behaviour.  
8 There you will see it is headed up "Profiled offender  
9 behaviour" and it says:

10 "Profiling a person's behaviour may assist in  
11 determining an officer's reasonable response. Profiled  
12 offender behaviour can be sub-categorised."

13 And then we have level 1, "Compliance":

14 "Most people dealt with are reasonable and will  
15 comply with any lawful instruction. This compliance may  
16 be verbal or it may be active compliance such as  
17 stopping an action when told."

18 And can I confirm with you nothing you have  
19 described in relation to Mr Bayoh at Hayfield Road would  
20 have come within this level, there wasn't compliance  
21 with your instructions?

22 A. Yes, correct.

1 Q. And then level 2, "Verbal resistance and/or gestures":

2 "This includes shouting, swearing and verbal  
3 challenges to requests and/or instructions given. It  
4 normally includes non-verbal gestures and posturing  
5 (body language) and can consist of warning and danger  
6 signs of potential attack."

7 We looked at those warning and danger signs  
8 yesterday, but again nothing in that description of  
9 level 2 would apply to the way things were at  
10 Hayfield Road?

11 A. At what stage?

12 Q. At the beginning. Mr Bayoh wasn't shouting, he wasn't  
13 swearing, he wasn't making verbal challenges to your  
14 requests and in terms of non-verbal gestures and  
15 posturing there was no warning or danger signs.

16 (Pause)

17 Please say if you disagree with that.

18 A. It's not that I disagree, it's that you've got to be  
19 careful how you're applying this because it was  
20 a dynamic -- his attitude and behaviour changed  
21 throughout, so it's not just a case he's a level 2 and  
22 he stays a level 2.

1 Q. No, no. I'm just saying at the beginning there was  
2 nothing -- there was no shouting or swearing when you  
3 arrived at Hayfield Road, in fact at any time I don't  
4 think you have said there was any shouting or  
5 swearing --

6 A. No.

7 Q. -- by Mr Bayoh.

8 A. That's correct, yes.

9 Q. Right. And then level 3, "Passive resistance":

10 "This is a typical tactic used, but not exclusively,  
11 by demonstrators. This is best described as non-active  
12 conduct with no compliance to lawful instruction."

13 And when would you say that Mr Bayoh started to  
14 demonstrate level 3, passive resistance?

15 A. It would be when PC Paton approached him and asked him  
16 to stay where he was, "Stop", and gave the clear lawful  
17 orders.

18 Q. And then level 4, "Active resistance":

19 "This is more of a physical form of resistance, in  
20 that the subject is actively doing something to prevent  
21 or obstruct an officer from carrying out their duty.

22 This type of resistance, although physical by nature,

1 falls short of an assault upon another. It can include  
2 holding on to an object/person either physically or  
3 mechanically; struggling to break free from an officer's  
4 grasp; trying to dispose of evidence."

5 When would Sheku Bayoh have demonstrated this level  
6 of active resistance?

7 A. When he was walking towards PC Paton, refusing to stop  
8 and closing down the reaction gap for him.

9 Q. And then level 5, "Assaultive resistance":

10 "This is when there is a deliberate intention by  
11 another to cause a physical effect upon a person, either  
12 directly or by indirect means (assault by menaces). It  
13 can be caused by an individual or by a group of people  
14 acting together."

15 When would he have demonstrated this level of  
16 resistance, assaultive resistance?

17 A. When he started to chase PC Short.

18 Q. Then level 6, if we could move on to that,

19 "Serious/aggravated assaultive resistance":

20 "The highest level of resistance encountered, which  
21 generally involves the intended use of weapons as part  
22 of the attack where the perceived threat is that of

1 serious injury or is life threatening. It can also  
2 include situations without the presence of weapons where  
3 the perceived threat is that of serious injury, or is  
4 life threatening.

5 "The above provides a rising scale of resistance.  
6 An offender may display a combination of these types of  
7 behaviour and may start at any level. They may escalate  
8 through the levels; similarly, they may de-escalate  
9 their levels of resistance and any force used by  
10 an officer or staff must be proportionate and  
11 appropriate to the perceived resistance in combination  
12 with the impact factors present at that time."

13 So when we look at level 6, serious aggravated  
14 assaultive resistance, when would Mr Bayoh have achieved  
15 that level?

16 A. When he struck PC Short and knocked her to the ground.

17 Q. Right, so he reaches this level 6 when he strikes her,  
18 knocks her to the ground and then you have described  
19 a stomp --

20 A. The stamp after that, yes.

21 Q. The stamp, sorry.

22 Then can we look at 4.7 please:

1 "Officers' reasonable response (force options).

2 "By combining the elements of profiled offender  
3 behaviour and impact factors it affords the  
4 officer/staff the ability to quickly assess the threat  
5 and to make an informed decision to adopt appropriate  
6 tactics from a range of force options in order to deal  
7 with the situation in a controlled, justifiable and  
8 accountable manner. These responses (force options) can  
9 be sub-categorised ...

10 "Level 1 - officer presence. This is a broad term  
11 encompassing the physical and psychological aspects of  
12 an officer, especially in uniform or other specialist  
13 equipment, having a visual impact and effect on the mind  
14 or will of another merely by attending to or arriving at  
15 the situation. Adopting a professional approach and  
16 conduct can enhance this."

17 So this level 1 of officer response, is that turning  
18 up --

19 A. Yes.

20 Q. -- in your uniform --

21 A. (Inaudible overspeaking) van and blue lights.

22 Q. Looking impressive, with equipment and your van and

1 things, right.

2 Then level 2 please, "Tactical communications." So  
3 this is a step up from just turning up with all your  
4 equipment?

5 A. Mm-hm.

6 Q. "By definition, tactical communication means the ability  
7 to give out and take in information in a way which gives  
8 the officer a tactical advantage. It incorporates  
9 verbal and non-verbal communication skills and is the  
10 ability of an individual to effectively use all forms of  
11 communication, within reason, to resolve an identified  
12 area of conflict. This level could include giving  
13 specific direction, commands and/or instructions to an  
14 offender, even in a forceful vocal manner."

15 And so tactical communications, it says verbal and  
16 non-verbal communication skills.

17 A. Mm-hm.

18 Q. Now, yesterday you were talking about communicating by  
19 a hand gesture, so not even any words said, but the hand  
20 gesture which you said would communicate that you want  
21 the person to stop.

22 A. Yes.

1 Q. Is that the type of thing that's also included in this?

2 A. Yes, I would say so.

3 Q. Right. And then level 3, "Control skills":

4 "This is the lowest level of physical use of force  
5 where there is some form of restraint applied to an  
6 offender. This may be as little as placing a hand on an  
7 offender, applying hold and restraint techniques, up to  
8 and including various handcuffing techniques and the use  
9 of leg restraints."

10 So level 3, "control skills", is this the first part  
11 where force is actually incorporated into your level --  
12 your response?

13 A. Yes, I would say so.

14 Q. Right, and it could include the lowest level of force  
15 being something like touching the person in some way?

16 A. Mm-hm.

17 Q. Or it could be more than that. It talks about hold and  
18 restraint techniques. Is that the techniques you  
19 mentioned yesterday that you're taught in OST training?

20 A. Yes. I mean that varies from "come along holds", where  
21 you've got a hold of somebody's hand to escort them  
22 along, to if they become resistant at that point and to

1 ground pins, et cetera, but yes, we cover all of that.

2 Q. Thank you. Then level 4, "Defensive tactics":

3 "These tactics are generally perceived to be  
4 strikes, whether delivered by means of empty hand  
5 techniques or baton strikes, but also include the more  
6 robust defensive handcuffing techniques and the use of  
7 CS incapacitant spray."

8 So this seems to be a level up from level 3 and it's  
9 called "defensive tactics", and how do you see this as  
10 differing?

11 A. That's when a case of somebody's fighting back against  
12 the initial restraint, so you feel somebody resisting  
13 against you, you put them into a ground pin, you get  
14 handcuffs on, that's it, or if you get somebody into  
15 a ground pin and then they try and break free, or they  
16 start a higher level then there's the come along hold  
17 and that's when you have to start to use your PPE  
18 equipment and strike-out -- strike back.

19 Q. And what's a ground pin?

20 A. It's just an OST technique where you get somebody lying  
21 on the ground and you use your hand to pin in against  
22 the shoulder and pin up to the ground and then you could

1 go from that to applying handcuffs.

2 Q. So it's an empty hand technique that allows you then to  
3 apply handcuffs to somebody?

4 A. Yes.

5 Q. Thank you. And this level 4, defensive tactics, would  
6 also include the CS spray?

7 A. Yes.

8 Q. And then there's mention of specialist operations and  
9 police dogs and firearms officers and tasers in that  
10 section as well.

11 A. Yes.

12 Q. And then level 5, "Deadly or lethal force":

13 "This is a level of force that has the potential to  
14 cause serious injury or even death when it is applied.  
15 It may in certain circumstances ...(Reading to the  
16 words)... chosen option, there must be a high degree of  
17 jeopardy involved; ie the subject has the means,  
18 ability/opportunity and is displaying intent to cause  
19 serious injury or kill. All elements of jeopardy must  
20 be present immediately at the time that lethal force is  
21 applied. Officers using empty hand strikes, baton  
22 strikes, as well as authorised firearms officers use of

1 conventional firearms could potentially deliver lethal  
2 force."

3 So the empty hand strikes, or baton strikes, or the  
4 firearms officers could deliver lethal force. So this  
5 seems to be the highest level.

6 A. Yes.

7 Q. So there's six levels of resistance and five levels of  
8 response by officers, so they're not immediately --  
9 they're not mirror images of -- it's not a simple  
10 tick box exercise where you lead one to the other.

11 A. Yes.

12 Q. Right. Can you tell us when you -- when you used your  
13 spray, what level of force were you using? If you want  
14 we will move down --

15 A. No, that would have been the defensive.

16 Q. The defensive?

17 A. Yes.

18 Q. And then when you shoulder charged Mr Bayoh, what level  
19 of force were you using?

20 A. Defensive, I would say at that point.

21 Q. Still defensive. And then when you were restraining  
22 him, what level of force were you using in response?

1 A. It went from defensive when he was lashing out, to when  
2 we've got control of him, to putting the handcuffs and  
3 that on, to whatever level 3 is, I think.

4 Q. It went to level 3?

5 A. To the control skills, yes.

6 Q. So as far as you were concerned you were never using  
7 level 5?

8 A. No.

9 Q. Do you want to see that on the screen again please, just  
10 so that we can look at it.

11 A. No, I would say I never went to the level of force where  
12 there's potential to cause serious injury or death.

13 Q. So you don't think --

14 A. Just by shoulder charging, no.

15 Q. When you were -- during the restraint I was asking  
16 about.

17 A. No, I would say that was defensive. He was punching at  
18 me, I was punching at him, it was trying to get control  
19 of him and then once we had control of him it went into  
20 the level 3.

21 Q. Thank you. Right, I would like to ask about the --  
22 after the restraint and the moment where they're calling

1 for an ambulance, so can we look at paragraph 76 of your  
2 statement please. You were asked to look at  
3 a photograph when you did your statement and I wonder if  
4 we can see that on the screen please, this is PIRC  
5 03374, and you will see this is a photograph or an image  
6 that's been captured and there's a number of officers  
7 identified there. We may hear in due course from  
8 Samantha Davidson that she is the one who wrote the  
9 names on.

10 A. Right, okay.

11 Q. And would you look at this and you will see that,  
12 slightly right of centre of that photograph, it says  
13 "PC Walker". Do you agree that that is you?

14 A. Yes.

15 Q. Do you recognise any of the other officers in the  
16 photograph?

17 A. I would agree with DS Davidson --

18 Q. Would you mind pointing to them while you speak.

19 A. Yes, so DS Davidson, Alan Paton, Alan Smith, and  
20 confident to say that that's -- actually --

21 Q. It says -- the line to that person says "PC A  
22 Tomlinson". It's at the bottom of the page.

1 A. My initial thought was that was Daniel Gibson.

2 Q. Right, so you're not sure about that one?

3 A. So I'm not sure about that one, no.

4 Q. Then in the distance there's someone called DC Connell  
5 with a blue jacket on.

6 A. Mm-hm.

7 Q. Did you recognise him?

8 A. He's not clear enough in that but ...

9 Q. No. Okay, thank you very much.

10 After the restraint -- can I ask you about the  
11 spreadsheet please. There's an entry at 7.24.28, so  
12 it's page 7 of the spreadsheet and it's towards the top.  
13 7.24.28. It is the second entry involving Acting Police  
14 Sergeant Scott Maxwell. So this is at the end of  
15 phase 4 and just before there's a request to get an  
16 ambulance for Mr Bayoh, and Acting Police Sergeant  
17 Scott Maxwell says:

18 "Although there's no visible injuries to PC Short  
19 she has been stomped to the body a few times et cetera  
20 and struck to the head. Can see if the ambulance can  
21 attend ASAP".

22 I'm wondering if you can help me. We may hear that

1 Acting Police Sergeant Maxwell wasn't present in  
2 Hayfield Road at the time you have described the stamp  
3 on PC Short.

4 A. Mm-hm.

5 Q. Who provided that information to him? I'm wondering was  
6 that you, or someone else?

7 A. No, that wasn't me at that point.

8 Q. It wasn't. And then can we look at another Airwave  
9 transmission by Acting Police Sergeant Maxwell and it's  
10 on the next page, page 8. And it's 7.26.52. and it  
11 starts 'just for the log' do you see that one?

12 A. Yes.

13 Q. "Just for the log, the initial on attendance, this  
14 male's attacked PC Short ...(Reading to the words)...  
15 there may be a suggestion that he has been batoned to  
16 the head area. 4/1 over."

17 So the suggestion from the transmission is that the  
18 first thing that happened was Sheku Bayoh attacked  
19 PC Short and then was sprayed, but can I confirm with  
20 you that your evidence is that he was sprayed prior to  
21 that happening with PC Short?

22 A. Yes, that's correct, he was sprayed with PAVA then --

1           sorry, sprayed with CS, then PAVA and then the assault  
2           on PC Short took place.

3           Q. So the information that Scott Maxwell has given over the  
4           Airwaves transmission there is not correct?

5           A. It's probably to the best of his knowledge, given the  
6           fact that he has just turned up and been picking up bits  
7           and pieces.

8           Q. He has picked that up from someone else; he has not got  
9           that from you?

10          A. No.

11          Q. So he has picked it up from someone else and transmitted  
12          it but that version is not a correct version?

13          A. No, it's not as per how --

14          Q. Not as per your evidence?

15          A. Not per my recollection.

16          Q. Thank you. Can I ask you about paragraph 70, please, of  
17          your --

18          A. Sorry, what paragraph?

19          Q. Paragraph 70, please, and we will get that on the  
20          screen.

21                 You have said you were:

22                 "... the first officer to perform chest compressions

1 on Mr Bayoh when it became apparent that he was  
2 unresponsive and not breathing. I placed interlocked  
3 hands on the centre of the chest and started  
4 compressions in line with the training I have had.  
5 After two or three compressions I heard the sound of  
6 a rib breaking in the chest area. In my training I was  
7 told if you were doing it right, you might break a rib."

