| Expert: | Instructed By: | Date: |
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| Mr Martin Graves Esq. | Mr Alasdair MacLeod, Senior Procurator Fiscal Depute, Crown Office, Serious and Organised Crime Unit, 25 Chambers Street, Edinburgh, EH1 1LA | 13th April 2018 |

**Investigating:**

Procurator Fiscals Office of Scotland

**Subject Matter:**

Use of Force by Police in the restraint of Mr Sheku Bayoh

# EXPERT WITNESS REPORT OF MR MARTIN GRAVES

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## Contents

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## 1. Brief Curriculum Vitae

a. I joined the Metropolitan Police Service (MPS) in February 1982 and served in the rank of Sergeant and acting Inspector from January 1997 until my retirement in September 2012. I performed a number of operational roles in both uniform and plain clothes.

b. I maintained an operation role until my retirement being deployed during the Olympics and Notting Hill Carnival in August 2012. I have planned, organised, controlled and policed numerous incidents involving conflict and restraint over my service including major public order events involving crowds and working in various environments and locations around London.

c. From March 2000 I was employed within the Central Officer Safety Unit. Until March 2011 I was the training manager for this unit based at Hendon Police College. I had direct responsibility for the training packages provided in relation to conflict management, dynamic threat assessment, arrest, restraint and personal protection for the 5000 plus staff passing through the college each year. This included the training, monitoring and development of over 500 personal safety trainers together with a dedicated team of 16 lead trainers.

d. I qualified as a National Taser trainer in 2007 as part of the Home Office trial and was part of the original team that introduced and delivered the training to the first group of none firearms officers (STO's) in the MPS. I was also responsible for the content and design of the supporting Taser training packages for none Taser trained officers in the MPS.

e. In April 2011 I moved to New Scotland Yard as the Senior Advisor and Subject Matter Expert in relation to personal safety. This role includes the creation of curriculum, the review and development of service training packages, policy and equipment. I also provided advice to Professional Standards, Legal Services and other departments within the MPS. As part of this role I also liaised with numerous outside agencies and public bodies providing advice and guidance. An additional role was the quality assurance, monitoring and collation of all Taser incidents in the MPS both Firearms and specially trained officers on the TSG and the introduction to BOCU officers.

f. I still retain my qualification as a Personal Safety trainer and have been responsible for its practical delivery since 1996. I am registered with the National College of Policing, formally the National Policing Improvement Agency (NPIA) as an associate tutor/lecturer and regularly assist with personal safety, operational leadership and command courses.

g. I hold an NVQ level III award in training design, delivery and evaluation and an NVQ A1 assessors award both from OCR. I also hold a Certificate in Education from Greenwich University.

h. I hold a number of external trainer qualifications in connection with Personal Safety, Self Defence, Health & Safety and use of protective equipment. These include qualifications in the application of risk assessment techniques in the work place from the Institution of Occupational Safety and Health (IOSH).

i. At a National level I was appointed Secretary to the Association of Chief Police Officers (ACPO) Practitioners Advisory Group on Personal Safety in April 2000. This role included the management of the National Personal Safety Manual which I fully reviewed and continually updated with the latest version having been launched in February 2012. I have also conducted a large number of other research and development projects on behalf of the Association of Chief Police Officers (ACPO). As part of this role I represented ACPO as a member of the Conflict Professionals Advisory Board and various Home Office committees on safe detention and restraint.

j. In 2003 I was selected to go to the USA to research and train in various less lethal weapon platforms including Taser. I was qualified in this and other systems including baton rounds and 'bean bag' or 'sock' rounds. This was as part of the UK research and development into less lethal options which continued through the various testing and evaluation phases working with ACPO and the Home Office Scientific Development Branch on Taser implementation.

k. In August 2008 I was selected to represent ACPO as their subject matter expert and strand lead for a joint ACPO/NPIA review of the National Personal Safety programme. I designed the current national learning programme curriculum for personal safety training; this included the training of trainers programme. As part of this review I managed a full review of the medical implications section of the manual acting as the Subject Matter Expert to the Independent Medical Sciences Advisory Panel (IMSAP), which is independent of the police and funded by the Home Office. This review also looked at and incorporated information on recent medical and tactical information.

l. I have also worked on other research projects on behalf of the Police Federation around communication and officers' responses during combative/stressful situations. This included post incident management and debriefing programmes following traumatic, critical and major incidents and the support of officers involved in such events.

m. These roles and projects have required extensive research and investigation into the tactics used and training delivered across the UK not only by the police but our colleagues within the prison service, health service and private sector including the security industry.

n. Outside the police I am the managing director of a private sector company which delivers training in dynamic risk assessment, conflict management, operational planning, physical intervention and restraint and personal safety to security, mental health, custodial and other outside agencies including the Home Office. I also work for a charity specifically developing and delivering programmes in relation to defusing and dealing with conflict.

o. I am regularly called upon to provide expert witness reports around the use of force by police, the operational tactics they employ and the training they receive. I have provided in excess of 150 statements and actual expert testimony in excess of 60 cases on behalf of the MPS, IPCC, CPS and Police Federation together with a number of other forces including South Wales, Dorset, Bedfordshire, Merseyside and Cambridgeshire. As such I believe I am fully aware of the development of personal

safety policy and training, including the various techniques taught to staff, operational risk assessment and best practice in such matters.

*Please find attached full CV and certificate of police service at Appendix A*

## 2. Instructions

a. I have been instructed to review the various documents provided, CCTV and other materials in relation to the interaction between Mr Sheku Bayoh and officers from Police Scotland.

b. I have been asked to provide a full report of my findings on this matter based on detailed and specific terms of reference *(please see attached copy at appendix C).*

c. My observations and opinions have been based on the two main points that the investigators are looking into. That of the officers' initial justification to use force and then the continued use of force on Mr Bayoh once it appeared or was apparent that he was in need of medical assistance and the subsequent actions of the officers at this point.

d. My initial approach has been to consider the following elements of the incident: -
   - Look at the initial information available to the officers
   - The additional information/intelligence they received during the incident
   - The officers' decision making process
   - The guidelines and training in relation to dealing with subjects exhibiting such behaviour and resistance
   - The tactical options available to the officers
   - The tactical options used by them
   - The officers' duty of care to Mr Bayoh

e. I have also been informed that it is likely that I may be required to provide a supplementary report following submission of this one.

## 3. Issues

a. My opinions below raise some questions and points that may require further clarification but will hopefully assist the investigators in arriving at a balanced review of the incident for all concerned.

b. I must examine and therefore explain the various elements that make up the decision making process officers are taught to better establish the proportionality of the actions and their recognised risks.

c. I will present my opinions based on the training the officers receive in dealing with such incidents and their expected competent level of performance.

## 4. Documentation

a. I have been given access to the initial accounts and subsequent records provided by the officers concerned. I have also examined the witness statements, CCTV footage and recordings from the radio and 999 emergency calls. These have been provided as a composite produced by the Forensic Services department of the Scottish Police Authority. I have also examined various PSOS Standard Operating Procedures, policies and training materials together with relevant NPCC programmes and manuals.

b. In addition to these documents I also received a thorough briefing on the case from Mr MacLeod prior to reviewing the documents, together with a telephone conference with him and Miss Fiona Carnan to discuss my preliminary findings and raise any questions I had in relation to the evidence and documents provided.

*Please see Appendix C for full list of documents provided by instructing investigator.*

## 5. Chronology / Case Abstract

a. This has been taken from the COPFS/PIRC detailed timelines.