8 So you were the first officer to help do the CPR?

9 A. Yes.

10 Q. And at that point Mr Bayoh was on his back?

11 A. Yes.

12 Q. And you were applying those compressions to his chest  
13 area?

14 A. Yes.

15 Q. And you have said that you heard a rib fracture in that  
16 area during that time?

17 A. Yes.

18 Q. Were you able to discern at that stage the area where  
19 the rib fracture was?

20 A. No.

21 Q. Where on his chest were you applying compressions.

22 Could you --

1 A. Just in line with the nipples is where you're supposed  
2 to do that, on the sternum.

3 Q. Thank you. I would like to ask you, in your self-penned  
4 statement that you prepared -- have it before you if you  
5 wish -- I don't see any mention of the rib fracture in  
6 that statement, but in your PIRC statement, which you  
7 gave on 4 June, it is mentioned.

8 A. Mm-hm.

9 Q. And I just wonder if you can help the Chair understand  
10 why there's that difference?

11 A. Probably because the PIRC asked obviously a lot more  
12 questions, so I probably just said I started -- in my  
13 own statement that I started CPR and they have probably  
14 probed that a bit further as to, well, kind of what  
15 happened and all the rest of it. That would be my only  
16 explanation.

17 Q. When did you become aware that there was a rib fracture?

18 A. That would be when the results of the post mortem become  
19 public knowledge and was published in the press and  
20 there was mention of his multiple injuries, including  
21 a rib fracture.

22 Q. Do you remember when that was?

- 1 A. I don't know.
- 2 Q. So the information came to you from an entry in the  
3 media or the press?
- 4 A. Yes.
- 5 Q. Was it a newspaper or was it some other form of media?
- 6 A. It would be the news; it would either be online or on  
7 the TV or ...
- 8 Q. But that's something that you noticed?
- 9 A. Yes.
- 10 Q. Do you remember if that was before you gave your  
11 statement to PIRC on 4 June 2015 or after?
- 12 A. I think it would be after, but I don't know. I don't  
13 know about the dates.
- 14 Q. You're not sure about that?
- 15 A. No.
- 16 Q. Right.
- 17 A. But certainly it didn't influence the statement that  
18 I provided.
- 19 Q. Okay. Can I ask you to look at paragraph 77, please.  
20 It's still on the same page. Then you say there:  
21 "I have been asked whether any senior officer spoke  
22 to me or PC Paton prior to leaving the scene. I can

1           only recall speaking to DS Davidson who instructed we  
2           return to the office and we would regroup there.

3           DS Samantha Davidson also told us to take her police van  
4           back to the office."

5           So you were to take her police van back to the  
6           office, is that right?

7           A. No, no, a typo; it was to take our police van back to  
8           the office.

9           Q. Right, okay. So you were still in the same van that you  
10          had arrived in and you went back to Kirkcaldy Police  
11          Office in your own van?

12          A. Yes, in the same Ford Transit van (inaudible).

13          Q. Thanks. So that -- we can make that correction for you.

14          A. Thank you.

15          Q. In relation to officers speaking to you prior to leaving  
16          the scene, the Chair may hear evidence from inspector  
17          Kay, Stephen Kay, and he will maybe tell us that he  
18          spoke to Acting Police Sergeant Maxwell and told him not  
19          to allow the officers to discuss the ins and outs of the  
20          case, and we may hear from Acting Police  
21          Sergeant Maxwell that he spoke to you and PC Paton in  
22          the custody van, so that's your van.

1 A. Mm-hm.

2 Q. And at that point you said you wouldn't be speaking to  
3 anyone or giving a statement until you had spoken to  
4 your federation rep. Do you remember Acting Police  
5 Sergeant Maxwell telling you at the custody van, or  
6 before you left the scene, that officers shouldn't be  
7 discussing the ins and outs of what had happened?

8 A. No, I've got no recollection of that.

9 Q. All right. And then can I ask you when you got back to  
10 Kirkcaldy Police Office, who was in charge at that  
11 stage?

12 A. Upon still arriving back at the station it would still  
13 be PS Maxwell as far as we was concerned.

14 Q. Thank you. Do you remember getting any instructions  
15 when you went back to Kirkcaldy Police Office not to  
16 discuss the incident? In your PIRC statement, 264, you  
17 said specifically "DI Robson didn't tell us not to  
18 discuss the incident", but I'm wondering about any other  
19 instructions you may remember.

20 A. I can't remember much of what happened when we got back  
21 to the canteen. It was -- I mean we had to -- there  
22 were people came in and out, gave us updates -- not

1 updates, but let us know what was happening or  
2 whether -- they were going to go into meetings to find  
3 out what was going to be happening, but I can't recall  
4 any specific message that was passed, I can't recall the  
5 contents of it.

6 Q. How were you feeling at that time when you got back to  
7 the police office?

8 A. Concerned for the wellbeing of the gentleman. Obviously  
9 nobody wants to be involved in an incident like this.

10 Concerned at the nature of the call and what we had been  
11 involved in, and then obviously just wondering what was  
12 going to be happening, what is the process now for --  
13 obviously initially we were concerned it was going to be  
14 a death in custody and then -- none of us were really  
15 aware of what the process would be after that, what do  
16 we need to do and, as I say, people were coming in  
17 saying "We're going away to meetings to find out what's  
18 going to happen, we will get back to you", so it just  
19 turned into a bit of a waiting game.

20 Q. Had you ever been involved in anything like this before?

21 A. No.

22 Q. And you didn't understand what procedure would be

1 followed?

2 A. Yes.

3 Q. When do you feel you received sufficient information to  
4 help you understand what the procedure would be?

5 A. Not that day at any point.

6 Q. So when?

7 A. I lost track of the days afterwards, but I would say the  
8 first time I had a true -- I think -- I mean what needs  
9 to be appreciated is the next day when I came in  
10 I basically left the office and went on sick leave, so  
11 I didn't have a lot of contact with the office and that  
12 at that time, so it was a case of -- I was waiting on  
13 somebody coming to take my statement from me and it  
14 wasn't until I got a phone call asking me to attend at  
15 the police station -- sorry, the police college -- to  
16 provide a statement ...

17 Q. How long were you on sick leave?

18 A. I would say 6 months from the incident.

19 Q. And you were expecting a call from someone to ask you  
20 for a statement?

21 A. Yes. I mean I was coming in and out of the station as  
22 they were requiring me to come in for updates and for

1 TRIM and things like that but, yeah, it was basically --  
2 I will try and remember the exact -- the way it worked,  
3 but when we left that day it was "You will get a -- PIRC  
4 will be in contact with you via Conrad Trickett and then  
5 they will arrange a statement to be noted from you", and  
6 then it was just every time you went in it was - nobody  
7 was really sure what was happening and it was a waiting  
8 game until eventually the first definitive answer I got  
9 was "Please attend the police college (inaudible) and  
10 we'll get a statement noted from you", by the PIRC.

11 Q. Do you remember if Trickett got in touch with you?

12 A. He never did, no.

13 Q. He never did. How did you then find out that PIRC  
14 wanted to take a statement from you?

15 A. I received a telephone call from the Federation lawyer  
16 who was working on -- had been appointed to me by  
17 the Police Federation, asking if I was free.

18 Q. Who was that?

19 A. It was someone from Peter Robson's office.

20 Q. Right. And so you have said that Constable Trickett  
21 never got in touch with you.

22 Can I ask you about a couple of things. We have

1           mentioned DI Robson, first of all.

2           A. Mm-hm.

3           Q. And there may be evidence available to the Chair that he

4           says he spoke to the officers in the canteen after you

5           went back to Kirkcaldy Police Office and requested that

6           they not actively discuss the incident at this time,

7           "Just relax, watch TV and have a cup of tea or coffee".

8           In your PIRC statement you said "Robson did not tell us

9           not to discuss the incident". Can I be clear: are you

10          saying he did not say that or you just don't remember?

11          A. Aye, I don't recall being told that.

12          Q. You don't recall?

13          A. Yes.

14          Q. And then if there's a suggestion that Inspector Kay

15          spoke to officers in the canteen and said that to

16          protect the integrity of the Inquiry and officer welfare

17          he told officers of the pitfalls of discussing the

18          incident and highlighting the anticipated media

19          attention, that he said you were not under suspicion for

20          any offences and you were to utilise the canteen area as

21          respite and he would bar other officers access to the

22          canteen to offer privacy.

1 Do you remember him telling the officers, including  
2 yourself, that information?

3 A. That we were -- we had exclusive use of the canteen,  
4 yes, but again, I can't remember the exact ins and outs  
5 of what he said.

6 Q. Okay. And if there's evidence available to the Chair  
7 that Conrad Trickett, who was I understand the  
8 post-incident manager --

9 A. Mm-hm.

10 Q. -- said there was no need -- he told officers there was  
11 no need to talk about the incident amongst themselves,  
12 made clear they shouldn't speak to each other about the  
13 incident or their involvement in it and he arrived at  
14 Kirkcaldy Police Office as post-incident manager and  
15 spoke at the first meeting, so it would be some time  
16 around 11.30 that morning. Do you remember him sharing  
17 that information with you?

18 A. Yes, I do.

19 Q. You do.

20 A. Yes.

21 Q. And what I have said, is that what he told you?

22 A. I can't remember exactly, but yeah, it was -- they were

1 introducing it as a post-incident management, which was  
2 something that I had never partaken in before and  
3 that -- along the lines of that we shouldn't really be  
4 talking to each other about the incident and he was here  
5 to make sure that if there was anything it would be  
6 noted down, and he had a book that was basically keeping  
7 a track of anything that was -- it was my understanding  
8 that he would be keeping a track of anything that was  
9 said or not said or ...

10 Q. Did he remain with you for the rest of the day?

11 A. Yes.

12 Q. And as far as you know, he had a book to note things  
13 down?

14 A. That is -- aye.

15 Q. Right, so up until around -- if we take it for the  
16 moment it was around 11.30, or some time shortly after  
17 that that he arrived, did you discuss the incident  
18 before he arrived?

19 A. There was discussion about the incident, as in like the  
20 injuries to Nicole and kind of why PAVA didn't work  
21 because I was under the impression that PAVA worked on  
22 most people, but as to the actual what happened and who

1 done what, there was no discussion in relation to that.

2 Q. And after Conrad Trickett spoke to you in the morning,  
3 was there any conversation after that period?

4 A. No.

5 Q. About what had happened?

6 A. No, there was -- I mean there was no real conversation  
7 about the actual incident, it was just stuff that was  
8 associated to the incident, if that makes sense, it  
9 wasn't --

10 Q. What do you mean?

11 A. Like I say, again, I thought PAVA worked on everybody,  
12 I thought that was the case, and why didn't it work in  
13 this, so it is kind of connected to that slightly but it  
14 wasn't "Oh, I sprayed him with the PAVA and this was his  
15 reaction and this is what happened and did you see him  
16 doing that? Did you see this happening?"

17 Q. Did you tell people what you had done?

18 A. Yes, that the spray didn't work on him and at that point  
19 I was concerned. Again, that's -- this is the overlap  
20 between the welfare issue when you're sitting down and  
21 dealing with the trauma that you have just been through  
22 as a team and trying to still be professional and

1 not ...

2 Q. So you told people that you had sprayed him with your  
3 PAVA?

4 A. Mm-hm.

5 Q. And did PC Paton tell people that he had sprayed him  
6 with his CS spray?

7 A. I don't know if it's a case he told people because  
8 everybody was aware that he was under the effects of his  
9 CS spray.

10 Q. Still at that point in the canteen?

11 A. Yes, aye, because the CS spray, if you move about, it's  
12 on your clothing, it can go back up into a cloud again  
13 so aye, and he still had red and sore eyes. In relation  
14 to my PAVA, I mean, that was brought back to the office  
15 and it was lying on the canteen table so everybody knew  
16 that the PAVA had been discharged, it was on the table,  
17 along with my handcuffs and my radio.

18 Q. Did PC Tomlinson tell people what he had done?

19 A. Yes, aye.

20 Q. And what about the other officers, PC Smith?

21 A. No, there wasn't a lot of discussion. As I say, the  
22 only reason that I think PC Tomlinson -- he became quite

1           upset because of the baton strike that he had put in and  
2           that was, as I say, trying to get the balance between  
3           welfare ...

4           Q. Where was he upset? Was that just in the canteen or  
5           before then?

6           A. That was before then, when we first arrived back we were  
7           in the writing room in Kirkcaldy Police Station.

8           Q. And why was he upset?

9           A. Just because of the circumstances that he had put in  
10          the baton strike and then potentially the male was -- or  
11          appeared to be dying or dead.

12          Q. And did he remain upset in the canteen?

13          A. No, not throughout the day. He managed to -- got the  
14          initial concern I think out of the way and then we were  
15          looking -- we will just see what's going to happen,  
16          we'll ken -- we'll see what the next step is, we will  
17          see what the process is and we will just take it from  
18          there.

19          Q. Okay. You talked about the officers in the canteen and  
20          you have talked about the discussions you have had. Did  
21          you leave the canteen during that day?

22          A. Yes.

1 Q. And what sort of areas did you go?

2 A. I went in the back yard to make a telephone call, which  
3 is just outside the canteen. I went to the custody area  
4 to get cups, so that people could get refreshments, and  
5 in order to hand over my equipment I had to go back  
6 upstairs to the change -- the locker rooms to retrieve  
7 my equipment at the end of the day to hand it over.

8 Q. Did you speak to other officers when you were out of the  
9 canteen?

10 A. In the canteen -- sorry, in the custody area, yes,  
11 somebody asked about the welfare for Nicole, if we had  
12 had an update as to how she was.

13 Q. Do you remember who that was?

14 A. That would be Constable Geddes.

15 Q. Brian Geddes?

16 A. Brian Geddes, yes.

17 Q. And so you had a conversation with him?

18 A. Yes, because he is part of our team, but he was seconded  
19 that day to work in the custody to backfill for short  
20 staff, so yes, he is obviously part of the team. If he  
21 had been working that day he could have been at that  
22 call and he was concerned for his colleague so he was

1           just asking for -- what Nicole's injuries were and if it  
2           she was okay.

3           Q. Explain why you were in the custody area?

4           A. To get cups.

5           Q. Cups for your coffee?

6           A. Yes, polystyrene cups for -- I was also custody trained  
7           at that time so I knew where the cups were.

8           Q. Why weren't there cups in the canteen?

9           A. The canteen is a place for eating. There is -- it's not  
10          well stocked.

11          Q. Are there staff there serving food?

12          A. No, no, no, no.

13          Q. It's not that type --

14          A. It's a kitchen as opposed to a canteen, but aye, there's  
15          days where you would need to share the shift fork. It  
16          wasn't well stocked.