*Please see Appendix C for full list of documents provided by instructing investigator.*

## 6. Technical Background / Examination of Facts in Issue

### General

a. Most Personal/Officer/Staff Safety packages are made up of a number of elements, which includes threat or risk assessment, decision making, conflict management and de-escalation techniques, communication skills, the delivery of basic unarmed defensive strikes which may include the use of pain compliance and pressure point control tactics, restraint techniques, use of handcuffs and other equipment such as batons or incapcitant sprays.

b. These tactical options are presented together with the possible medical implications and accountability for their use.

c. The number of techniques taught will depend on the role the person is employed to undertake, the strategic or corporate risk assessment that has been carried out for that role together with any identified equipment required to address that risk.

d. Officers are also given input on their powers to use force regarding justification and accountability around their choice of tactical option. It is therefore the officers responsibility to evaluate the risk, choose the method of dealing with a subject and then account for their actions.

e. The nature of policing is as diverse as the behaviour of the individuals' officers have to deal with and as such it is impossible to train tactics for every set of circumstances.

However, it is an overriding principle that they are taught that they have a duty of care to members of the public, themselves and their colleagues and that their actions must be proportionate, reasonable and necessary in the circumstances and that they may be required to account for what they have done or not done. Any actions must first comply with the law then policies and procedures and their training.

**Dynamic Risk Assessment and Impact Factors**

a. One of the cornerstones of conflict management is the ability to assess a situation based on a number of elements. Officers within The PSOS receive officer safety training on an annual basis. This training includes the application of the National Decision Model (NDM). The NDM replaced the Conflict Management Model (CMM), which is very similar in design and content. The NDM is now used nationally to not only assess dynamic risk but also applies to Taser training.

b. The relevance of the NDM is that it is based on standard human reaction to a stimulus (a threat or perceived risk) and the brains natural cognitive processes.

c. A much older model is the Conflict Resolution Model (CRM) This was phased out in England, Wales and Northern Ireland as far back as 2004. Whilst it can be used to visualise the application of the decision making process it has long been considered as insufficient for modern day policing.

**The National Decision Model (NDM)** ***(appendix D item 1)***

a. The NDM was introduced in 2012 to give guidance to officers in arriving at a considered, appropriate and necessary response to any situation they are faced with.

b. The model is made up of five elements, which should be considered in turn when evaluating a situation. The application of this model is an ongoing process throughout any incident and is considered as a circular process where at any stage the officer may need to go back to the beginning and start over. This model follows the human cognitive process previously mentioned.

c. The underpinning principle of the model were those of the police Statement of Mission and Values which has now been replaced by the Code of Ethics which underpins the expected behaviour and performance of police officers.

d. The ethos and application of this model is integral to the standard training for police officers and staff around decision making and conducting not only a dynamic threat/risk assessment but as a tool for pre-planned situations where time is not an important part of the equation.

e. The first element is GATHER INFORMATION AND INTELLIGENCE this covers everything the officer is told; such as briefings, intelligence reports, radio transmissions, witness accounts and colleagues as well as what they can gather from their own senses, sight, hearing etc. Their personal knowledge of the subject involved including past encounters and experiences with them, the location and its impact on dealing with the situation in a certain way, or other situations with persons which are similar to the

incident being dealt with play a part in this element. Also, their perceptions and thought processes around the situation will come into play as part of the overall input.

f. The amount of information available to officers can sometimes be very limited or they may be required to act prior to gathering all apparent available information. Whilst this is not considered 'best practice' it is unfortunately a very real consideration in responding to modern day policing incidents.

g. The second element is ASSESS THREAT AND RISK AND DEVELOP A WORKING STRATEGY which can be partly conducted before the actual incident and will be based on the information gathered at that time and the experience and knowledge of the officer. In these circumstances, more time can be devoted to this initial process but will be ongoing as the incident progresses and develops.

h. This can however be conducted in a heartbeat in a dynamic and fast moving incident and is developed from the brains natural defence mechanism. It is about making a judgment of the situation and the subject's involved base on all the information that has been gathered and the application of the surrounding impact factors.

i. This threat assessment can be divided into three main categories of risk that should be considered to arrive at a conclusion.

These impact factors are: -

- PERSON(s) – This could include their behaviour, verbal and non verbal signs of aggression displayed and comparisons between the subject and the officer (age, height, weight, gender, ability, fitness etc). This also covers the proximity of other individuals (crowds) who may become involved/frustrate police action or be put at risk from the subject. The availability of support or backup and previous knowledge of the subject or similar individuals and their responses to the officer are also relevant at this point.

- OBJECT – This refers to articles carried by the subject or items that may be accessed in the area. This will include articles not seen but believed to be in their possession, based on the information available, for example items carried in a bag out of sight or secreted about their person (weapons etc).

- PLACE – These are specific to the location in which the incident is being dealt with, such things as space or constraints of the environment, lighting, weather and the ease of escape or withdrawal for both the subject and officers. The 'mood' of the area also plays a part as some areas may be hostile to police actions and by that very nature can create problems outside of the actual incident.

j. These factors including the availability of and capability of support will above all guide an officer's decision as to how to tackle a situation once they have considered the third element.

k. This is the consideration of the POWERS & POLICIES available to them to deal with the situation. This specifically involves the use of force but also includes powers under statute law, service and organisational policy, such as positive arrest for specific

offences or other issues and associated procedures, together with their obligations and duty under Human Rights legislation will also be considered here. In pre-planned events this may have formed part of the original briefing or again in a fast moving dynamic situation this may be a pre-cognitive process based on the officer's knowledge and experience if called upon to react to a perceived threat.

l. This now leads onto the IDENTIFY OPTIONS AND CONTINGENCIES or the tactical options chosen to deal with the situation or subject. This is drawn from the array of skills the officer is taught from communication, the use of open hand or defensive techniques to calling for support, withdrawing or the use of equipment. This choice is as you can see based on a great deal of information, which may be assimilated in quick time as an incident unfolds in front of an officer. This tactical option is constantly under review as changes are made in the threat assessment based on additional information, however the underlying principle should be that it should be the least intrusive option available based on the perceived threat.

m. The next part of the model is to TAKE ACTION and REVIEW WHAT HAPPENED. This is where the chosen 'tactical option' is applied and is either found to be affective or not. It is at this point any previously identified contingencies (other tactical options) may be utilised.

n. It must be born in mind that this process is ongoing and continually under review as circumstances change or the tactical option chosen becomes ineffective or other risks become apparent. Such as an additional risk to the officers, the subject or public due to additional information being received or further actions from the subject.

**Use of Force Powers, Self Defence at Common Law and the use of Pre-Emptive Strikes** ***(appendix D item 2)***

a. It is a well established fact of law and has formed part of police use of force training for some years that a person being threatened does not have to wait for the assailant to deliver the first blow (R v Beckford 1988). However, this must be justified based on a 'genuine and honest held belief' of 'imminent danger' of attack.

b. An officer must show using the NDM and the impact factors mentioned above that they held this belief and that the force used was reasonable, necessary and the least intrusive option available. These stated case definitions were further clarified and now form part of statute Law under Section 76 of the Criminal Justice and Immigration Act 2008.

c. Scottish Police have specific power under Section 20 Police and Fire Reform (Scotland) Act 2012. This lays out the duty of a constable and gives guidance in relation to when force may be used. This mirrors the legislation used in England and Wales.

d. As with members of the public officers also have a power to use force under the 1967 Criminal Law Act (section 3). This provides that reasonable force, in the circumstances may be used to prevent crime or conduct and arrest or assist another in making a lawful arrest.

e. It is therefore relevant to establish the reasons why an officer used force on another person. Were they: -
- attempting an arrest
- trying to prevent the person from committing a crime
- detaining them for a procedure such as a search
- defending themselves or another from a perceived or imminent attack
- preventing a breach of the peace or maintaining order

f. It may be that there is more than one reason for the officer to use force but their intentions and reasons for doing what they did should lead to the power they used force under and therefore the criteria that should be applied to establishing if it was lawful.

g. The question as to whether force was firstly necessary in the circumstances as the officer 'believed' or 'perceived' them to be, then whether the force used was 'proportionate' to that 'perceived' threat should form the primary basis of establishing if it was justifiable or excessive.

**Medical Implications** ***(appendix D item 3)***

a. Officers are given guidance as to the 'probable' and also the 'less likely' outcomes of their actions when using force on people. The effects and consequences of strikes to different parts of the body are highlighted. In particular the heightened risk of striking a subject to the head, spine or abdomen. Where applicable this can assist an officer in 'weighing up' or assessing the level of injury or harm that may result from their actions.

b. This is not always possible in a free flowing and dynamic situation but the underpinning knowledge can influence decision making around use of force and the specific tactics applied. It can above all else assist in identifying the least injurious or forceful option.

c. In particular the risks associated with applying pressure to the neck, restraining subjects in positions that may affect their ability to breath (positional or restraint asphyxia) and other associated risks with restraints are highlighted. This includes the risk of secondary injuries occurring when a subject is taken to the ground.

d. The medical implications of restraint have formed part of police training since the mid 90s. One main element of this is the term positional or restraint asphyxia. This has been subject to extensive medical research both here and in the USA and the information provided to officers has greatly improved over recent years. This has improved their duty of care to subjects and increased their ability to not only identify the early signs but better understand how people breathe and how officer's actions and the application of restraint can impede this process.

e. Apart from an unobstructed airway, for oxygen to get in and carbon dioxide out, to breath the human body needs three activities to take place, these are: -
- the chest and rib cage to expand and contract
- the diaphragm to rise and fall
- the ancillary muscles in the shoulders and neck to move

f. In simple terms an individual can stop breathing because of the position they have been held in. Positional asphyxia is likely to occur when a subject is in a position that interferes with inhalation and/or exhalation and cannot escape from that position.

g. The training covers two main areas, the signs and symptoms and the risk factors, some of which are listed below: -

- When a subject is prone causing their stomach to press up to the ribs
- When a subject is sat (possibly in a vehicle) and their head drops between their knees compressing their chest and abdomen
- When the subject's head falls forward restricting their windpipe
- When subjects' arms are pinned or secured for example where handcuffs are applied

Therefore, a number of standard restraint techniques can impede the breathing mechanism. The following are factors which have been shown to contribute to this phenomenon: -

- Subject's body position results in partial or complete airway constriction
- Alcohol or drug intoxication (the major risk factor)
- Inability to escape position
- The subject is prone
- Obesity (particularly large beer bellies)
- Restraints
- Stress
- Respiratory muscle fatigue, following violent muscular activity (such as fighting or running away)

h. Officers should pay close attention when they recognise the following signs and symptoms, taking immediate action to remedy them, and apply emergency aid.

- Body position restricted to prone, face down
- Cyanosis (face is discoloured blue due to lack of oxygen)
- Gurgling gasping sounds
- An active prisoner suddenly changes to passive - loud violent to quiet/tranquil or the reverse of this (quiet to violent)
- Panic
- Subject tells the officer that they cannot breathe

i. It is also a well known impact factor that the length of time a person has such a restriction or impediment on their breathing takes place the higher the risk. Officers are taught to reduce the risks as soon as practicable by way of relocating or repositioning the subject or if required disengaging from the restraint if it is deemed that the risk to the subject is too great.

j. It is however a misnomer that only prone restraint and direct pressure on a subject can cause positional asphyxia. By its very title it is due to the 'position' of the body not just any pressure on it that can cause this condition. In essence where the aforementioned risk factors apply, a person can suffer positional asphyxia if left in a position that restricts/reduces their ability to breathe even when no actual pressure is applied to them.

k. The bodies' requirement for oxygen is also a major factor. A person lying quietly needs less oxygen than someone struggling or who has just finished struggling. Also, the amount of body muscle a person has can affect the amount of oxygen required together with the fatigue in those muscles.

l. It is also accepted that any combination of the risk factors again will increase the possibility of a person suffering from positional asphyxia.

m. Above all officers are taught that they have a duty of care to any subject they restrain. They must consider the risk factors in relation to each subject they deal with. They need to constantly and carefully monitor them and react immediately to any signs of positional asphyxia. Should it be considered that positional asphyxia may be evident them it should be treat as a medical emergency and assistance summoned immediately.

n. Another important area of this training is the identification and treatment of people suffering from Acute Behavioural Disturbance (ABD) also referred to as Excited Delirium. This 'condition' has long been identified as having a much higher risk of death during restraint. In simple terms, this is when a subject exhibits sometimes violent behaviour in a bizarre and manic way rather than just being simply violent. This is a rare form of severe mania, sometimes considered part of the spectrum of manic depressive psychosis, and chronic schizophrenia.

o. Just as an abnormal brain function can be associated with stupor or loss of consciousness, it can also cause confusion or agitation. The degree of agitation may vary and there are many commonly associated with severe agitation.

p. This is also sometimes known as 'excited delirium' or 'agitated delirium' but agitation is agitation. Even in hospital, it can be very hard to tell one cause from another. In these circumstances a number of causes can co-exist.

q. Therefore, those under some form of intoxication such as from alcohol or drugs, those with chemical imbalances due to prescribed medication, perhaps a head injury or those with oxygen deprivation are at greater risk.

r. There are many causes of ABD and it has been linked to various drug, alcohol and mental Illness causes. In reality the cause is not always evident and officers are taught to concentrate on identifying the signs and symptoms and dealing with it as a medical emergency, calling for suitable medical assistance as soon as possible and if the subject is restrained, to follow identified guidelines. The signs and symptoms of ABD are as follows: -

- Bizarre and/or aggressive behaviour
- Impaired thinking
- Disorientation
- Hallucinations
- Acute onset of paranoia
- Panic
- Shouting
- Violence towards others

- Unexpected physical strength
- Apparent ineffectiveness of irritant sprays
- Significantly diminished sense of pain
- Sweating, fever, heat intolerance
- Hot to the touch
- Sudden tranquillity after frenzied activity or vice versa

s. The main risk factors that increase a subjects' likelihood of suffering a cardiac event or dying in such situations are prolonged exertion and not getting the required medical help. Therefore, one of the main pieces of guidance in such incidents is that the person should be treat as a medical emergency and examined at hospital as soon as possible as they can collapse and their condition worsen rapidly even after it appears the incident is all over.