17          Q. Okay. You mentioned there's a back yard just outside  
18          the canteen.

19          A. Yes.

20          Q. Is there a doorway between the canteen and the back  
21          yard?

22          A. Yes, there would be two sets of doors.

- 1 Q. Two doors?
- 2 A. Yes.
- 3 Q. One in, one out, or just different areas?
- 4 A. No, different areas. So you come out of the canteen,  
5 that takes you into the main corridor, and then at the  
6 bottom of the corridor you go out to the main yard.
- 7 Q. People coming in from the back yard: can they get into  
8 the canteen from that area then, from that door?
- 9 A. They would come in that door, but they would then need  
10 to go through the canteen doors to enter and that's  
11 where there were signs up saying no staff allowed in  
12 there.
- 13 Q. So who put the signs up?
- 14 A. I don't know who done it, but it was organised I think  
15 by Inspector Kay, but I don't know who ultimately got  
16 round to --
- 17 Q. When did they get put up?
- 18 A. Pass. Time-wise, pass.
- 19 Q. Up until the signs went up, were people just walking  
20 into the canteen freely?
- 21 A. I wouldn't say walking into the canteen -- it's  
22 a through road into custody. So I think at one point

1 one of the custody officers came in that door and walked  
2 through to get into the custody area, but aye, it was  
3 shortly after that it was -- nobody was allowed to come  
4 in.

5 Q. Could I ask you to look at paragraph 84 of your  
6 statement, please. You say you were waiting on a senior  
7 person to decide on a course of action and let me just  
8 see ... so it's line 3, start with line 2:

9 "The impression [at the end of line 2] I was left  
10 with when we were asked to wait in the canteen was that  
11 we were awaiting on someone senior to decide on the  
12 course of action and tell us what was expected of us.  
13 This didn't happen at all until 4 pm when we were told  
14 that our clothing and equipment was being seized for  
15 forensic examination. Up until that point we were not  
16 asked to give statements, fill in any paperwork or asked  
17 not to discuss what happened."

18 Now, it then goes on to say:

19 "The canteen area was being treated as a welfare  
20 area for the officers involved. We all mingled together  
21 and left items of uniform lying about."

22 In light of what we have said about Conrad Trickett,

1 the post-incident manager, and your recollection of him  
2 speaking, do you want to amend that part of your  
3 statement at paragraph 84, that:

4 "We were awaiting on someone senior to decide on the  
5 course of action and to tell us what was expected of us.

6 This didn't happen at all until 4 pm."

7 A. Yes.

8 Q. But Conrad Trickett had spoken to you -- he was the  
9 post-incident manager -- prior to 4 pm, hadn't he?

10 A. Mm-hm.

11 Q. So when you say it didn't happen, do you want to amend  
12 that or explain it in a little bit more detail?

13 (Pause).

14 Who told you the equipment was being seized?

15 A. I think someone came into the canteen to tell us that  
16 would be happening.

17 Q. Do you remember who that was?

18 A. No.

19 Q. Was that at 4 o'clock, as you say in this statement?

20 A. It might have been just before then.

21 Q. Right. So between Trickett speaking to you and this  
22 thing around about 4 o'clock, do you remember which

1 senior officers spoke to you during the course of the  
2 day, if any?

3 A. I could remember -- it was that long ago now.

4 Colin Robson, Stephen Kay and there was -- I think there  
5 was another female super whose name I can't remember,  
6 but she came through to tell us that she was going to  
7 a gold meeting and she would get back to us with some  
8 information as to what was happening next.

9 Q. All right. Do you remember what those senior officers  
10 said to you? What did Kay say to you?

11 A. I honestly can't remember.

12 Q. You can't remember. Let's move on then. Still in  
13 paragraph 84, you talk about you mingled together and  
14 left items of uniform lying about. Can I also ask you  
15 to look at two other paragraphs, 91 and 93. We will  
16 start with 91:

17 "When I returned to Kirkcaldy Police Office my stab  
18 vest and equipment was placed on the floor within the  
19 canteen. I continued to wear my uniform until it was  
20 seized at the end of the day."

21 And then 93:

22 "When I initially returned to Kirkcaldy Police

1 Office, none of my equipment was initially recovered.  
2 At the end of the day my clothing, and all PPE including  
3 baton was taken by me to a designated office and  
4 forensically seized by other officers. I do not know  
5 who I gave this equipment to. I would describe them as  
6 two officers in full forensic suits. I believe all  
7 other officers' equipment was also seized at the end of  
8 the shift."

9 So there was a process whereby all the officers'  
10 equipment was seized at the end of the shift.

11 A. Yes.

12 Q. But up until then it was in the canteen with everyone,  
13 and you have described at paragraph 84 you left items of  
14 uniform lying about. We can go back up to 84 --

15 A. Yes, that's --

16 Q. -- to let you see that. That's the last sentence there.

17 A. Mm-hm.

18 Q. And was that the same for everyone?

19 A. Yes.

20 Q. Right. When you said you left items of uniform lying  
21 about, did that include your hi-vis vest and your stab  
22 vest, the sort of black body armour and the hi-vis?

1 A. I believe it would have been, but I'm also aware that in  
2 a previous statement I have said I left it upstairs when  
3 I first arrived, so ...

4 Q. So what's your best recollection now?

5 A. My best recollection would be -- and it makes more sense  
6 because we went upstairs first of all, was it probably  
7 would have been left upstairs at that point and then we  
8 went downstairs to the canteen.

9 Q. So yours was left upstairs?

10 A. I would be happy to go with the initial statement which  
11 says it was upstairs because that also fits in with the  
12 chain of events that day where we went back upstairs  
13 first of all.

14 Q. And is that your recollection now that you left it  
15 upstairs when you arrived back?

16 A. I have no recollection of where it was, just the fact  
17 that we were in the canteen and I had my uniform on  
18 minus my stab vest and I just -- I almost assumed that  
19 because I was in the canteen without my vest, my vest  
20 would have been besides everybody else's.

21 Q. So everyone else's vests were lying about?

22 A. Aye, equipment was wherever people had taken it off that

1 day.

2 Q. Right. And you said you wore your uniform; is that  
3 essentially what you're wearing now?

4 A. Yes, yes.

5 Q. Without the body armour and the hi-vis?

6 A. Yes.

7 Q. And is that what you were wearing in the cell -- the  
8 custody area?

9 A. Yes.

10 Q. And can I ask, were other -- apart from the comments of  
11 other people coming in, senior officers, were there any  
12 other members of staff who were coming in and out of the  
13 canteen that day? Do you remember?

14 A. Like I say, I think initially one person who was  
15 attending for his work walked through the canteen and  
16 sort of realised that there was maybe something ongoing  
17 and quickly exited the canteen towards the custody area.

18 Q. He is the person you remember?

19 A. Yes.

20 Q. Apart from that, you don't remember anyone else?

21 A. Who wasn't involved in us coming or going? No,  
22 I wouldn't think, no.

1 Q. Okay. Can I ask you when PC Short came back to  
2 Kirkcaldy Police Office?

3 A. Mm-hm. Oh, the time, sorry?

4 Q. What time, sorry?

5 A. No, again, I wasn't keeping track of the time that day.

6 I have no idea what time it was she came back.

7 Q. Do you have a sense of how long it was after you  
8 returned that she came back?

9 A. It was -- I mean, we had been back, been upstairs, back  
10 down to the canteen, so it was a while after us, but  
11 no -- it wouldn't be as far as, like, four hours or  
12 anything like that, it was after us.

13 Q. What was she wearing when she came back?

14 A. I can't remember. I could just remember her sitting on  
15 the sofa in her blacks, the same as everybody else.

16 MS GRAHAME: Right. Could you just give me a moment please,  
17 constable.

18 (Pause).

19 Thank you very much. I'm not completed yet, but I'm  
20 conscious of the time.

21 LORD BRACADALE: We will stop for lunch then and sit again  
22 at 2 o'clock.

1 (1.00 pm)

2 (The luncheon adjournment)

3 (2.00 pm)

4 LORD BRACADALE: Ms Grahame.

5 MS GRAHAME: Thank you. Constable Walker, I omitted to ask

6 you one question earlier today and I just want to ask

7 you if you want to comment on this. There may be

8 evidence available to the Chair in due course -- we have

9 not heard this yet, but it may become available, to

10 suggest that Sheku Bayoh did not stomp on PC Short on

11 her lower back. You have given a description of what

12 you saw.

13 A. Yes.

14 Q. Do you wish to comment on that evidence?

15 A. No, that was my recollection.

16 Q. Thank you.

17 A. I'm happy with that.

18 Q. Thank you. I would like to move back to where we were

19 just before we broke for lunch. I was going to come on

20 to the question of statements and status.

21 A. Yes.

22 Q. And when I talk about status, I mean your status as

1           either a witness or as a suspect having to contemplate  
2           possible criminal charges.

3           A. Yes.

4           Q. Could I look at paragraph 94 please of your Inquiry  
5           statement. This says:

6                    "Whilst at Kirkcaldy Police Office I was not  
7           formally given my status. I was aware that some  
8           supervisory officers came by the canteen and offered  
9           support and stated that we had nothing to worry about in  
10          relation to the incident, that we were not detained as  
11          suspects and would be treated as witnesses. I took this  
12          to be merely words of encouragement and support not a  
13          formal briefing or declaration. I have no recollection  
14          of ever being spoken to by the PIRC or briefed by the  
15          PIRC at any point. I have no recollection of receiving  
16          any advice regarding my status."

17          Looking at that paragraph, can I ask you what did  
18          you mean when you said you were not formally given your  
19          status?

20          A. I mean, I think at that point in relation to the whole  
21          being in the canteen we knew at that point that it would  
22          become a PIRC investigation because of a death in

1 custody, and if I'm being honest, I was actually waiting  
2 on -- or expected or had an anticipation of the PIRC  
3 arriving in the canteen to formally take over "This is  
4 what's happening", you know, "This is the SOP that we're  
5 going to be working through, this is what the next steps  
6 are going to be", and, as I say, that never seemed to  
7 happen that day.

8 Q. So you would have -- when you say "formally", you would  
9 have expected the PIRC or someone from the PIRC to come  
10 in and speak to the officers in the canteen?

11 A. Yes, as a form of -- as an official briefing that they  
12 would be taking over the investigation and this is  
13 what's going to happen.

14 Q. But that didn't happen that day?

15 A. No.

16 Q. And then paragraph 102, if we can have a look at that on  
17 your statement.

18 "I was never requested to complete a statement by  
19 anyone."

20 Now, we have discussed conversations that you have  
21 had with Conrad Trickett and such-like, and I think when  
22 I looked at your statement previously there was

1 a suggestion that you were thinking something would be  
2 done before 4 o'clock and your equipment -- you were  
3 told your equipment was seized, but do you -- were you  
4 ever asked to give operational statements during that  
5 day by any of the senior officers such as  
6 Conrad Trickett?

7 A. No, not that I can recall.

8 Q. And was any correspondence or anything along those lines  
9 of requests for statements from PIRC ever shared with  
10 you by anyone?

11 A. No.

12 Q. No.

13 A. As in like written or correspondence?

14 Q. Any email correspondence sent to you --

15 A. No, nothing like that.

16 Q. -- or anything along those lines?

17 A. No. The canteen it doesn't have computers, so we  
18 wouldn't have access to email, nothing was passed to us,  
19 like printed out either.

20 Q. Right. And are you aware of any request with PIRC --  
21 involving PIRC and the MIT, major incident team, on 7 or  
22 8 May that year regarding giving a statement?

1 I understand you were asked to go and see a DI Wilson at  
2 some point?

3 A. I don't know -- I certainly can't recall the name but we  
4 were asked to go and speak to the MIT team and we were  
5 asked by them if we wished to provide a statement, but  
6 we were under the impression that that was not the PIRC  
7 Inquiry, that was not the PIRC that was requesting  
8 a statement. We were basically advised that the -- that  
9 that was the MIT team were running a parallel  
10 investigation or something along these lines, but it was  
11 not made clear that it was a PIRC request at that point.

12 Q. So that's not something you were aware of?

13 A. No.

14 Q. And when you say "We", who do you mean "We"? Who are  
15 you referring to?

16 A. Myself and other officers.

17 Q. Were all of the other officers who had attended  
18 Hayfield Road called together to that meeting?

19 A. It wasn't even called to a meeting, we came in for  
20 a discussion of TRIM and they basically said "The MIT  
21 team is upstairs wanting to have a word with you",  
22 then -- but, aye, "it's a tick box exercise and you

1 don't need to provide a statement."

2 Q. Who told you that?

3 A. Inspector Alan Seath.

4 Q. Sorry, I didn't hear that?

5 A. Inspector Alan Seath.

6 Q. Seath, thank you. And you have mentioned TRIM a couple  
7 of times and I realised I have not actually asked you to  
8 explain that acronym. Do you mind telling us what --

9 A. I can't mind exactly what it stands for but as I say,  
10 basically after a traumatic incident it's a debriefing,  
11 a form of counselling session through trained officers  
12 who just basically establish if you are maybe needing  
13 a wee bit further help to deal with an incident you have  
14 just been dealing with.

15 Q. Thank you. But in relation to this discussion with the  
16 MIT, Seath had told you didn't have to provide  
17 a statement and so you declined to provide a statement  
18 at that time?

19 A. Yes, because that was my understanding at that time,  
20 that we were to go and we were to decline it and then  
21 because we would hear -- the PIRC would note a statement  
22 in due time, in due course.

1 Q. Thank you. Can I ask you to look at paragraph 96 of  
2 your statement and this relates to notebooks and you  
3 were asked about your understanding of obligations and  
4 completing paperwork:

5 "... including my notebook, a use of force form,  
6 a use of spray form insofar as they related to the  
7 events at Hayfield Road. My understanding is that in  
8 relation to the use of force/CS spray form, these are to  
9 be completed prior to terminating duty by officers, or  
10 if unable, by the supervising officers. In relation to  
11 my notebook, my understanding is that this is at the  
12 discretion of the officer."

13 Can I just go through that paragraph. The use of  
14 force and the CS spray forms; they're two separate  
15 forms, are they?

16 A. I think they might have been combined now but I'm not  
17 100% sure. They were changing quite regularly at that  
18 point and being amended.

19 Q. Do you remember what the position was in 2015?

20 A. They were on the computer system but I can't remember  
21 which form was what, if they were combined or not.

22 Q. So you had access to them on the computer system?

1 A. Yes, we would have to go into the computers and search  
2 for them.

3 Q. That's how you would access them, I should say.

4 A. Yes.

5 Q. And they are completed prior to terminating duty by  
6 officers, use of force or use of spray forms?

7 A. Yes.

8 Q. You didn't do that on that day though, did you, before  
9 you left?

10 A. No.

11 Q. And then you say if you're unable, by the supervising  
12 officers. Now, who would your supervising officer be?

13 A. On that day, I couldn't tell you, I couldn't tell you.

14 I mean it's like I said, on that day we were waiting on  
15 somebody coming in to take the lead as to what we were  
16 doing and what was happening and what was expected of  
17 us, so in relation to filling in forms and all the rest  
18 of it, that was just something that we weren't  
19 considering. Everybody on the team was (inaudible).

20 Q. Can you explain -- we have heard about senior officers,  
21 we have heard about different ranks; what's the  
22 difference between that and a supervising officer?

1 A. I'm not sure, to be honest. Aye, just somebody of sort  
2 of senior rank would be a supervising officer.

3 Q. It's just it's words you use and I'm just -- this is  
4 your statement. I'm just wondering if -- what were you  
5 meaning by that description?

6 A. Like, if we couldn't do it then the sergeant could do  
7 it, if the sergeant couldn't do it then the inspector  
8 could do it, so anybody that is in the chain of command.

9 Q. So more senior officers to you?

10 A. Yes, yes.

11 Q. And that would be Acting Police Sergeant Maxwell?

12 A. He was in the canteen beside us so he wouldn't be in  
13 a position to do that.

14 Q. So he wouldn't be one of those supervising officers at  
15 the time?

16 A. Again, I don't know. I don't know what the process was  
17 in the canteen. That was -- we were all kind of  
18 struggling with that.

19 Q. All right, all right. In relation to the notebook, you  
20 have said your understanding was that it was at the  
21 discretion of the officer. What do you mean by that?

22 A. Just in general notebooks are for keeping the officer's

1 notes, if you need to write something down, you write it  
2 down. It's best practice to write it down and you  
3 should write stuff down but it's not a must, for want of  
4 a ...

5 Q. So in your view, there's no obligation on you to  
6 complete that?

7 A. It's good practice because you may need to rely on your  
8 notebook in the future.

9 Q. Right. People will have seen officers or maybe even on  
10 TV shows turning up and being asked to explain and they  
11 pull their notebook out --

12 A. Yes, refer to my notebook for notes I have made at the  
13 time.

14 Q. Were you ever advised by anyone to complete your  
15 notebook?

16 A. No.

17 Q. In the canteen or --

18 A. No, I was never told to do so.

19 Q. Now, in paragraph 100 of your statement you say -- if we  
20 can have that on the screen, please. You say that you  
21 recall you were asked by PC Tomlinson if he should  
22 complete his notebook:

1 "I advised him that I would not be completing my  
2 notebook until advised that we should. I was not aware  
3 of the processes following a serious injury/death in  
4 custody as to what should be completed and by who."

5 So you weren't aware of the processes that should be  
6 followed at that stage?

7 A. Yes, I had no idea.

8 Q. And do you think that you were influential in relation  
9 to PC Tomlinson by giving him that --

10 A. I didn't give him advice as to what he should do, but  
11 I advised that I wouldn't be filling mine in until  
12 somebody gave us some sort of guidance on it.

13 Q. So you simply told him you wouldn't be completing his  
14 notebook, but you didn't advise him not to complete his?

15 A. No, I just told him what I would be doing.

16 Q. In terms of the difference in level of experience, you  
17 have told us that you had ten years' service at that  
18 time. What stage was PC Tomlinson at?

19 A. He was younger in service but I couldn't give you an  
20 exact number.

21 LORD BRACADALE: Can I just be clear, I have understood you  
22 to say you had a total of 17 years, or is that now?

1 A. That's now.

2 LORD BRACADALE: That's now, thank you.

3 MS GRAHAME: Thank you. Can we look at your PIRC statement  
4 please, 264, now. Could we look at page 11, please, and  
5 paragraph 5. This starts:

6 "I returned to the canteen and about half an hour  
7 later I went home. While I was in the canteen with my  
8 team, the advice from Amanda given was to say nothing to  
9 anyone at that time. That was my intention anyway until  
10 we found out more about what kind of inquiry was going  
11 to take place and what the man had died of. I also made  
12 it known that I would not be completing my notebook  
13 either and I suggested that others don't do theirs.

14 Some of the team, I'm not sure who, spoke about doing  
15 their notebooks but I wasn't doing that. No other  
16 officers outwith the team gave any instructions on their  
17 notebooks."

18 So you have said in this statement "I suggested that  
19 others don't do theirs". Do you see that now? This is  
20 your statement that was given to PIRC on 4 June 2015.  
21 Should we prefer this version because it was closer to  
22 the time?

1 A. Yes, but I think the suggestion was that I -- I mean  
2 I wasn't advising to him not to do his, it was a case of  
3 kind of wait and see what is going to be asked of you as  
4 to what the next step is. If you have to fill it in,  
5 you have to fill it in. It wasn't a: don't fill it in;  
6 if you're asked to fill it in, do it, but wait and see  
7 what's asked of us first or what the process is.

8 Q. And then can I ask you about Amanda Givan. She -- you  
9 say the advice from Amanda Givan was to say nothing to  
10 anyone at that time. Do you remember what she said in  
11 the canteen.

12 A. No.

13 Q. No. Okay. Do you remember if she said anything about  
14 your status or seeking confirmation of your status?

15 A. No. I mean she was waiting in the canteen with us.  
16 I think she was in the same sort of situation as the  
17 rest of us, but she was waiting to find out what was  
18 going to be happening next and it was just it turned  
19 into a waiting area.

20 Q. Okay, thank you. Can we look at an SOP on the notebooks  
21 please, PS 10937. I've got a note here, page 4. Could  
22 we move up the page slightly. Here it is, 3.4:

1 "Entries in notebooks and PDAs should be made at the  
2 time or as soon as possible thereafter. The date and  
3 time of every entry must be recorded in the margin of  
4 a notebook. On no account should you make notes  
5 elsewhere and later copy them into your notebook."

6 So this is the notebooks SOP, standard operating  
7 procedure, and it seems to say entries should be made at  
8 the time or as soon as possible thereafter. Were you  
9 aware of this SOP?

10 A. Yes.

11 Q. It doesn't seem to indicate in there that it is a matter  
12 for discretion that notebooks are completed; it seems to  
13 be recommending that the entries are made as soon as  
14 possible.

15 A. Yes, entries that you're going to make should be made as  
16 soon as possible.

17 Q. Can I ask you now to look at the investigation of deaths  
18 SOP, PS 11110, and this is page 6. Sorry, I think we  
19 might have passed it. There it is. If we can go down  
20 please.

21 It is 4.7:

22 "The role of the initial attending officers is

1 critical in all suspicious deaths."

2 And it indicates that:

3 "The information and circumstances which officers  
4 will be presented with at the outset of the Inquiry are  
5 essential for allowing early decisions to be made."

6 And then 4.8:

7 "It is therefore of critical importance that the  
8 initial officers in attendance record all relevant  
9 details in their official police notebooks or PDAs and  
10 ensure that such information is passed to the appointed  
11 SIO without delay."

12 Were you aware of that part of the SOP?

13 A. That doesn't apply because we're not the initial  
14 attending officers at a suspicious death.

15 Q. Right, okay, so you didn't think that applied?

16 A. No.

17 Q. Can I ask who the SIO was in any event?

18 A. On the day?

19 Q. In relation to yours on 3 May?

20 A. No idea.

21 Q. You don't know? Can I ask you about the use of force  
22 and the use of spray forms. I understand from your

1 statement that you need access to a computer to be able  
2 to complete those; is that correct?

3 A. Yes.

4 Q. And were there any computers in the canteen?

5 A. No.

6 Q. Can I ask you about paragraph 97 of your statement  
7 please. It's at the bottom. Did you want to complete  
8 these forms that day? If you had had access to the  
9 computer, would you have wanted to complete those forms?

10 A. I would have waited on somebody, like I say, taking the  
11 lead. We were in a state of shock at what had happened  
12 and we -- genuinely we were just waiting on somebody  
13 coming in to take the lead, for want of a better term to  
14 hold us by the hand and take us through the process. We  
15 had no idea what was going on, what was required, what  
16 we had to do.

17 Q. Okay. So looking at paragraph 97, when you talk about  
18 the use of spray forms:

19 "... at no time were any of us afforded access to  
20 a computer. Additionally I was unsure and remain unsure  
21 as to whether I was legally required to complete these  
22 forms in the case of a death in police custody,

1 particularly in respect of receiving legal advice on  
2 whether to document any aspect of the events."

3 So again, is this an example of one of the areas of  
4 uncertainty and lack of assurity that you had on the  
5 day?

6 A. Yes, aye.

7 Q. And can I ask you to look at PIRC 01344, please. This  
8 is a memorandum, a memorandum regarding operational  
9 discharge of CS incapacitant spray. Now, I know you had  
10 your PAVA spray?

11 A. Yes.

12 Q. And it is dated 1 April 2013 from the Assistant Chief  
13 Constable, Local Policing West, to divisional  
14 commanders, heads of department. Do you see that?

15 A. Yes.

16 Q. Have you seen this before?

17 A. The memo?

18 Q. Yes.

19 A. I can't recall reading that specific memo, but we get  
20 a lot of them.

21 Q. Right. So let's -- I'm going to go through this, if  
22 that's okay. So you see that from 1 April 2013, there's

1 a legal requirement for the Police Service of Scotland,  
2 the SPA and the PIRC, to ensure compliance with the  
3 provisions and it gives certain statutory provisions in  
4 the Human Rights Convention:

5 "This means that on every occasion where CS  
6 incapacitant spray is discharged operationally, there is  
7 a legal requirement to record the incident and report  
8 onwards to PIRC within 24 hours."

9 And then there is mention of a particular form  
10 that's been prepared and is available on the intranet  
11 for that purposes and then it says:

12 "When complete, the form should be emailed to ..."

13 And we have redacted out some details:

14 "... marked for the attention of Officer Safety  
15 Training, Local Policing West, who will be responsible  
16 for its onward transmission to the Police Investigations  
17 and Review Commissioner."

18 And:

19 "The completion of this form is separate to the  
20 existing use of force form ..."

21 That is on the system as well:

22 "... which must still be submitted."

1           So would it appear that at least in April 2013 there  
2           is two forms?

3           A. That would suggest so at that point, yes.

4           Q. So there's the use of force form, and then a separate  
5           one for use of spray, use of CS spray?

6           A. Yes.

7           Q. So were you aware of this change in the legislation that  
8           required these forms to be completed?

9           A. I was aware that the forms had to be completed.

10          I wasn't sure of the legal mechanism behind it, but

11          I was aware that the forms needed to be completed.

12          Q. Thank you. Can I ask you to look at PS 10933, the use  
13          of force SOP, please, and I'm going to look at  
14          paragraph 6.2 and it should start:

15                 "Use of force is defined as use of the baton to  
16                 strike an individual or individuals, or the operational  
17                 discharge of CS incapacitant spray."

18          So the use of force would be triggered where a baton  
19          is used or a spray is sprayed?

20          A. Yes.

21          Q. Those are both considered to be use of force by  
22          an officer. Then can we look at 6.4:

1           "Additionally, on every occasion where CS  
2           incapacitant spray is discharged operationally there is  
3           a legal requirement to record the incident and report it  
4           to the PIRC within 24 hours."

5           And then moving on to 6.5, it incorporates reference  
6           to the form and says:

7           "Forms must be submitted as soon as reasonably  
8           practical after the incident but no later than the end  
9           of the discharging officer's tour of duty, and if the  
10          officer is unavailable then a supervisor must arrange  
11          its completion."

12          So again, were you aware of the contents of this  
13          SOP?

14          A. Again, I think that's referring back to the same form,  
15          so it's just a case of the forms would need to be  
16          completed.

17          Q. Okay. Can I ask you about any other discussions that  
18          you had with Amanda Givan. So I will refer you -- your  
19          paragraph 82 in your statement mentions this and it  
20          says:

21          "We were joined by Police Federation representative  
22          Amanda Givan at some time that morning and later by

1 Chief Inspector Conrad Trickett. Several other  
2 supervising officers passed through and spoke with us at  
3 points throughout the day but did not remain."

4 When Amanda Givan was with you that morning in the  
5 canteen, did she give you any advice about completing  
6 forms or completing paperwork?

7 A. No.

8 Q. No. Right. Now, I know you were up-to-date with all  
9 your training in May of 2015; is that correct?

10 A. Yes.

11 Q. I would like to ask you some questions about race. You  
12 have answered -- there's about seven paragraphs in here  
13 where you comment on race and you were asked specific  
14 questions about whether you had taken it into account or  
15 not.

16 Can you tell us what training you have received on  
17 race, in equality and diversity?

18 A. Equality and diversity would be -- the first week or two  
19 when I went to the police college was dedicated solely  
20 to diversity training and then I think there's ongoing  
21 modules, but the majority of it was at the police  
22 college.

1 Q. And the ongoing modules, are they refresher training  
2 that you continue to get?

3 A. Yes, I mean occasionally you get sort of memos coming  
4 out when it is coming up to religious festivals and  
5 things like that, to be -- like, extra activity around  
6 about mosques and that at certain times of the year, you  
7 do get supplied just sort of reminders and refreshers.

8 Q. And then in February 2014, so that's the year prior to  
9 this, I think your training log records indicate you  
10 received an equality and diversity values and ethics  
11 briefing, was that correct?

12 A. I can't recall.

13 Q. But you were getting up-to-date equality and diversity  
14 training at that time?

15 A. Yes, yes.

16 Q. And of the training that you had had, what sort of  
17 topics did that cover? Do you recall?

18 A. So what it would ... I can't recall the exact, but it's  
19 just being aware of other people's cultures and  
20 religions and, like, needs that might be required and  
21 sudden deaths that we're dealing with, again religious  
22 and cultural beliefs in relation to post mortems and

1 just to be sensitive when dealing with things like that  
2 just to take into consideration that there might be  
3 religious and cultural needs.

4 Q. And did that include dealing with members of the black  
5 community?

6 A. Yes.

7 Q. And tell us, if you were to respond to a call tomorrow,  
8 for example, that a black man was in possession of  
9 a knife, thinking about the racial awareness training  
10 that you have had, would you do anything differently  
11 tomorrow than you did in 2015?

12 A. No.

13 Q. Do you ever take someone's physical characteristics or  
14 skin colour or religion and make assumptions about them,  
15 categorise them that they will be a particular type of  
16 person? Do you ever make assumptions, for example, that  
17 a black person is maybe more likely to be a terrorist?

18 A. No.

19 Q. What -- on the training you have had, what did you  
20 learn, if anything, about unconscious bias?

21 A. It's basically along the lines, like that example that  
22 you have given, assuming that somebody that's black is

1 a terrorist but without actively thinking it but just  
2 being almost instinctively and reacting to them that  
3 way, you know. I suppose an example would be --  
4 you know, immediately becoming fearful of a group of  
5 black teenagers standing as a group and then walking  
6 away from them on the other side of the road without  
7 actually making that conscious decision would be my  
8 understanding. You know, it's something that you do  
9 subconsciously without actually ...

10 Q. And in the training, were you able to identify any areas  
11 of unconscious bias in your own beliefs and perceptions?

12 A. No.

13 Q. Were you ever asked to do that as part of the training  
14 that you have received?

15 A. No. I mean obviously as part of the training it is to  
16 make you look at your own actions and to evaluate your  
17 own actions, yes, but --

18 Q. You don't recall ever being asked to think about your  
19 own unconscious biases, or to identify any that you may  
20 have?

21 A. No.

22 Q. No. So if the -- the learning points from the training

1           that you have had about bias, how have you implemented  
2           those or incorporated those into your everyday work as  
3           a police officer?