**Restraint and Taking or Placing Subjects on the Ground *(appendix D item 4)***

a. There is a distinct separation between the initial contact and control of a subject to that of full restraint. It can on occasions take some time to control a violent or resistive subject before they can be placed under physical restraint or in mechanical restraints.

b. The restraint of an individual by one or even two officers is problematic and can lead to the use of other tactical options such as strikes, joint locks or other pain compliance techniques to establish control. Also, the 'threat' or representation of using a specific piece of work equipment (batons or irritant/incapcitant spray) may also be utilised.

c. The use of Taser to control a resistive and potentially violent individual can provide an additional and alternative tactical option to strikes, takedowns or other more injurious uses of force in such cases.

d. In most circumstances following initial contact with the subject their arms, legs and if necessary the head need to be secured and an open space should be sought to take the subject to the floor and fully restrain as necessary.

e. The control and restraint of violent or potentially resistive individuals is usually a fluid and dynamic process, which often ends up with one or more parties on the ground. The reasons for this are twofold. Firstly, gravity will prevail in fast moving incidents where one's balance is lost or deliberately taken away by an officer (press down, leg sweep etc). Secondly, the ground is often the safest place (for all) to achieve control and subsequent full restraint of a violent or resistive person.

f. The use of the ground is widely encouraged to assist officers in the restraint of individuals. This can act as an 'extra officer' in such circumstances by providing a solid platform for the officers to work from.

**Use of Handcuffs *(appendix D item 5)***

a. The use of handcuffs is well established within the police service. Chain linked, folding and rigid bar handcuffs were introduced into the UK back in the early 1990s. They

provide an additional tactical option of replacing physical restraint (an officer holding onto a subject) with a form of mechanical restraint.

b. Rigid bar handcuffs were adopted by most forces as they provide the additional benefit of using compliance techniques to assist in gaining control of violent or resistive subjects. This is done by manipulating the handcuffs to cause temporary stimulation of the nerves in the wrist and therefore creating pain which is transient and stops once the pressure is released.

c. This compliance can be used if necessary to direct or take a subject to the ground where they can be successfully controlled and restrained. It can also be used in other positions to assist officers in gaining full control and therefore restrain of a subject.

d. Most standard handcuffs have an ability to be double locked. This is done by inserting the rear of the key into a small hole or slot. Double locking the handcuffs prevents them from tightening on the subjects' wrists and causing further injury. This is not always possible during the restraint but should be conducted at the earliest opportunity when it is safe to do so.

e. This should be done once they have been checked for tightness. This can be a visual check which may later include a check for circulation in the capillary refill of the fingers, a verbal check (asking the subject) or a fingertip check for a gap on the ratchet bracelet. This can however be difficult to achieve during a struggle.

f. The fact that hands have been secured by use of handcuffs still leaves a subject the ability to inflict injury on an officer by the use of their legs, head (biting and spitting) and main body mass to resist an officer.

g. Unless certain medical or operational factors apply officers are encouraged as best and safe practice to handcuff subjects to the rear.

**CS and PAVA irritant/incapacitant sprays *(appendix D item 6)***

a. Incapacitants or irritant sprays are known to reduce the capacity of most individuals to offer resistance or violence to officers, without unnecessarily prolonging discomfort. They are designed to incapacitate violent and aggressive individuals who could not otherwise be restrained without risk to the officer.

b. CS was first introduced into the British police following extensive trials in 1997. The CS (Orthochlorobenzalmalonitrile) is a white crystalline solid designed to react with the moisture from a person's body, mainly in the mucus membranes. These crystals are suspended in a solvent called MIBK (Methyl Iso Butyl Ketone), which is also found in citrus fruits and vinegar.

c. The CS and solvent is contained in a small aerosol canister, which is hand held and works in much the same way as an everyday aerosol spray. The CS is discharged in a streamer spray, similar to a water pistol, which reduces the risk of cross contamination. The standard canister contains sufficient spray for about a 6 second continual burst.

d. The likely effects are pain and discomfort in the eyes that causes excessive watering and a burning sensation in the nose and throat. Other effects include excess nasal secretion, excess salivation, burning and constriction of the chest, sneezing, coughing, retching and a stinging sensation on exposed skin.

e. The effects of CS are dependent upon the amount of spray coming into contact with the person and their reaction to it. Most people recover within 10 to 15 minutes without any lasting effects. However, MIBK can sometimes cause blistering that can last up to 8 days. Current information suggests that 1 in 10 individuals are resistant to the effects of CS. This percentage can increase if the subject is under the influence of certain drugs or medication or suffering from Mental Ill health.

f. CS spray can have an immediate effect or take up to 20 seconds. If the first application is not successful, the technique can be repeated as there is sufficient spray contained in the canister for several horizontal bursts. Should the spray be ineffective then other control methods will have to be considered. There is no significant cumulative effect with CS and further bursts are unlikely to cause greater incapacity.

g. Captor II is the trade name for PAVA (Pelargonic Acid Vanillylamide). It contains Nonivamide which is a synthetic equivalent of Capsaicin, the active ingredient in natural pepper sprays. Nonivamide has been used for a number of years in pharmaceuticals, such as pain relieving balms and as a flavouring additive in foodstuffs available in the UK and Europe. It was authorised for use by the British police on 9th November 2004 when the Home Office agreed to support the use of PAVA.

h. A burst of PAVA in the face will usually affect the eyes, the skin and if inhaled the respiratory system. The effect may be virtually instantaneous, delayed or there may be no effect at all. For this reason, officers must not rely on PAVA as their only option, but must be prepared to consider other appropriate tactical options. The extent of these symptoms will depend on the amount of PAVA sprayed, the delivery system and the range it is used at, and may vary between subjects.
The effects include: -
    - dilation of the capillaries and instant closing of the eyes
    - severe twitching or spasmodic contraction of the eyelids involuntary closing of the eyes; an eye shut reflex
    - a burning sensation; this is not actual burning however the chemical is causing the body sensors to respond in a similar way
    - if inhaled it produces immediate respiratory inflammation which in turn produces uncontrollable coughing as a protective measure, and sometimes shortness of breath
    - inflammation of mucous membranes produces difficulty in breathing through the nose
    - the face will feel very hot, as will the inside of the nose and mouth if they have been in contact with the spray
    - lips and eyelids may become slightly swollen
    - skin colour may range from slight discolouration to bright red

i. Subjects can find the experience of being exposed to PAVA very painful. This can lead to high stress, anxiety, panic or aggression. This combined with the experience of being temporarily unable to see for a longer period of time than they have ever experienced before can lead to disorientation and a feeling of nausea.

j. Anyone suffering the effects from CS or Captor may be angry, frightened or both. Officers are taught to administer aftercare to minimise discomfort caused by the spray. This would entail the officer informing the person that they have been sprayed and that the effects are temporary. Any commands given by the officer should be in a loud, clear voice and may be repeated. Officers should tell the subject to keep their hands away from their face and encourage them to breathe normally. Persons suffering from Captor may have difficulty hearing properly.

k. In relation to CS and when practicable the subject should be moved to an uncontaminated open area and told to face into the breeze. This will help to disperse the CS crystals away from the subjects' face.

l. Irritant sprays should generally be used at distances of between 1-3.5 metres (3-10 feet) from the subject. When the spray is used the fluid is forced out under pressure. At close range the sheer force of the spray raises the possibility of causing damage to the soft tissue of the eyes. Hence the sprays should not be used at a range of less than 1 metre, unless the situation makes it justifiable or an officer can account for the use. This can occur in grappling situations where space is restricted or an officer's ability to withdraw is limited.

m. The decision to use an irritant spray is taken by the individual officer concerned. In general, when dealing with a violent or potentially violent situation, Captor spray is much less likely to have long lasting effects than for example a baton strike, which could cause more serious an injury. Captor is also far less dependent on an officer's physical strength or technical ability and therefore offers an alternative method of controlling subjects offering violence towards officers.

n. Before using an irritant spray officers are taught to use verbal commands in an attempt to diffuse the situation. However, this will depend on the circumstances at the time and may not always be possible. It has been shown that on occasion's issuing a warning can allow a subject the opportunity to cover their faces and therefore frustrate/limit the effectiveness of the spray.