4        A. As I say, the main one for me is the cultural awareness,  
5           when you're coming to deal with things like sudden  
6           deaths and, you know, that there's -- I mean that's the  
7           one that jumps to mind is the need for, like,  
8           post mortems and stuff, where the Fiscal is going to get  
9           involved there could be post mortems and that might be  
10          against cultural beliefs and the fact that some  
11          religions require the body to be buried within 24 hours  
12          or 48 hours, and it's just sensitivities that you need  
13          to be aware of, and then obviously for the custody  
14          training side of it, the fact that some religions  
15          obviously require hands to be washed before eating food  
16          and that -- you know, because if you're going to give  
17          somebody food, then you've got to give them the  
18          opportunity to wash their hands first and that's a sort  
19          of religious belief, it's not just the case is, you  
20          know, assuming that somebody is just being an awkward  
21          custody because they're wanting to do this, wanting to  
22          do that, there's actually a legitimate reason behind it.

1 Q. And as well as those, how did they inform your practice  
2 as an officer on a day-to-day basis? Presumably not  
3 every day you're dealing with post mortems, or that type  
4 of thing. So were there things that you changed about  
5 your day-to-day work in light of the training that you  
6 have received?

7 A. I wouldn't say that I have needed to change my way  
8 because I have always tried to deal with people fairly  
9 and honestly and equally.

10 Q. Okay. Have you ever come across any examples of racial  
11 discrimination at Kirkcaldy Police Office?

12 A. No.

13 Q. Have you ever come across any racist jokes or comments?

14 A. No.

15 Q. If you did come across anything like that, how would you  
16 respond?

17 A. Challenge them. That's not acceptable.

18 Q. And is that the way that senior officers would respond?

19 A. I don't know. You would need to -- that's something you  
20 would need to take up with them.

21 Q. And when you say "Challenge them", what do you mean by  
22 that?

1 A. Just tell them that that sort of behaviour's not  
2 acceptable.

3 Q. Have you ever seen your colleagues exhibit that type of  
4 behaviour, to make racist comments or racist jokes?

5 A. No.

6 Q. At the time of Mr Bayoh's death, so May 2015, what  
7 awareness did you have at that time about public  
8 concerns about the use of force by police officers,  
9 particularly against black men?

10 A. A lot of it was getting reported in the news from  
11 America, that the Black Lives Matter campaign was really  
12 forming and that there was a lot of news coverage of  
13 deaths of black males at the hands of the police.

14 Q. And was that something that you were aware of --

15 A. Yes.

16 Q. -- you keep up-to-date with the news? Yes. From your  
17 own experience to what extent was that an issue of  
18 concern for the officers in Police Scotland and in  
19 particular in Kirkcaldy? Was there any discussions  
20 about that?

21 A. No.

22 Q. Or sharing of information?

1 A. No.

2 Q. Are you aware of other high profile cases in the UK, so  
3 wider than Scotland, down south, for example, in which  
4 a person has died in police custody where -- well,  
5 there's been restraint and/or there's issues of a person  
6 being restrained face-down that had given rise to sort  
7 of public discussion and public concern?

8 A. At that time, no.

9 Q. No. Not in 2015?

10 A. No.

11 Q. You will be aware of that now presumably, are you?

12 A. Yes.

13 Q. Is there -- from your own experience, constable, is  
14 there much information-sharing amongst police forces --  
15 I'm thinking about maybe information that they have down  
16 south in relation to restraint and concerns in that  
17 regard. Is there much information-sharing with the  
18 Police Force up here, such as yourself? Do you get  
19 information that's come from England?

20 A. No, I mean that would go back into a higher up level and  
21 then would be disseminated down so I don't know,  
22 I couldn't speak to the intelligence-sharing.

1 Q. So that would be more senior officers --

2 A. Yes.

3 Q. -- or maybe the officer safety training department?

4 A. Yes, aye.

5 Q. So at the time of Mr Bayoh's death, what measures, if  
6 any, were actually in place that would allow someone in  
7 your position as a constable in Kirkcaldy Police Office  
8 to receive information about restraints, or learning  
9 lessons that had arisen out of high profile cases down  
10 in England?

11 A. In relation to OST, that would be a yearly refresher, or  
12 if there was -- that would be the main one, OST  
13 refresher training courses.

14 Q. And at those OST yearly refresher courses, do they have  
15 an opportunity to discuss lessons that have been learned  
16 from other cases down in England, for example?

17 A. I don't think it was actually discussed, it was just  
18 they would amend the techniques and that that were used  
19 and then they would teach us the new techniques or make  
20 us aware of if you are doing this technique be mindful  
21 of this but they wouldn't certainly give case studies or  
22 anything like that.

1 Q. So you're not receiving sort of case studies for  
2 discussion at those yearly refreshers?

3 A. No, not that I'm aware of.

4 Q. All right. Thinking now, how confident are you now that  
5 in the training you have received in relation to  
6 race-related issues and deaths in custody, that that is  
7 providing you with the information that you need to  
8 allow you to do your job in Kirkcaldy?

9 A. I have been able to continue doing my job for the last  
10 seven years since the incident without issue so yes, I'm  
11 fairly confident.

12 Q. Okay, thank you. What's your own understanding and  
13 awareness of the black community in Kirkcaldy? Do you  
14 have an awareness of a black community in Kirkcaldy?

15 A. I mean, I have not worked in Kirkcaldy now for a few  
16 years so ...

17 Q. At the time, in 2015, what was your awareness then?

18 A. I don't know. I didn't really have one. Like I say,  
19 you just deal with calls on a call-by-call basis so ...

20 Q. Had you at that time in 2015 been involved in any  
21 community relation work with the black community in  
22 Kirkcaldy?

1 A. No.

2 Q. Were you aware of other officers in Kirkcaldy engaging  
3 with work with the black community?

4 A. That would -- if there was, that would be down to the  
5 community teams who would be engaging with them as  
6 opposed to response teams.

7 Q. Your team was a response team?

8 A. A response team, yes.

9 Q. So the officers at Hayfield Road were a response team,  
10 not a community team?

11 A. Yes.

12 Q. Was that all the officers, or were there any involved  
13 who were part of a community team?

14 A. The officers that were there that day were all response,  
15 or CID plain clothes.

16 Q. Thank you. So what's your experience, or what was your  
17 experience in 2015 of interacting with black men or  
18 black members of the community in Kirkcaldy in the  
19 course of discharging your police duties? Either as  
20 suspects or as victims, or other people that you need to  
21 speak to, witnesses?

22 A. Just as a response officer out noting statements and

1           that from them. Just normal day-to-day interactions.

2           Q. How much contact had you had with the black community in  
3           2015?

4           A. I can't give you exact numbers.

5           Q. Not exact numbers, but could you give us an impression?

6           A. No.

7           Q. Are you aware, or were you aware in 2015 of any tensions  
8           between the black community and the police?

9           A. No.

10          Q. Were you aware of any negative views held by colleagues  
11          of yours in Kirkcaldy Police Office in relation to black  
12          people generally?

13          A. No.

14          Q. Did you have any concerns at that time about  
15          the policing of black communities in relation to use of  
16          force --

17          A. No.

18          Q. -- in Kirkcaldy. What sort of stereotypes are you aware  
19          of about black people generally, or black men  
20          specifically in the context of criminal justice? Are  
21          you aware of any sort of stereotypes that exist?

22          A. No.

1 Q. No. Are you aware that black men may be perceived as  
2 more likely to resist or not be compliant, or more  
3 likely to be violent?

4 A. No, not from my experience.

5 Q. Are you aware that they may be perceived as having  
6 superhuman strength or size?

7 A. No.

8 Q. Do you have any assumptions along those lines?

9 A. No, none.

10 Q. Looking back now to 2015, do you think you assumed that  
11 Sheku Bayoh posed a greater risk because he was  
12 particularly strong or going to be more violent because  
13 he was black?

14 A. No, it was just he was physically quite broad, that's  
15 been reflected by the CCTV footage, and I don't think  
16 anybody would argue with the fact that he looked quite  
17 a strong individual and that's, like I said, the only  
18 thing that we took into consideration was his possible  
19 physical power.

20 Q. If he had been white, would you have seen him as being  
21 less of a threat?

22 A. No, because he still would have been the same physical

1 size.

2 Q. We have heard that later that day, an officer described  
3 him as like the size of a house. Is that the type of  
4 view that you held?

5 A. That's not how I would have described him, but I would  
6 certainly say he -- he was broad build, broad about the  
7 shoulders.

8 Q. Of course at that time you and PC Paton are 6 foot 4?

9 A. Mm-hm.

10 Q. And he was 5 foot 10, so he was actually shorter than  
11 both of you.

12 A. Yes.

13 Q. And we talked about weights yesterday, I won't go back  
14 over that. When you arrived at the scene, did you have  
15 any expectations before you arrived about what you were  
16 going to find, based on what you had heard over the  
17 Airwaves transmissions?

18 A. No, I think we covered that yesterday, that -- yes, we  
19 came up with possible scenarios but ultimately you have  
20 just got to wait until you get there and see what you're  
21 presented with.

22 Q. Thank you. I think I have dealt with these other

1 questions yesterday. Looking back now, what role, if  
2 any, do you think that Mr Bayoh's race may have played  
3 in the assumptions you made about his behaviour and the  
4 choices you made as to the best course of action that  
5 day?

6 A. I didn't make any assumptions about his behaviour.

7 Everything was intelligence-led on what we have seen  
8 when we arrived.

9 Q. And what about the choices you made? Looking back now,  
10 do you think his race played any basis in that?

11 A. No. The decisions were all based on the threat that was  
12 posed to ourselves and the members of the public.

13 MS GRAHAME: Thank you. Could you give me one moment,  
14 please.

15 (Pause).

16 That completes my questioning, thank you.

17 Questions from LORD BRACADALE

18 LORD BRACADALE: Thank you.

19 Constable Walker, I wonder if you could help me with  
20 one or two matters.

21 You said yesterday that when the reports about the  
22 events in Hayfield Road were coming in, that

1 Sergeant Maxwell was in command.

2 A. Yes.

3 LORD BRACADALE: And could we perhaps just look at the entry  
4 in the spreadsheet, if you've got it, on page 2. We  
5 looked at this yesterday, but I just want to revisit it  
6 for a moment. At 07.17.23, Acting Police Sergeant  
7 Scott Maxwell made contact with control and he said:

8 "I want all units to attend that, bearing in mind  
9 officer safety."

10 Now, I think you said yesterday that as a result of  
11 that command that all units should attend, you would  
12 expect perhaps around eight or so officers to attend; is  
13 that right?

14 A. Yes, just whoever was on shift that day, I can't  
15 remember the exact number, but it would be round about  
16 that because other people weren't committed.

17 LORD BRACADALE: And would you expect them to come in  
18 a number of vehicles?

19 A. Yes, I would expect them to turn up in their units that  
20 they're allocated in, so yes, you had two officers per  
21 vehicle.

22 LORD BRACADALE: And when he added "Bearing in mind officer

1 safety", what did you understand that to mean?

2 A. It's basically another version of the "Stay safe"  
3 message that they covered further on, but basically  
4 "Attend there but bear in mind your own safety". "Assess  
5 before you go in", basically.

6 LORD BRACADALE: Now, we heard earlier in the Inquiry that  
7 the decision to deploy an armed response vehicle would  
8 be made by the inspector in the control room; is that  
9 your understanding?

10 A. Yes, he's got the authorisation -- he needs to authorise  
11 it for it to happen.

12 LORD BRACADALE: And we also heard that in the event that he  
13 made that decision, the inspector would take charge of  
14 the entire incident and would tell the officers on the  
15 ground what to do, does that accord with your  
16 understanding?

17 A. Yes. At that point it would be declared a firearms  
18 incident.

19 LORD BRACADALE: Yes. Could we then look again at the  
20 spreadsheet and at page 3 and we can see at 7.20.13,  
21 Inspector Stewart at the control room introduced himself  
22 and he issued an order. He said:

1 "Inspector Stewart, area control room to the  
2 (inaudible) attending. I'm monitoring this, obviously  
3 from an ARV Perspective. If you get sightings of the  
4 male you need to make an initial assessment yourself and  
5 feed back through straight away and I will listen out on  
6 the channel."

7 We heard that order being given when we listened to  
8 the tape yesterday.

9 A. Yes.

10 LORD BRACADALE: Now, I think your evidence yesterday was  
11 that you didn't hear that instruction, is that right?

12 A. Yes, yes. I was never aware of that being passed.

13 LORD BRACADALE: If you had heard that instruction, what  
14 would you have done?

15 A. I think I kind of answered that yesterday where -- it  
16 hadn't been declared an ARV incident at that point.  
17 When we turned up he wasn't actively in possession of  
18 the knife, brandishing it, and therefore we would have  
19 just dealt with the situation that we had.

20 LORD BRACADALE: But if you had heard the instruction from  
21 Inspector Stewart, what would you have done?

22 A. Probably exactly the same as we have done.

1 LORD BRACADALE: So would you have ignored the instruction  
2 from Inspector Stewart?

3 A. My understanding of that would be he is monitoring it  
4 for an update if we are looking to have the ARV to come  
5 into the area.

6 LORD BRACADALE: Thank you.

7 Now, with the exception of the Dean of Faculty, who  
8 I will come to in a moment, do any other core  
9 participant legal representatives wish to make an  
10 application under Rule 9? Now, I will just get my list  
11 here. So I see Ms Mitchell. Anyone else? Sorry? Oh,  
12 Mr Scullion. Anyone else? No.

13 And Dean of Faculty, do you intend to make an  
14 application under Rule 9 too?

15 DEAN OF FACULTY: (Mic turned off).

16 LORD BRACADALE: Yes, very well. We will do that.

17 Constable Walker, I wonder if you would withdraw  
18 then from the hearing room for a little and I will hear  
19 from Ms Mitchell and Mr Scullion.

20 (The witness withdrew)

21 You will need to come to the table, yes. Now,  
22 Ms Mitchell.

1 Application by MS MITCHELL

2 MS MITCHELL: Sir, I'm obliged to Senior Counsel to the  
3 Inquiry who has already gone over a number of questions  
4 that were put in our Rule 9, but there are some  
5 additional matters.

6 One, first a matter of clarification on the issue of  
7 PC Paton and Walker working together. He was asked  
8 about how often they had worked together and he said  
9 that he couldn't remember:

10 "I would say at the time we were pretty set, that  
11 was me and Alan were the van crew. As to how long that  
12 had been, I honestly can't remember."

13 I was just wanting to clarify what he means by "were  
14 pretty set", and to see if we can get him to be a little  
15 more specific, for example, how long had they worked at  
16 Kirkcaldy together, whether it had been all the time  
17 that they had been at Kirkcaldy, et cetera, so it's just  
18 trying to narrow down his contact with Mr Paton as  
19 a colleague that he worked with. Perhaps he might be  
20 able to, for example, help us with weeks, months or  
21 years.

22 LORD BRACADALE: Is that the only matter?

1 MS MITCHELL: No, there are further matters. Shall I simply  
2 continue?

3 LORD BRACADALE: Yes, carry on.

4 MS MITCHELL: Issue 2 is the issue about PC Walker  
5 describing Sheku Bayoh walking towards him after he was  
6 sprayed in the face with gas by Alan Paton.

7 In the Inquiry, he has given evidence that:

8 "He walked towards him, he kept walking straight  
9 towards me."

10 And said that Alan -- sorry:

11 "... Walker was trying to create space so he is  
12 coming back round to the front of the van to create  
13 space and he has followed me round to the front of the  
14 van..."

15 And then:

16 "... at which point I have sprayed my PAVA into his  
17 eyes".

18 I would wish to put to him his previous statements,  
19 the two of which taken in 2015 do not suggest in any  
20 sense that Sheku Bayoh followed him anywhere at all, in  
21 fact, one of the statements reflects that when he turned  
22 round after shouting at him he immediately sprayed him

1 and the first time that we have any indication that he  
2 said he walked towards him is the statement taken by the  
3 Inquiry on 7 April 2022 and then further, today -- or  
4 yesterday, in fact, we heard more evidence that not  
5 simply was it walking towards him, but walking round the  
6 van, and that's when he then sprayed.

7 So it seems that that is a difference and given the  
8 fact that the witness has already said, I think on three  
9 occasions now, that he had previously -- that he would  
10 rather go with his original statements than his later  
11 memory, I would respectfully submit that we should test  
12 that and see whether or not his memory has now come to  
13 be wrong and his original memory is better.

14 In relation -- shall I simply continue, sir?

15 LORD BRACADALE: Yes, I think if you just tell me  
16 everything.

17 MS MITCHELL: In relation to issue 3, I would like to ask  
18 something in addition to simply asking how he physically  
19 felt when he was sprayed with the CS or PAVA, or when he  
20 felt it coming into his eyes, but also to ask him  
21 emotionally how he felt at that time.

22 Issue 4, again, today we heard in evidence that

1 instinct made him jump over something when he was  
2 charging towards him. Now, he has not mentioned that in  
3 any of the previous statements he has given and I think  
4 it would be helpful if the Inquiry had an opportunity to  
5 understand why he has said that only in this particular  
6 hearing but in none of his previous statements. The  
7 next issue was that he said when he was talking about  
8 how Sheku Bayoh was lying, he said:

9 "This is what we had the discussion about before  
10 when I was doing this. He might have been face down but  
11 not on his front."

12 I would just like to find out when he is talking  
13 about that, who is he saying that he is discussing these  
14 matters with. I wasn't clear on what discussions had  
15 taken place.

16 The sixth issue is to ask him about a matter which  
17 occurred when it was clear Mr Bayoh was in some way  
18 unwell as he records in his statement that PC Paton,  
19 still kneeling besides the man's face, slapped him  
20 a couple of times on the face to see if there was any  
21 reaction, and I wanted to ask him about that, in  
22 particular whether or not he considers that a recognised

1 way of ascertaining if this -- a reaction to a man who  
2 appears to be at best perhaps unconscious.

3 The next issue that I would like to ask about is the  
4 issue of race and it arises somewhat from what  
5 my learned friend has already said. This officer has  
6 indicated that he has not come across any examples of  
7 racial discrimination or heard racist jokes or comments,  
8 and I would like to put to him for his consideration  
9 that at least one of his colleagues had described  
10 Mr Bayoh in their statement as "coloured", to ask him  
11 whether or not he would consider that that was a matter  
12 which he would find unacceptable and would have to take  
13 up with his colleague had he heard it, and that's in one  
14 of the police officer's statements.

15 The last and discrete point that I would like to  
16 raise in relation to racist stereotyping. The witness  
17 says "I am not aware of any stereotyping", and I have  
18 gathered together a list of the descriptions that were  
19 used of Mr Sheku Bayoh by a number of the  
20 police officers, and I wish to ask him individually if  
21 he considers whether or not those were stereotyping.  
22 They include -- and touch upon -- my learned friend did

1 go to this, but a fuller list which elicits  
2 a better list, I suppose, of what might be described as  
3 racist stereotyping, including his size, how well built  
4 he was, a frightening crazy man, an intimidating figure  
5 who they were scared of, deranged with superhuman  
6 strength, those sort of things, so I would like to put  
7 it to the witness whether or not he considered any of  
8 those as stereotyping, to ascertain whether in fact he  
9 properly understands what the issue of stereotyping is.  
10 Those would be the issues I would like to raise.

11 LORD BRACADALE: Thank you.

12 Mr Scullion, what did you want to deal with?

13 Application by MR SCULLION

14 MR SCULLION: A Rule 9 application was lodged in relation to  
15 this witness and Senior Counsel to the Inquiry has asked  
16 questions in relation to that application, but in  
17 relation to a specific matter, the witness gave evidence  
18 that during the period following the incident he was  
19 waiting on officers from PIRC to come and take  
20 a statement and in that regard he was asked about  
21 a meeting which took place on 7 May of 2015 and he  
22 confirmed that he had met with officers on that date and

1 that he was asked to provide a statement on that date,  
2 but that he gave evidence that he was under the  
3 impression at that time that the officers were not from  
4 PIRC.

5 He said that he thought the officers were MIT who  
6 were operating, he thought, a parallel investigation to  
7 PIRC. He also said that he was informed not to give  
8 a statement as it was a tick box exercise and so he need  
9 not provide a statement.

10 The officers that PC Walker met with were Detective  
11 Chief Inspector Keith Hardie and Detective Inspector  
12 Stuart Wilson. Those officers were at that time acting  
13 on behalf of PIRC and were there on the instruction of  
14 PIRC in order to obtain a statement.

15 Now, on 4 June 2015, PC Walker gave a statement to  
16 PIRC, which is reference PIRC 00264, and in that  
17 statement, in June of 2015, he told the officers at that  
18 time that when he was asked to provide a statement on  
19 7 May 2015 he had refused to provide the statement on  
20 the basis of legal advice.

21 Now, in my submission, that is different from  
22 thinking that it was a tick box exercise that there was

1 really no point in. There will be, I anticipate,  
2 evidence in this case that he was informed at the  
3 meeting on 7 May 2015 that he was being asked to provide  
4 a statement in relation to the incident, and during that  
5 meeting he was informed that his status was that of  
6 witness, but he refused to provide a statement on the  
7 basis of legal advice, and I would wish to clarify with  
8 the witness whether he refused to provide the statement  
9 on the basis of legal advice at that time in the  
10 knowledge of his status rather than because he thought  
11 it was an inconsequential tick box exercise.

12 LORD BRACADALE: Thank you. I shall allow each of you to  
13 ask these questions. I would have thought between you  
14 would complete him this afternoon without any  
15 difficulty, would you?

16 MS MITCHELL: I would hope so, my Lord.

17 LORD BRACADALE: I would hope so.

18 MR SCULLION: I certainly won't be long.

19 LORD BRACADALE: Yes, I can see that.

20 Very well, I think I may have to rise very, very  
21 briefly in order to set up the table for the examiner  
22 and the witness, so we will do that.

1 (3.00 pm)

2 (Short Break)

3 (3.07 pm)

4 LORD BRACADALE: Ms Mitchell.

5 Questions from MS MITCHELL

6 MS MITCHELL: Thank you.

7 I wonder if I can ask you first of all, yesterday  
8 you explained that you and PC Paton had worked together  
9 and you were asked a specific question about how long  
10 you had worked together?

11 A. Mm-hm.

12 Q. And you said:

13 "I honestly can't remember as to when -- we move  
14 teams about -- people get moved within teams. I would  
15 say at that time we were pretty set, [it] was me and  
16 Alan were the van crew for that shift. As to how long  
17 that had been for, I honestly can't remember."

18 Now I wonder if we can try and narrow that down  
19 a little. Do you know how long both yourself and  
20 PC Paton worked together at Kirkcaldy?

21 A. No, that's what I'm saying -- I moved teams within  
22 Kirkcaldy as well and Alan moved teams within Kirkcaldy.

1 Q. So you don't know how long he has worked at Kirkcaldy  
2 for?

3 A. How long Alan has worked at Kirkcaldy for?

4 Q. Yes.

5 A. I wouldn't be able to say because he moved departments  
6 as well, so he was in community for a bit and he was in  
7 response for a bit, so I -- some days I would see him  
8 for a while, some days I wouldn't so aye, that's --

9 Q. Would you know if he had gone somewhere else to work  
10 somewhere else, to a different police station?

11 A. Not particularly.

12 Q. You said at that time "We were pretty set"; what did you  
13 mean by that?

14 A. That the pairings were pretty set, so when we came in  
15 for a muster on a day shift it would be a safe  
16 assumption that me and Alan would be on the van and --  
17 the pairings were set. You got used to who you were  
18 working with.

19 Q. And how long had that been in place for?

20 A. That's what I'm saying, I can't remember.

21 Q. Well, could you help us with this: was it years? Was it  
22 months? Was it weeks?

1 A. I honestly don't know. I honestly don't know how long  
2 I was on that team at that time.

3 Q. So if you weren't on that team, even though you were  
4 both within Kirkcaldy, you could be -- simply not see  
5 one another from week to week, month to month, year to  
6 year?

7 A. Yes, pretty much. If I'm team 4 and he is the opposite  
8 team, when he goes days off, I start day shift, when  
9 I go day shift, he starts night shift and aye, you never  
10 see each other.

11 Q. Were there other times that you worked together?

12 A. I think that's the first time -- I honestly --  
13 I couldn't tell you.

14 Q. So when you say "We were pretty set", you have in your  
15 mind at that time that it was you and Alan that worked  
16 together?

17 A. Yes.

18 Q. PC Paton?

19 A. Yes.

20 Q. But you can't remember --

21 A. For how long that had been the case, no.

22 Q. Is it likely to have been years?

1 A. I can't -- honestly, I can't -- I can't recall who moved  
2 off the team, who was there, when he came, when he  
3 didn't. I mean, it's ten years -- or 17 years now, we  
4 were moving and shifting so ...

5 Q. Moving then on to another issue I want to speak to you  
6 about, you have given evidence to the Inquiry that the  
7 sequence of events was that you see PC Paton spray  
8 Mr Bayoh, that you shout and attract his attention --

9 A. Yes.

10 Q. -- that he turns and starts to walk towards you, you  
11 back away from him, he continues to come towards you and  
12 you're backing away around the van; is that correct?

13 A. Yes. Around the front of the van is my recollection,  
14 yes.

15 Q. Around the front of the van. And at that point, as  
16 you're walking around the front of the van, you then  
17 spray him; is that a fair summary of what your evidence  
18 has been?

19 A. Yes, because he is closing down the gap quicker than  
20 I can back away from him.

21 Q. Now, and I think your words were:

22 "Because I was trying to create the space, so I was

1 coming back round the front of the van to try and get --  
2 to create the space and he has followed me round the  
3 front of the van."

4 A. Yes.

5 Q. And then you have said:

6 "... and then at which point I have sprayed my PAVA  
7 into his eyes and made quite good contact with it."

8 A. Yes.

9 Q. Okay. Now I wonder if I might take you to your previous  
10 statements. The first statement is a statement you took  
11 by yourself and that's PIRC 265. I wonder if Ms --  
12 thank you. I would like you to go to page 3 of 7,  
13 please. Now, if I can take you to about halfway down  
14 that second paragraph you can see there's a paragraph  
15 that starts:

16 "I drove the vehicle in the direction of the male."

17 Do you see that?

18 A. Yes.

19 Q. And if we can go slightly further down, we see that  
20 PC Paton exits the vehicle and PC Paton gives a command  
21 and PC Paton thereafter deployed the CS spray at the  
22 male. Do you see you have written that there?

1 A. (Pause)

2 "... (reads sotto voce) ... and thereafter deployed  
3 CS spray at the male."

4 Yes.

5 Q. Now, can I ask you from that "deployed CS spray at the  
6 male", can I ask you to read the last three lines and  
7 the next paragraph -- the next paragraph to the part  
8 where it says "... PAVA to the male's face and eyes".

9 I will just stop you when you get to that point?

10 A. So:

11 "I noted that the CS spray seemed to have no effect  
12 on the male. I am aware that the PAVA spray that I have  
13 been issued is superior to CS spray and that it should  
14 have an effect on all persons. By this time I had  
15 exited the vehicle. I walked around the front of the  
16 van to the male's (inaudible) position. I gave a clear  
17 verbal warning to the male to stop and to drop any  
18 weapons. I noted at this time that PC Paton had  
19 suffered from the effects of the spray. I was  
20 struggling to see him (inaudible) was disorientated."

21 Q. Sorry, can I ask you just to keep your voice up  
22 a little?

1 A. Yes:

2 "The male, now aware of my presence, turned to  
3 (inaudible) in my direction, and appearing not to be  
4 following any of the directions given, I therefore  
5 deployed PAVA spray. I was approximately 8 feet from  
6 the male (inaudible) direct spray of PAVA to the male's  
7 face and eyes."

8 Q. Right. If I can ask you to stop there. Do we see that  
9 there you don't mention that the male was walking  
10 towards you?

11 A. Yes.

12 Q. And do we see that there is no mention of him following  
13 you round as you back away round the van?

14 A. Yes.

15 Q. And in fact, if we go on to the next paragraph, if you  
16 can read out that next paragraph?

17 A. From "I felt several drops of PAVA...."?

18 Q. Indeed.

19 A. "I felt several drops of PAVA spraying and hit me in the  
20 eyes and due to the windy conditions at locus this  
21 immediately had an effect on me and caused my eyes to  
22 start nipping. I started blinking rapidly, I raised my

1 hands ...(Reading to the words)... transmitted on the  
2 police radio 'spray ineffective'."

3 Q. So can we see there that the statement that you took  
4 yourself, this was your aide memoire at the time, has  
5 the circumstances differently, that you sprayed  
6 Sheku Bayoh first with the spray, it doesn't mention  
7 that he was walking towards you, and then said that you  
8 went round the van after you had sprayed him in order to  
9 create distance because you were getting the spray in  
10 your eyes? Do you see that?

11 A. I disagree with the second part. I mean that goes with  
12 the statement that I said that I ended up on the offside  
13 of the van to crouch and get away from him. I didn't go  
14 round the other side of the van to put the van between  
15 us, that's a different statement.

16 Q. I think what you have read here is:

17 "I started blinking rapidly and raised my hands to  
18 my face to overcome the effect, whilst stepping back to  
19 the offside of the police vehicle."

20 A. Mm-hm.

21 Q. So the spray went into your eyes and you moved to the  
22 back of the vehicle?

1 A. Yes, which is what I stated earlier. The spray was in  
2 my eyes, I ducked away and ended up at the back of the  
3 offside of the vehicle.

4 Q. I wonder if I can take you to the next statement, that  
5 would be PIRC 264, Ms Drury. Can we go to the bottom of  
6 page 5 of 14. At the bottom of page 5, do you see  
7 a paragraph that said:

8 "It was clear to me that PC Paton got some of the  
9 spray in his face."

10 A. Yes.

11 Q. So it says:

12 "It was clear to me that PC Paton got some of the  
13 spray in his face and he immediately tried to duck away  
14 and crouch downwards towards the van. He pulled both  
15 his hands up towards his face. From my experience  
16 I reckoned he would be in a bit of pain from CS and  
17 would be unable to see properly or defend himself  
18 properly. He would be pretty much out of the game. No  
19 other officers had arrived at that stage as far as I was  
20 aware. As I got past the front of the van, he turned  
21 towards me after I shouted at him 'stay there', or words  
22 to that effect."