**Use of Batons** ***(appendix D item 7)***

a. Police issue batons come in a variety of types and sizes. The batons used by Scottish police are a three part metal baton similar to that used by a number of other forces. They either lock in place due to the machine fit of the tubes or by some other locking mechanism.

b. These batons are designed to be used in a 'closed' and 'open' position. In the closed position they are generally used to deliver strikes at close quarters to major muscle groups such as the bicep or thigh *(see dysfunction/distraction strikes below)*. This can assist officers in achieving control of a subject or disarming them of a weapon.

c. These batons are design to maximise the efficiency of a 'fluid shock' *(see strikes below)* strike whilst reducing the overall injury potential.

**Strikes** ***(appendix D item 8)***

a. The outcome of these strikes can be quite different therefore the choice of body weapon (hand, fist, elbow, foot, knee etc) or equipment (baton) and target area (muscles groups, torso, joints, face etc) linked with the possible injury potential must be considered.

b. The level of perceived threat can obviously alter what an officer may use to strike together with where they might strike a subject. For example, if a weapon was involved or serious harm or possible death was about to happen to either the officer or another person this may justify a strike to the head in some circumstances.

c. The training therefore includes the teaching of strikes to various parts of the body to achieve these different objectives. If defending one's self against a perceived assault strikes to the face, chest/major body mass or abdomen can stop an assailant's attack and keep them at a distance where they are unable to strike out at the officer.

d. Officers receive instruction in how to gain a tactical advantage over a subject. This can be by the use verbal dominance such as shouting, strikes or pain compliance techniques to achieve either or both of the following objectives.
   - Theirs or another's immediate protection i.e. stopping a perceived attack
   - To assist in the control or restraint of an individual

e. These are commonly referred to as distraction or dysfunction techniques. Strikes to major muscles such as the upper arm, fore arm, thigh, or calf produce a 'fluid shock' affect which disrupts the messages being sent by the nerves to the brain. Such strikes maximise the effect whilst minimising the injury potential. It can be necessary to deliver more than one strike <u>but each individual strike must be justified and consideration given to its effectiveness against another possible tactical option.</u>

f. The outcome of these techniques can be quite different depending on which one is chosen. If strikes are required then the choice of body weapon (hand, fist, elbow, foot, knee etc) or equipment (baton or handcuffs) and target area (muscles groups, torso, joints, face etc) linked with the possible injury potential must be considered.

g. Such strikes whether used in self defence or to establish control will achieve one or all of the following: -
   - Dysfunction – This is where the muscle, which has been struck, loses its ability to function. This makes it easier to then control that limb for handcuffing, placing them in restraint holds or taking the person on the ground. A subject's ability to maintain a grip of a weapon could also be reduced. In relation to verbal dominance this can result in defecation or loss of bladder control in extrema cases.
   - Distraction – This can allow another technique to be applied or stop the immediate threat of attack. The technique used can take a subjects mind off attempting to keep hold of something or prevent their arm being placed in a

certain position for example an attempt to place a restraint hold or handcuffs on a subject.

- Mental stunning – This is sometimes also referred to as the 'Freeze' moment *(see effects of stress below)*. In cases of extreme stimulus, the brain is overloaded with the amount of information it has to deal with so its processing capability is shut down for a short time, usually between 5-7 seconds. This allows the brain to sort out the information it is receiving or 'reboot'. This can manifest itself as freezing (the rabbit in the headlights), loss of body control (falling to the ground) and a degree of auditory exclusion and perceptual narrowing.

h. It is also true to say that delivery of strikes to other areas of the body such as the face, as previously mentioned, can also produce these effects.

i. Strikes should always be delivered with strong verbal commands to allow the subject to comply with the officers requests e.g. "Get down" "Get back" or "Stop resisting".

j. As mentioned above these effects can also be created with stimuli other than strikes. Shouting, verbal commands or threats, over emphasised movement or other types of none verbal communication can cause a person to freeze or submit therefore allowing an officer the chance to place some other kind of control or restraint upon the subject. It may also assist in prevent or stop them from resisting or entering the 'fight' phase of the process.

k. It should also be borne in mind that the use of tactics during training is very different to their operational deployment. The stresses on an officer are much greater in the operational environment, the risks are real and the behaviour of individuals can be much more violent. Absolute perfection in the application of a technique is unlikely under these conditions as the officer's ability to perform complex tasks or produce cognitive thought processes diminishes with increased heart rate.

**Communication Skills** ***(appendix D item 9)***

a. Communication is considered a core skill within not only conflict management but policing in general. Whilst there are many models and research on this subject the difficulties in dealing with highly charged and emotional individuals can be beset with problems.

b. Using an inappropriate level or style of communication can also cause problems. For example, using certain terminology like 'Sir' or 'Mate' in the wrong context with the wrong person can cause conflict. On the other hand, using the appropriate terminology and language can get your message across far more effectively in certain circumstances.

c. The Stresses on a subject as well as the officer can produce numerous blocks to communication. Not least are the barriers created by alcohol, drugs and mental ill health. These can evolve very quickly when perceptions and other traits can seriously affect an officer's ability to deescalate situations by means of communication.

d. When an individual is under threat they can say or do things that later appear out of character or ill considered. This is primarily due to such stresses effecting the persons

rational brain and therefore the ability to formulate cognitive communication *(see effects of stress below)*.

e. We can also revert to what is known as 'Ego state' or 'Transactional Analysis' communication. This is sometimes referred to as Byrne's Theory or the 'parent and child' process. In essence we adopt an ego state where we react and treat the other person as if they were a child. As an ingrained voice of authority within us built up over many years this can be a common response from adults in situations of control especially with younger people.

f. To assist officers in combatting this effect they are taught to keep communication during crisis or volatile/violent encounters simple, loud and repetitive. To some extent linked to the startle or reflex response *(see effects of stress)* officers can and do regularly revert to basic course and even abusive terminology in an attempt to regain control or resolve the conflict. Whilst this is not suggested as a good communication style it can have its place in dealing with some individuals.