1 Do you see that?

2 A. Yes.

3 Q. It then says:

4 "He faced me and I had my PAVA spray in the drawn  
5 position I described in my right-hand. I also had my  
6 left arm extended pointing at him. I think I was  
7 standing in a defensive position. I again shouted 'drop  
8 your weapon', or something like that, but there was no  
9 response from him. I still thought he had a weapon  
10 concealed on him and he wasn't giving verbal or  
11 non-verbal communications at all."

12 And then you write:

13 "I immediately discharged my PAVA spray at him.  
14 I didn't issue a warning re the discharge but it would  
15 be obvious to him as I had it up in front of him in  
16 plain sight and it has a bright red lid on it."

17 So do we see once again that in this statement which  
18 was taken I think in June of 2015, 4 June 2015, you  
19 don't make any mention there that he was walking towards  
20 you?

21 A. No, I make mention to the fact that he has closed the  
22 distance to about 8 feet in the next line.

1 Q. He has closed the distance to about 8 feet, but you have  
2 already identified in fact that you had sprayed him by  
3 that point?

4 A. No, that was the point I sprayed him. The canister  
5 sprayed directly into his face from a distance of  
6 8 feet, so at the point of spraying, he was 8 feet away.

7 Q. You haven't said at all that he turned and walked  
8 towards you?

9 A. Yeah, I appreciate that line is not there, but it is  
10 covered by the statement, that he has managed to get  
11 within 8 feet of me at that point.

12 Q. Or that he followed you in front of the van?

13 A. I didn't give my position anywhere in that statement  
14 really.

15 Q. So in the first two statements in 2015 you have  
16 indicated in the first statement that he turned towards  
17 you and you deployed the spray and in the second one,  
18 that he turned towards you and deployed the spray but  
19 you have not mentioned in either of those that he  
20 started walking towards you, or came round towards you  
21 at the front of the van; is that correct?

22 A. No, but I gave -- the second one I certainly said he's

1 got to within 8 feet of me. So he has had to come from  
2 not being 8 feet to me, to 8 feet to me, and I've not  
3 moved.

4 Q. And your explanation for why you have not put that in  
5 your first statement?

6 A. That was just -- that was prepared a couple of days  
7 after the event and I have probably just -- an omission  
8 at that point. When I was going into further detail  
9 with the PIRC investigators I have covered it in greater  
10 detail.

11 Q. It seems when you have looked at your first statement  
12 you have been very, very clear about the time that you  
13 have deployed the PAVA spray. Would you agree with  
14 that, the statement -- sorry, PIRC 265.

15 A. 265?

16 Q. And we're looking at page 3 of 7, the bottom of page 3  
17 of 7. And if we look at the second last paragraph. Do  
18 you see what it says in that paragraph is you issue  
19 a command to stop and drop any weapons?

20 A. Mm-hm.

21 Q. Do you then see that you see PC Paton is struggling to  
22 see and was disorientated?

1 A. And again in that statement it says that the PAVA was  
2 deployed when he was 8 feet from me as well.

3 Q. And you have said:

4 "The male, now aware of my presence, turned his head  
5 in my direction."

6 So you have gone into the detail of how he came to  
7 be looking at you:

8 "He turned his head in my direction whilst appearing  
9 not to be following any of the directions given."

10 And your next statement is:

11 "I therefore deployed the PAVA spray."

12 You haven't said before he was further away than  
13 8 feet; you have said he turned his head in your  
14 direction and therefore you deployed the PAVA spray, is  
15 that correct?

16 A. That's the wording of that statement, yes.

17 Q. And if we go to the final paragraph of that statement --

18 sorry, I'm sorry, the final paragraph on that page,  
19 which is page 3 of 7. It says:

20 "I felt several drops of PAVA spray then hit me in  
21 the eyes due to the windy conditions at the locus. This  
22 immediately had an effect on me and caused my eyes to

1 start nipping. I started blinking rapidly and raised my  
2 hands to my face to overcome the effect whilst stepping  
3 back to the offside of the Police vehicle."

4 So do we see that contemporaneously with feeling the  
5 effects of the PAVA spray that you have sprayed on him,  
6 it is you who go back during that period of time,  
7 because at that time, you are feeling the effects of the  
8 spray?

9 A. No, I disagree with that interpretation of that  
10 paragraph, that I have -- I have had the after-effects  
11 of the spray and I have made my way to the offside of  
12 the vehicle. I didn't suggest that I walked round the  
13 front to the offside of the vehicle.

14 Q. Well, I wonder if we can just try and analyse that. The  
15 first thing is that you feel drops of spray.

16 A. Mm-hm.

17 Q. And that's after you have said that you did this because  
18 he turned his head in your direction and you sprayed  
19 him. It doesn't say he was walking towards you --

20 A. Mm-hm.

21 Q. -- it doesn't say you were backing away from him to  
22 create space while he was walking towards you?

1 A. It doesn't say I was walking towards him.

2 Q. No, but it doesn't say that you were walking backwards  
3 as he was walking towards you?

4 A. Mm-hm.

5 Q. It doesn't say that he was -- you were moving round the  
6 back -- round the front of the van to create space. The  
7 only time that it mentions you walking round to the  
8 front of the van was already when you had PAVA drops  
9 sprayed in your eyes and this having an immediate effect  
10 on you meant that you started blinking rapidly, raised  
11 your hands to your face to overcome the effects whilst  
12 stepping back to the offside of the police vehicle. Are  
13 you suggesting that that doesn't mean that what happened  
14 was he turned his head, you sprayed him, it came back  
15 and affected you and then you went round to the van, you  
16 went round the van?

17 A. It says I stepped back to the offside of the police  
18 vehicle so if I'm at the front of the vehicle and I step  
19 back, I end up on the offside of the vehicle. It  
20 doesn't say anywhere about me moving round from the  
21 front of the vehicle to the offside or passing the front  
22 of the vehicle to get to the offside. There's no

1           mention of the front of the vehicle in that paragraph at  
2           all.

3           Q. Sorry, back to the offside of the police vehicle.

4           A. Yes, so if I was standing in front of the vehicle,  
5           having walked past the front of the vehicle, when I'm  
6           off the offside front light cluster, if I take a step  
7           back I'm on the offside of the vehicle.

8           Q. And nowhere in either of those statements does it  
9           suggest that you were doing that because Sheku Bayoh was  
10          walking towards you.

11          A. Well, like I said, it's covered it with the -- I mean,  
12          I appreciate that it's not stated, but there is parts in  
13          there which suggest he's got to within 8 feet of me.

14          Q. Wouldn't it have simply been easy to do so, to -- if he  
15          was walking towards you, to put that in? It seems like  
16          an odd thing to leave out?

17          A. The statement was prepared by myself at the house  
18          a couple of days after the event and I was just trying  
19          to recall things to the best of my recollection at that  
20          time and, as I say, further things have been cleared  
21          when it was given to the PIRC investigators.

22          Q. You have already been taken back to previous statements,

1 I think on three occasions, and you have accepted that  
2 your memory would have been better for those occasions  
3 at the time. Why not this particular issue? Why are  
4 you so clear that he was walking towards you when that's  
5 not been recorded as your evidence or in your statements  
6 in 2015?

7 A. Because the times where I have said -- when I was  
8 referring left to right or something like that, it was  
9 basically stated to be different. There's nothing  
10 I could see in this statement that's contradictory to  
11 what I have suggested and --

12 Q. Would it not have been -- sorry.

13 A. No, I mean fair enough, I will admit that it's not as  
14 clear detail but there's nothing in there  
15 that contradicts to what I have said.

16 Q. Would it not be important to note in a statement if  
17 someone was walking towards you before you discharged  
18 your spray?

19 A. But again, he's got to the point where he's been 8 feet  
20 from me so ...

21 Q. The question was would it not be important to note at  
22 the point you are discharging your spray that someone

1 was walking towards you?

2 A. The statement could be clearer in that fact, but I don't  
3 think it makes the statement any less true.

4 Q. Does it not suggest that what happened was contained in  
5 the first two statements that you have given in 2015,  
6 that in fact he wasn't walking towards you?

7 A. No, I would say that he was walking towards me and he  
8 got approximately 8 feet from me when I administered the  
9 spray of PAVA.

10 Q. I wonder if I can move on to the next issue. You have  
11 explained to us how you felt physically when you got  
12 PAVA in your eyes, but how did you feel emotionally when  
13 that happened?

14 A. In what way?

15 Q. How did you feel?

16 A. Like I said, it was the instinctive reaction to duck  
17 away and -- I'm not sure --

18 Q. Well, why? What did you feel emotionally? You must  
19 have had an emotional reaction to the circumstances that  
20 you were in?

21 A. It was a physical reaction, the pain in the eyes.

22 Q. You didn't have any emotional feeling at the time that

1 it happened? Well, why did you duck away?

2 A. Like I said, that's a biological reaction to the pain in  
3 the eyes, you move away from the pain source, is my  
4 understanding of how the PAVA works.

5 Q. I suppose the pain source would be in your eyes, so you  
6 wouldn't be moving away?

7 A. No, but your body tries to move away from the pain  
8 source.

9 Q. So are you simply saying you had no emotional reaction,  
10 or you can't recall an emotional reaction?

11 A. I don't recall a notable emotional reaction at that  
12 point.

13 Q. We have heard in evidence that you have suggested that  
14 you had an instinct to jump over something when you  
15 charged at Sheku Bayoh.

16 A. Mm-hm.

17 Q. That piece of information hasn't been contained in any  
18 of your previous statements as far as I'm aware, so none  
19 in the one that you wrote by yourself in 2015 shortly  
20 after the incident, not the one in June of 2015, not the  
21 one given to PIRC, and not the one given to the Inquiry.  
22 This appears to be new evidence.

1           Can you explain why you haven't mentioned that  
2           before in any of your statements?

3           (Pause).

4           A. No, but it's something that I do distinctly remember.

5           Q. Again, wouldn't it be important if there was something  
6           you distinctly remembered like that to put it in any of  
7           these previous statements when you're being asked about  
8           what happened?

9           (Pause).

10          If you want we can go through the other statements.

11          I don't think anyone is seeking to correct me that it's  
12          not contained in those other statements.

13          (Pause).

14          A. It's -- I need to take your word, that's not in the  
15          first two statements, I would need to check through them  
16          all.

17          Q. Well, I'm sure if they are, someone will explain that to  
18          us and lead that evidence before the Inquiry, but it  
19          appears that that is the only time you have ever  
20          mentioned that. My question is to you, if that was  
21          something that had happened, can you explain why you  
22          didn't put it in any of your previous statements?

1 A. No.

2 Q. You would realise that these statements are obviously  
3 clearly very important?

4 A. Yes.

5 Q. And that the detail of these statements is going to be  
6 important and gone through by others in some detail?

7 A. Yes.

8 Q. But you simply can't help the Inquiry with why you  
9 didn't put that in?

10 A. I don't -- I mean in relation to the PIRC -- sorry, the  
11 Inquiry statement, I don't think it was a particular  
12 question that was asked in the Rule 8 request.

13 Q. Well, you perhaps wouldn't be asked something in  
14 relation to something that you had never mentioned  
15 before, you wouldn't be asked a question.

16 A. In that case I can't be criticised for not answering a  
17 question that was never asked.

18 Q. Well, what you no doubt have been asked quite clearly on  
19 a number of occasions is to explain what has happened  
20 and I'm suggesting you simply haven't indicated that on  
21 previous occasions that somehow instinct made you jump  
22 over something and I'm wondering if you have any

1 explanation for why that's been missed out.

2 (Pause).

3 LORD BRACADALE: Ms Mitchell, I think the point has been  
4 made. We can perhaps move on now.

5 MS MITCHELL: I'm obliged.

6 We move on to another issue. You said in evidence  
7 earlier today, you were being asked about Mr Bayoh in  
8 the prone position and you said:

9 "You mean by on his front. This is what we had  
10 a discussion about before when I was doing this. He  
11 might have been face-down but not on his front so he  
12 went across from over to here ..."

13 And you were indicating. What I want to know is  
14 when you said "This is what we had the discussion about  
15 before when I was doing this", what did you mean? What  
16 discussion? You were talking about the physical --  
17 Mr Bayoh being physically restrained, you were talking  
18 about him lying down, and it was just a sentence I have  
19 sort and cut and paste it from the transcript so the  
20 exact words were:

21 "... you mean by on his front. This is what we had  
22 the discussion about before when I was doing this."

1 A. When I was filling out the reply to the Rule 8 request.

2 Q. And who did you have the discussion with?

3 A. The person that was noting my statement.

4 Q. I see. I want to take you on to an issue in relation to  
5 your PIRC statement, PIRC statement 264, page 8 of 14.

6 This is at a point, PC Walker, when Mr Bayoh was already  
7 restrained on the ground and it was clear that there was  
8 some kind of issue with his physical health, and you  
9 have recorded, at the bottom of this paragraph:

10 "PC Smith knelt down beside the man at his left-hand  
11 side. He leaned down with his ear to his face, looking  
12 down onto his chest. PC Smith said 'he is still  
13 breathing'."

14 And you have recorded that you recall:

15 "... PC Paton then still kneeling beside the man's  
16 face, slapped him a couple of times to see if there was  
17 any reaction. He didn't move."

18 Is that a recognised way to ascertain if there's  
19 a reaction to someone who you have come across who is  
20 perhaps unconscious?

21 A. A pain reaction, just to see if there's any sort of --

22 I want to say I don't know if it would be recognised

1 or -- I can't answer on behalf of PC Paton.

2 Q. I'm asking whether or not if that would be something  
3 that you would do to test for a reaction? Is that, for  
4 example, something that you're trained to do?

5 A. I mean part of the OST training is to see if there's  
6 a pain reaction in somebody, to see if they could -- and  
7 then ...

8 Q. And as part of that training, do they suggest slapping  
9 a person?

10 A. I think it was done with the best intentions to see if  
11 the male was conscious.

12 Q. Are you able to answer the question? Is that part of  
13 the training, any training you get?

14 A. I mean, the training is to see if there's a reaction  
15 from somebody.

16 Q. Yes.

17 A. Yes, and that could be rouse them, shake them -- I mean  
18 the rules -- I wouldn't say the rules, the guidance  
19 changed, you used to like, nip people's ears and that to  
20 see if you can get a reaction from them, or push down on  
21 the top of their eyelid or something like that to try  
22 and get a pain reaction from someone.

1 Q. So you explained the pinching the ear lobe, pressing  
2 down the eyes; was slapping one of them?

3 A. Anything to sort of test to see if there was a pain  
4 reaction. Again, I don't know -- I don't know if it was  
5 an official test, but, like I said, it was done with the  
6 intention of seeing if there was a reaction, to see if  
7 the male was unconscious.

8 Q. If I may move on to the next issue in relation to race.  
9 Now, you have said in your time at Kirkcaldy Police  
10 Office -- which has been how long?

11 A. At that time, it was ten years.

12 Q. Ten years. At your time at Kirkcaldy Police Office, you  
13 have never seen any examples of racial discrimination?