**The Effects of Stress *(appendix D Item 10)***

a. During any physical encounter officers experience physical changes which occur during stressful situations and its well known impact on cognitive ability, such as judgement, decision making and time distortion.

b. There are a number of well known physiological and psychological effects, the main ones being: -
- auditory exclusion (although things are said the person may not hear them)
- perceptual narrowing or 'tunnel vision' (only what is in front of the person may be processed or fixated on)
- Perceptions alter (estimates on size, time, level of threat etc)
- Performance (ability to perform fine and complex activates reduces)
- Rational thought (ability to produce rational decisions including communicate normally, rather than act instinctively)
- Using more reactive or 'natural' responses rather than those learnt during training

c. Normal functions and cognitive abilities can return quite quickly. This is indicative of an initial struggle or rapidly changing high stress or confrontational situation deescalating once some form of control is achieved and the immediate threat has subsided.

d. This is often referred to as the 'Chemical Cocktail' or Sympathetic Nervous System (SNS) discharge and the 'Fight or Flight' response, which takes over in such high risk situations and controls most of the body's internal organs and heightens activity at times of stress.

e. It is important to remember that there is a third element to this process, that of the 'Freeze'. This precedes the 'fight or flight' response and is the 'rabbit in the headlights' moment. This is where the stimulus is so overwhelming that the person can freeze and fixate for a period of time before acting.

f. It should also be borne in mind that the application of tactics during training is very different to their use during operational deployment. The stresses on an officer are much greater in the operational environment, the risks are real and the behaviour of individuals can be much more violent and unpredictable. Under these conditions an officer's ability to perform complex tasks or produce cognitive thought processes diminishes with increased heart rate.

g. Such incidents can affect officer in different ways. This can depend on a number of factors, such as: -
   - their experience in similar situations
   - their current state of mind
   - how aware or 'switched on' they were at that point
   - fitness levels
   - Their perceptions as to the level of danger they faced

   Even a very experienced officer can suffer such symptoms during an event even where other may believe the incident to be 'routine'.

h. It is therefore not uncommon to find discrepancies between initial accounts and those recalled later in the investigation process or Post Incident Management. It is common place for officers to omit facts from their accounts or add information and salient facts well after the event. In fact, this is well documented in post incident management procedures where specific guidance is provided around when officers should provide such statements.

## 7. Opinion

### General Points

a. The following excerpts are from the introduction to the NPCC manual and explain that its purpose is not one of prescriptive content but rather guidance and should always be considered in conjunction with other NPCC documents and the rule of law.
   - The nature of policing is as diverse as the behaviour of the individuals' officers have to deal with and as such it is impossible to train tactics for every set of circumstances
   - For this reason, there will always be occasions when officers resort to tactics or techniques not described in this manual
   - In such circumstances, the actions of the officer will not necessarily be wrong or unlawful, provided they have acted reasonably and within the law
   - *Note: The illustrations contained within this manual are intended to be purely representative and should not be viewed as an absolute

b. As such officers are regularly faced with situations that they have neither received training to deal with, carry the required equipment to address the problem or have any previous experience to draw upon to help them in formulating a safe and effective tactical method of resolving the problem.

c. It is expected that in such situations that where possible officers apply the underpinning principles of the Police Code of Ethics. These basic policing principles of accountability,

fairness, honesty, integrity, leadership, objectivity, openness, respect and selflessness, underpin the expected behaviour and performance of officers.

d. Dealing with subjects who may offer violence or perceived to possibly be in possession of a weapon can be inherently dangerous and should always be treated as a high risk activity. Police officers are provided with various equipment and tactical options to deal with such subjects.

**Environment Issues**

a. As mentioned in the NDM section above the Environment or 'Place' in which the officer has to operate can greatly affect not only what they do but how they do it.

b. This is especially so in open areas where other members of the public might be put at risk. The ability of officers to contain a subject and limit their movement, ability to escape or access to weapons, as in this incident. This can greatly impact on the application of certain tactics and techniques can raise the risk to both officers and the public.

**Dealing with subjects with Edged Weapons**

a. When a subject has or is believed to be in possession of a firearm, knife or other edged weapon the risk to officers and members of the public become significantly higher. Officers are taught to approach such incidents as High Risk and may employ tactics, specialist equipment or call for a firearms unit to deal with such subjects.

b. When this specialist equipment or assistance is not available officers apply a best practice model to minimise risk. This involves, where possible creating or maintaining distance from an armed subject, utilising cover to create a barrier between them and the subject and transmitting for required assistance. This can include shouting to other in the area that a weapon is involved.

c. In some circumstances where creating distance may not be viable or possible, perhaps by an increased risk to the public or an inability to contain the subject, as in this situation, closing in and attempting to control the subject can be the better option. Officers may, in these circumstances attempt to control the subject by means of communication skills including verbal dominance possibly in conjunction with drawing a baton or spray.

d. This is particularly relevant when action may be taken to prevent the subject from actually accessing the perceived weapon. Therefore, dealing with the subject in close proximity may be the preferred option. This can limit a subjects' ability to generate power with the weapon or if it is concealed or out of reach, to access it.

**Effects of Stress**

a. As the officers involved in this incident heart rates increased, initially brought on by an SNS discharge, the panic caused when they were affected by their own sprays, then the physical exertion, struggle and subsequent restraint, they would begin to react in a much more instinctive rather than cognitive way. Their heart rates probably very quickly

climbed into the 120 bpm plus range. Research has shown that an officers response, even in a training environment can be greatly compromised at this level.

b. It must also be noted that officers can lose the ability to function during such incidents due to this response. They may appear to have 'lost it' as their brain shuts down and actions become reactive and more instinctive.

c. It should also be borne in mind that the application of tactics during training is very different to their use during operational deployment. The stresses on an officer are much greater in the operational environment, the risks are real and the behaviour of individuals can be much more violent and unpredictable. Under these conditions an officer's ability to perform complex tasks or produce cognitive thought processes diminishes with increased heart rate. This can include recognising visual ques, processing them for what they are and reacting to them.

d. Such traumatic incidents can affect officer in different ways. This can depend on a number of factors such as their experience in similar situations, their current state of mind, fitness levels and perceptions as to the level of danger they faced during that event. Even a very experienced officer can exhibit these symptoms even where other may believe the incident to be 'routine'.

e. It is therefore not uncommon to find discrepancies between initial accounts and those recalled later in the investigation process. This is well documented in post incident management procedures especially when an officer is then shown CCTV footage. Specific guidance is provided in the Post Incident Management procedure around when officers should provide such statements so as to obtains the best evidence available at that time. Those discrepancies evident in the accounts of the officers concerned are not uncommon and I would suggest a product of the effects they suffered during the incident and the fact that the PIM process was not followed correctly following this tragic event.

**Handcuffing**

a. The application of handcuffs is a use of force and as such must be justified. There must always be an objective basis for the decision to apply handcuffs. By applying the NDM an officer should consider whether it is believed the subject might attempt to escape or offer violence. Below is an excerpt from the NPCC guidelines on the use of handcuffs: -

- *In establishing an objective basis for believing that a person may escape or attempt to escape, an officer may react to whatever the person says or does, but need not wait for a physical act. The officer should take into account the seriousness of the offence for which the person has been detained. Depending on the circumstances, this can induce a level of desperation so that an attempt to escape could reasonably be expected. Previous indications of the persons likelihood to escape can also be considered to establish reasonable grounds to handcuff*
- *In establishing an objective basis for believing that a person should be handcuffed because violence is likely to be used against the officer or a member of the public, the officer need not wait for a physical act from the person. The officer should take into account the actions of the person prior to detention. If violence had already been displayed in the circumstances that led to the detention, regardless of*

*whether or not the detention was for an offence involving violence this could constitute adequate objective grounds for handcuffing. Verbal and non-verbal indications from a person of a possible likelihood of violence can provide grounds for making an objective decision. When a person is known or is believed to be likely to use violence, based on previous experiences of such (perhaps particularly at the point of detention or while in custody), this would also assist an officer to develop an objective basis for a decision to use handcuffs.*

b. In this incident Mr Bayoh was allegedly in possession of a large knife and been chasing and threatening people. He had failed to comply with officers directions and had assaulted a female officer knocking her to the ground. At least two of the officers mention their suspicion that this incident may have been terrorist related. I would suggest that all of this in combination with his aggressive and assaultive resistance provides grounds for the use of handcuffs.

c. Unless certain medical or operational factors apply officers are encouraged as best and safe practice to handcuff subjects to the rear. This greatly limits the movement and capability of a subject whereas being handcuffed to the front provides greater movement and the ability to use their hands more freely. In this incident due to the strength of the subject and his level of resistance the officers could only apply the handcuffs to the front.

d. It is important to recognise that handcuffs are a temporary means of restraint and that officers are taught that they should never consider a handcuffed subject to be fully restrained or under control and that they must remain ever vigilant as the subject can still present a threat by violently resisting officers or attempting to still assault them. The subject managed to pull free from the officers after the first handcuff was applied. This greatly increases the risk to the officers as the metal handcuff can inflict a nasty injury if used to strike with.

**Training Materials, Policies and Procedures**

a. Before starting I would like to draw attention to some of the training materials I have been provided with. In general, they mirror those used by other forces and organisations across the UK, however some of the models and terminology is somewhat dated and some information apparently missing from the literature reviewed.

b. The definition of 'conflict' used in the Scottish Police officer safety manual. This states that a conflict can be described as "*A trial of strength between opposed parties or principles or be at odds with*" *(see PRO 547 page 11).* I would question the use of this definition as in my opinion it points officers to accept that conflict is likely to become a physical act or battle. I accept that conflict is inevitable but most situations, when dealt with well, end in no physical force being used.

c. I am unable to find any reference to the medical implications of strikes. This should advise officers as to the different outcomes of strikes to various parts of the body. Some forces still use a medical implications or strike chart showing 'Red' (high risk of serious injury) Yellow and Green areas of the body. These are also sometimes referred to as primary, secondary and final target areas. Whilst this is not detailed and the information

available on this is quite extensive it does show the likelihood of strikes to the head, especially with a baton, carry a high potential for serious injury.

d. The SPELS first aid training document *(see PRO 678 page 15)* has information on Positional Asphyxia. This is both inaccurate and misleading by stating that this occurs when a person is face down or in the prone position. It does not reflect the information held in the officer safety manual. It also implies that this is only likely in someone who is intoxicated, are obese or have a 'beer belly' which again is incorrect.

e. It is also important to note that it appears that the guidelines in relation to post incident procedures and the making of notes and gaining initial responses form the officers concerned were not followed in this incident. This may well have hampered the gathering of accurate and meaningful recollections from the officers concerned.

**Directed comments**

a. I have attempted to compile my responses based on the list of specific questions posed by the investigator *(set out below)*.

***Were the methods of engagement and restraint of the deceased by officers reasonable and justifiable taking into account the requirement for their use of force to be necessary, accountable, proportionate, legal and ethical?***

***Did the officers follow their OST training?***

***Specific questions about PC Walker and PC Paton initial engagement.***

***Given the information available to these first two officers please comment on the profile of the now deceased, the initial risk assessment by those officers, their initial engagement and use of force?***
***What if anything could or should the officers have done differently?***

***Should these officers have been alert to the possibility that Mr Bayoh was suffering from drug induced psychosis given the information to hand and his response to their initial engagement with him?***
***If so what if anything could they or should have done differently in light of this in accordance with their training?***

***Specific questions about PC's Short and Tomlinson initial engagement.***

***Given the information available to these next two officers please comment on the profile of the now deceased, the initial risk assessment by those officers, their initial engagement and use of force, this should reflect their actions individually and with the other officers present?***
***What if anything could or should the officers have done differently?***

***Should these officers have been alert to the possibility that Mr Bayoh was suffering from drug induced psychosis given the information to hand and his response to their initial engagement with him?***

***If so what if anything could they or should have done differently in light of this in accordance with their training?***
***Questions about PC Walker and PC Tomlinson response.***

***Following the initial engagement and information now available to these two officers please comment on the profile of the now deceased at this point, their responses and use of force?***

***What if anything could or should the officers have done differently?***

***Questions about the period of restraint on the ground.***

***The methods and restraint techniques used particularly the use of body weight/position to hold the deceased on the ground.***

***The use of force applied.***

***The collective actions of the group and comment on the individual officers actions.***

***Given the information available to these first two officers please comment on the profile of the now deceased, the initial risk assessment by those officers, their initial engagement and use of force?***

b. As the questions are both complex and contain multiple areas for comment I have followed the timeline of events and included the various elements as the incident unfolded.

**Initial Information**

a. There were a high number of calls received on this incident. Sunday mornings at this hour are normally very quiet and for such a call as this to come in it would be very unusual. As the calls came in information in relation to the fact that the subject was in possession of a large knife (9 inches), that he had approached, chased and apparently threatened members of the public became apparent. This would have increased the level of risk and the officers should have been approaching this incident with an assessment of 'high' based on this information.

b. The Supervisor requested an ARV and dog van due to the high risk and information re the subject being armed with a knife. Whilst I am unable to establish if the officers were aware but the dog van was coming from Edinburgh and I can find no confirmation as to whether an ARV was dispatched or their possible attendance time. PS Maxwell states he was told that no ARV was available so this may have been information that the officers attending were aware of. If they were then they may have considered this removing the possible tactical option of standing by and waiting for their arrival.

c. At this point I do not believe there was any direct evidence to point towards Mr Bayoh suffering from ABD, however the fact he was apparently walking down the middle of the road could be taken as behaviour out of the norm but on its own I believe insufficient at this point to raise such alarms.

d. PC Walker was missing his baton due to a broken holder. The lack of one of your issued pieces of work equipment diminishes your choices in relation to tactical options and can lead to other less appropriate or successful measures having to be used.

e. PC Paton, and PC Walker both refer to rumours of an increased risk of a police officer being targeted by terrorists. I am aware of this increased risk which followed the Paris and Belgium attacks. The threat level in relation to UK police officers being targeted was increased to 'substantial' in October 2014 and the then head of Counter Terrorism Policing, Assistant Commissioner Mark Rowley was interviewed on this matter in January 2015. This heightened risk and the perception that they were possibly about to deal with a terrorist incident would have greatly impacted their assessment of the possible risks involved. *(see Appendix D Item 12 Daily Telegraph article)*

f. Based on all the above I would suggest that the subject and incident was classed as high risk and the officers would be acutely aware of the probable risk of them having to confront an armed subject. This is evident by PC Walkers comment in relation to considering using his vehicle to 'run over' the subject if he attacked them.

**Initial Contact**

a. On seeing Mr Bayoh PC Walker describes placing the van in a position to provide some cover to them as they exited.

b. PC Paton gives a strong initial verbal challenge to Mr Bayoh giving specific directions to him to stop and get on the ground,

c. Whilst this communication style might be considered 'aggressive' it is used in an attempt to establish control over a potentially resistive subject. PC Paton could have used a more communicative style to initially make contact with Mr Bayoh but I do not think this was the cause or catalyst for the subjects response or behaviour.

d. PC Paton said the subject looked 'crazy' and closed the gap on them. Whilst this is not a detailed description of Mr Bayoh's demeanour or behaviour. He also states that Mr Bayoh said nothing which again is not normal behaviour for someone who is just angry or upset.

e. I would suggest that the picture of Mr Bayoh being under the influence of something or suffering from some mental illness was now becoming evident. Whilst hindsight is a dangerous tool to use I would suggest that at this initial stage the officers thoughts were solely on the risk and getting the subject under control.

f. PC Paton shouted 'drop the weapon' although he states he did not see one in Mr Bayoh's hand. I would suggest this is a verbal indication of his thought processes and perception at that time and the initial effects of stress on him as detailed above.