14 A. Correct.

15 Q. You have not come across any racist jokes or comments?

16 A. Not that I could recall.

17 Q. And if you did come across anything like that, you would  
18 respond by challenging them?

19 A. Yes.

20 Q. At that particular time we may hear evidence that one of  
21 your colleagues used the word "coloured" to describe  
22 Mr Sheku Bayoh. If you heard that, what would you have

1 done?

2 A. Corrected them into the use of the word, that he was  
3 a black man, and that there was some sensitivities  
4 around the use of the word "Coloured".

5 Q. When you say "some sensitivities"; it's not an  
6 acceptable term.

7 A. Yes.

8 Q. So you would have challenged them?

9 A. Yes.

10 Q. You indicated that you are not aware of any racist  
11 stereotyping that you have yourself been involved in; is  
12 that correct?

13 A. Yes.

14 Q. And you were given one or two examples of that by  
15 my learned friend who spoke to you about that. I wonder  
16 if I can run through a list just now to see whether or  
17 not you consider any of these might be racist  
18 stereotyping. Being described as a "large black male";  
19 would you describe that as a possibly racist stereotype?

20 A. Not if it's an accurate description.

21 Q. "Could be part of a terrorist plot".

22 A. There needs to be more information surrounding that

1 before you could draw a conclusion.

2 Q. Describing someone on your way to this incident:

3 "I kept thinking about the Lee Rigby boy, the  
4 soldier who was killed."

5 Would you consider there had been any racist  
6 stereotyping going on there?

7 A. In relation to ..?

8 Q. In relation to the use of that comment in relation to  
9 someone's thinking, that when they were hearing they  
10 were going out to a call where a black man had a knife  
11 that they kept thinking about Lee Rigby, the soldier who  
12 was killed?

13 A. That would depend on the nature of the call.

14 Q. Well, we will no doubt hear -- and we have already heard  
15 evidence in this case about the nature of the call and  
16 the nature of the call that you received, and what I'm  
17 asking you to do is consider whether or not you think  
18 any of these might be racist stereotypes.

19 A. So you're speaking specifically in relation to this  
20 call?

21 Q. Yes.

22 A. Mm-hm.

- 1 Q. Do you think someone thinking:
- 2 "I kept thinking about the Lee Rigby boy, the
- 3 soldier who was killed."
- 4 A. That would depend on their perception of it.
- 5 Q. What about the phrase:
- 6 "I cannot emphasise the strength of this guy."
- 7 A. Again, if it's an accurate description ...
- 8 Q. You say an accurate description. One person's
- 9 suggesting:
- 10 "He was massive and is the biggest male I have ever
- 11 seen."
- 12 That wouldn't be an accurate description of
- 13 Mr Bayoh, would it?
- 14 A. Not for me to describe him as that, no.
- 15 Q. Well, not for anyone --
- 16 A. Yes.
- 17 Q. -- who would be working with you, for example, so it
- 18 wouldn't be a correct description to be applying to
- 19 Mr Bayoh?
- 20 A. Again, it would depend on their perception at the time,
- 21 but ...
- 22 Q. And if their perception at the time was "He was massive

1 and is the biggest male that I have seen", do you think  
2 that could be racial stereotyping?

3 A. Again, I mean it could be that he was referring to his  
4 muscular build. I don't know. You're asking me to  
5 answer questions on behalf of someone -- on their  
6 perception of something.

7 Q. I'm asking you whether or not you consider that could be  
8 racial stereotyping. I'm not asking you what they were  
9 thinking, I'm asking you whether you consider that that  
10 could be racial stereotyping:

11 "He was massive and is the biggest male I have  
12 seen."

13 A. If somebody was to say that to me about someone then  
14 I would just need to say that -- need to go that that  
15 was their judgment and their description of the male.

16 Q. "I've never seen a more frightening, crazy man in my  
17 life and I could see he was completely out of control."

18 Could that be an example of racial stereotyping?

19 A. Not if it's factual to that person.

20 Q. "He was an intimidating figure. I was scared of him."

21 A. Again, if that's factual to that person, if that's how  
22 they're feeling then that's their ...

1 Q. "The man was deranged with superhuman strength and in my  
2 mind intent on killing someone."

3 Might that be racial stereotyping?

4 A. Again, that could just be someone's perception of the  
5 incident.

6 MS MITCHELL: Would you allow me one moment, my Lord.

7 (Pause).

8 Thank you.

9 LORD BRACADALE: Thank you, Ms Mitchell.

10 Mr Scullion.

11 Questions from MR SCULLION

12 MR SCULLION: Thank you.

13 There's only one small chapter of your evidence  
14 I want to ask you about.

15 You gave evidence earlier that you were off sick for  
16 a period immediately following the incident.

17 A. Yes.

18 Q. And you knew there had been a death in custody and that  
19 the PIRC would be investigating?

20 A. Yes.

21 Q. And earlier you said that when you were off sick you  
22 were waiting for the PIRC to take a statement from you.

1 A. Waiting for somebody to come in contact with me to  
2 arrange for a statement to be taken from me, yes.

3 Q. And you met with police officers on, I think you said,  
4 7 or 8 May of 2015, but we will hear it was 7 May and  
5 the officers that you met with were Detective Chief  
6 Inspector Keith Hardie and a Detective Inspector Stuart  
7 Wilson. Do you remember that meeting?

8 A. I don't remember the names of the gentlemen, but yes, if  
9 they were the gentlemen from the MIT team then yes,  
10 I remember that meeting.

11 Q. And at that meeting, were you asked to provide  
12 a statement?

13 A. We were asked -- we were told that they were from the  
14 MIT team and that were we prepared to provide  
15 a statement at that point.

16 Q. Did you meet individually with the officers?

17 A. Yes.

18 Q. And at that meeting did the two officers ask you to  
19 provide a statement?

20 A. Yes.

21 Q. And I think earlier you said, and I think you may have  
22 repeated it a moment ago, that you were under the

1 impression that it was not the PIRC who was asking you  
2 to provide a statement, is that right?

3 A. Yes.

4 Q. Now, the Inquiry may hear evidence that Detective Chief  
5 Inspector Hardie and Detective Inspector Wilson were  
6 there to note a statement on behalf of the PIRC, but as  
7 I understand it your evidence is that you didn't know  
8 that; is that correct?

9 A. That's correct, that was never passed on or disclosed.

10 Q. And earlier you said you thought that MIT were operating  
11 a parallel investigation to the PIRC; is that right?

12 A. Yes -- well, that's the only reason I could assume as to  
13 why they would be wanting a statement.

14 Q. And you thought, or were told on that day, that this  
15 statement was a tick box exercise; is that how you  
16 described it?

17 A. That's how it was described to me.

18 Q. Right, and that therefore you need not provide  
19 a statement?

20 A. Yes. It was: "They will ask you for it and then just  
21 tell them that on advice that you've got you didn't need  
22 to provide one".

1 Q. Do you remember you gave a statement to the PIRC on  
2 4 June 2015?

3 A. Was that at the police college?

4 Q. Yes.

5 A. Yes.

6 Q. And that's statement reference PIRC 00264. I wonder if  
7 you could look at a passage in that statement. It's at  
8 the penultimate page of the document, just at the top of  
9 that page. Do you see the passage which begins:

10 "That was either on Thursday 7th ..."

11 Do you see that?

12 A. Yes.

13 Q. "That was either on Thursday 7 or Friday 8 May when  
14 I was in Kirkcaldy police station just after incident  
15 counselling. I was asked to go and see DI Stuart Wilson  
16 in the chief inspector's room. He was with a DCI who  
17 I don't know and have never met before. I think they  
18 were both from the major investigation team."

19 Do you see that?

20 A. Mm-hm.

21 Q. Does it continue:

22 "DI Wilson asked if I would be prepared to provide

1 a statement at that time. I told him that based on  
2 legal advice I had been given I would be declining to do  
3 so."

4 Do you see that?

5 A. Yes.

6 Q. So looking back now, did you decline to provide  
7 a statement on 7 May 2015 because you thought it was  
8 a tick box exercise that you didn't need to provide  
9 a statement, or did you decline to provide a statement  
10 on the basis of legal advice?

11 A. No, that was declined because it was a tick box exercise  
12 and I was told to say that on the basis of legal advice  
13 we were told not to provide one.

14 Q. So when you were told that it was a tick box exercise,  
15 part of that was it was a tick box exercise so refuse to  
16 provide a statement on the basis of legal advice?

17 A. Yes, to give that as the reason as to why you weren't  
18 providing a statement.

19 Q. And had you been given legal advice at that stage?

20 A. I don't think so. When was that? No, I don't think we  
21 had at that time. The days roundabout the aftermath of  
22 that was -- I lost track of them all.

1 Q. Sure.

2 A. So aye, the dates don't mean too much to me. I was  
3 going in and out the police station for certain things.

4 Q. At the meeting on 7 May, do you remember a discussion  
5 taking place about your status at that time?

6 A. No.

7 Q. But you will be aware that by status I mean whether you  
8 were a witness or a suspect at that time?

9 A. Yes, yes.

10 Q. At the meeting on 7 May 2015, do you recall being  
11 informed by either Detective Chief Inspector Hardie or  
12 Detective Inspector Wilson that your status was that of  
13 witness?

14 A. No. That they were just going to take a statement from  
15 us.

16 Q. So you don't recall being informed that your status was  
17 a witness and thereafter declining to provide  
18 a statement on the basis of legal advice that you had  
19 been given?

20 A. Yes, we never got as far as sort of saying if the  
21 statement would be under caution or anything like that,  
22 it was just "You've got to provide a statement".

1 Q. I'm not suggesting that you would have been informed  
2 that the statement was under caution; what I'm  
3 suggesting is that you were informed that you were  
4 a witness, not a suspect, and that you were asked to  
5 provide a statement in those circumstances. You don't  
6 remember that?

7 A. No, I don't think we were given any: that's your status  
8 at that point, no.

9 MR SCULLION: Thank you.

10 LORD BRACADALE: Thank you, Mr Scullion.

11 Dean of Faculty, what's your position now?

12 DEAN OF FACULTY: My Lord, I wonder, the only -- I'm sorry,  
13 I will sit down.

14 LORD BRACADALE: Yes, I think --

15 DEAN OF FACULTY: The only matter I would wish  
16 an opportunity to clarify would relate to Ms Mitchell's  
17 issue 2. It will take me five minutes. Rather than  
18 the court adjourning, if your Lordship is happy, I will  
19 just simply swap positions with Mr Scullion.

20 LORD BRACADALE: Yes, that's fine.

21 Questions from DEAN OF FACULTY

22 DEAN OF FACULTY: Obligated.

1 (Pause).

2 My Lord, just before I go to the point that I was  
3 going to clarify, my learned friend suggests it might be  
4 helpful, just in light of the question asked by  
5 Ms Mitchell about the Lee Rigby affair, if the witness  
6 could be directed to document PS 09749.

7 LORD BRACADALE: I'm not sure that's available. I think  
8 documents that are going to be used on the day are in  
9 a bundle. Would it be easier if Ms Grahame dealt with  
10 this?

11 DEAN OF FACULTY: It is perhaps -- I think if the Inquiry  
12 have it, it may be acceptable to -- do you recall  
13 anything about a "Stay safe" message from Assistant  
14 Chief Constable Ruairaidh Nicholson on 19 February 2015?

15 A. The memo that came out on the intranet, the video, is  
16 that the one you're referring to?

17 Q. Yes.

18 A. Yes.

19 Q. What was said to members of Police Scotland is:

20 "This means an attack is highly likely. Although it  
21 is uncertain what form it may take, we have witnessed  
22 recent attacks in Copenhagen, Paris, Australia and

1 Canada, and we can clearly recall the murder of Fusilier  
2 Lee Rigby on the streets of Woolwich."

3 Was that something that Police Scotland were keen to  
4 make officers aware of?

5 A. Yes.

6 Q. In 2015?

7 A. Yes.

8 Q. Thank you. PC Walker, the only other thing I wanted to  
9 ask you about is you recall the suggestion that there  
10 was an inconsistency in the original PIRC statement.

11 Can we have that back please, PIRC, 00265, and we go to  
12 the third page. And the -- down to the bottom, please,  
13 penultimate paragraph. Up a bit, thank you.

14 If we just look at what you have written here,

15 PC Walker:

16 "By this time I had exited the vehicle and had  
17 walked round the front of the van to the male's  
18 8 o'clock position. I gave a clear verbal warning to  
19 the male to 'stop' and to 'drop any weapons'. I noted  
20 at this time that PC Paton had suffered from the effects  
21 of CS spray and was struggling to see and was  
22 disorientated. The male, now aware of my presence,

1 turned his head in my direction whilst appearing not to  
2 be following any of the directions given."

3 Now, earlier in that paragraph you have mentioned  
4 two directions: 1, drop any weapons. Do we understand  
5 from what you have said already, he didn't drop any  
6 weapons?

7 A. Yes.

8 Q. The other direction that you record having given was for  
9 him to stop. Does this mean that he didn't follow that  
10 direction either?

11 A. Yes.

12 Q. And if he didn't stop, what was he doing?

13 A. Walking towards me and closing the gap down to  
14 approximately 8 feet away, as per my statement.

15 Q. Yes. So is there any inconsistency in this statement  
16 with what you have told the Inquiry?

17 A. No. Like I stated earlier, there was maybe not as  
18 sufficient detail but there's nothing in it to  
19 contradict what I had said.

20 Q. Would you have sprayed him if he had just been standing  
21 there doing nothing?

22 A. No.

- 1 Q. Why did you spray him?
- 2 A. Because he was closing the distance to me and was an
- 3 immediate threat to my safety, and I had to use
- 4 defensive tactics at that point.
- 5 Q. The other physical interaction before the restraint that
- 6 you had with Mr Bayoh was the shoulder charge. Why did
- 7 you do that?
- 8 A. In order to get him -- or to bring him under arrest and
- 9 to remove him away from Constable Tomlinson and
- 10 Constable Short.
- 11 Q. Was this after he had chased Constable Short?
- 12 A. Yes.
- 13 Q. Had PC Short done anything to warrant being chased by
- 14 Mr Bayoh?
- 15 A. Not that I was aware of.
- 16 Q. Had she done anything to warrant being struck and
- 17 knocked to the ground by Mr Bayoh?
- 18 A. Not that I was aware of.
- 19 Q. Had she done anything to warrant being stamped on
- 20 by Mr Bayoh?
- 21 A. Not that I was aware of.
- 22 Q. Were your actions in response to that?

1 A. Yes.

2 DEAN OF FACULTY: Thank you, PC Walker.

3 I'm obliged, my Lord.

4 LORD BRACADALE: Thank you.

5 Constable Walker, thank you for coming and giving

6 evidence to the Inquiry. You're now free to go.

7 A. Thank you.

8 (Pause).

9 LORD BRACADALE: We will adjourn now and we will sit again

10 on Tuesday. We're going to have a slightly earlier

11 start on Tuesday at 9.30.

12 Very well.

13 (3.58 pm)

14 (The Inquiry adjourned until 9.30 am on

15 Tuesday, 24 May 2022)

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