**Initial actions of PC Walker and Paton**

a. I do not intend to go over the various use of force powers and stated cases that could apply in this situation however, I would say that the officers intention was initially to

detain Mr Bayoh for the purpose of investigating the allegations and probably search him. It is my opinion that there were sufficient grounds and information to justify this course of action.

b. With the perceived threat, based on the information and intelligence available, securing or controlling the subject prior to search would appear to have been both a prudent and appropriate choice of tactical option. This would limit the risk to the officer by preventing him accessing any weapon. The fact that the knife was not seen is somewhat irrelevant as it is the officers perception and belief at that time as to him probably being in possession of the weapon.

c. However, once an officer honestly believed that he or another were in imminent danger their right to use force in defence of themselves, under Common Law, as defined by Section 76 of the Criminal Justice and Immigration Act 2008 might well apply. The officers duty and powers under Section 20 of the Police and Fire Reform Act 2012 could also apply in these circumstances.

d. In the absence of Taser, a dog or officers with protective equipment (shields etc) the use of an incapacitant/irritant spray when faced with a person believed to be in possession of a knife is a sound tactical option. They are designed to be operated at a distance therefore increasing the gap between the subject and officer. Also, when effective they limit the subjects ability to see the officers and can take away any emphasis on attacking the officers.

e. Moving in to restrain Mr Bayoh would have been a much more dangerous and risky option. As would the use of a baton in these circumstances.

f. No verbal warning was given prior to discharging their sprays. This is not always necessary, especially in circumstances where there is a threat of a weapon and time is at a premium as Mr Bayoh was apparently closing the gap and already approaching the officers.

g. Unfortunately, the subject had little or no reaction to either the CS or PAVA discharged by the officers. Whilst this is not unheard of, statistics show that around 1 in 10 subjects show a limited response to exposure to CS or PAVA. Hover one important factor which decreases this reaction is drug intoxication and certain psychotropic medication prescribed for mental health issues.

h. Due to the weather conditions both PC Walker and Paton were badly affected by their own sprays. Having been exposed to both substances myself it is extremely difficult to function normally and certainly in an operational situation such as this, where the subject was believed to be in possession of a knife, I would suggest a degree of panic sets in further reducing the officers operating capabilities.

i. PC Walker states he had informed the control room that spray had been ineffective. I am however unable to find this on the various Airwave audio tracks.

**Arrival of further Officers PC's Tomlinson and Short**

a. PC Tomlinson arriving on scene describes seeing the subject approach the other van and PC Walker. He says he thought PC Walker had been slashed as he put his hands up to his face. Not being able to see PC Paton is likely to have also increased his fear for the officers safety.

b. Although PC Short did not use force on the subject she was extremely scared and states that her adrenaline was pumping and was obviously suffering from the effects of this as I have detailed above when she states she was 'sick to her stomach'. This would have been further compounded by her statement that she 'hates knife calls'.

c. PC Short describes the subject as having had clenched fists, looked intimidating and as if he wanted to fight. At this point he was only 10 feet away. And she and PC Tomlinson were trying to mirror his movements whilst trying to maintain a safety gap.

d. She also states that Mr Bayoh shouted 'Fucking come on then' at PC Tomlinson when he was confronted with him drawing his baton.

**Initial actions of PC Tomlinson & Short**

a. Based on PC Tomlinson's description of Mr Bayoh's behaviour, demeanour and non compliance with his directions, it is obvious that he formulated the opinion that he had just slashed his colleague, was therefore probably armed with a knife, even though he did not see one, that he and PC Short were about to be attacked and therefore in imminent danger.

b. Not knowing that PC Walker and Paton had already discharged CS and PAVA at Mr Bayoh PC Tomlinson also chose this as his initial tactical option. Again, a sound choice when faced with a subject who may be armed with a knife. Unfortunately, with the wind conditions and increased distance from the subject (he states 4-5 meters, 13-16 feet) he was unable to hit the subject. He then emptied his cannister in an attempt to incapacitate the subject but as previously this had no effect. This must have increased the level of stress on both officers now knowing.

c. I think it important to mention that although Mr Bayoh appeared to have no reaction to the CS that this may have had some impact on his respiratory system if he had manged to inhale any of the crystals. This may be relevant due to his later increase in physical exertion linked to his probable heightened heart rate due to the drugs in his system.

d. Mr Nelson who lives nearby states that the subject was shouting back at officers. Although he could not hear what was being said his impression was that the officers were giving instructions which he was not following. I believe this was the arrival of the second van containing PC Short and Tomlinson and not the first van.

e. Due to the failure of the spray PC Tomlinson draws his baton. Again, considering his options at this time, the close proximity of the subject and his belief this would appear to be a sound tactical decision to protect himself.

f. Mr Bayoh runs at the officers but swerves past PC Tomlinson and heads for PC Short who due to her fear response has now taken the decision to run away. PC Tomlinson describes his perception of Mr Bayoh 'sizing them up'. I would suggest that at that moment PC Short was probably displaying all the body language linked to how she was feeling mentioned above and therefore may have presented as an easier target.

g. Mr Bayoh chases PC Short as she runs away catching up with her and striking her in the back of the head which what was described as a clenched fist punch. This strike causes her to fall to the ground face down. This punch is witnessed by Mr Nelson from his flat.

h. On the ground she tries to protect her head with one arm whilst trying to get back up. Mr Bayoh apparently raises his foot and stamps down on her back as she lay on the ground. PC Short felt the blow to her head but was unaware of being stamped on or kicked when on ground but did feel pain in her side later. This is not unusual in such situations due to the adrenaline and other chemicals running through the body. This 'stamp' and a subsequent one were witnessed by both PC Tomlinson and PC Walker which they describe as full force. PC Short states she believed she was 'going to die'.

i. PC Tomlinson states that after this stamp PC Short did not move and he honestly believed that the subject had killed PC Short. Whilst some might think these actions would be unlikely to cause her death it could be possible especially a fall to the ground in such circumstances and risk of serious head injury not to mention ruptured spleen or kidneys in such an attack.

j. During this time an emergency button was activated by one of the officers present who can be hear shouting 'Officer down'. There is also the sound of shouting and what appears to be a struggle. *(Airwave audio track 1)*

k. PC Tomlinson, based on his perception and honest held belief of the possible death of PC Short and with a view to protecting his female colleague runs up to Mr Bayoh and strikes him across the left side of the head. Head strikes with a baton carry a high risk of serious injury and although less likely, possibly death. As such the justification of such a strike must be balanced against a perceived or actual risk of serious injury to the officer or another. I would suggest that based on the account of PC Tomlinson faced with a possibly armed subject who was showing such a high level of violence towards PC Short who lay helpless and unprotected on the ground a head strike could be justified in this situation.

l. PC Tomlinson describes further strikes to the head as although the first strike had stopped the immediate attack on PC Short they did not appear to effect Mr Bayoh who then took up a fighting stance with his fists clenched 'like a boxer'. I have witnessed and reviewed many cases where baton strikes have had little or no effect on subjects.

m. PC Tomlinson says he now struck Mr Bayoh on the arms as he feared he was going to attack him. You will see from his account that he is unsure as to the number of strikes or exact location of where they landed on the subject.

n. These responses are not uncommon for officers who are young in service and are faced with a violent subject in such a dangerous situation for the first time. The effects

of stress, as mentioned above, can overwhelm an officer who will become stuck in a repeating loop doing the same thing over and over and lose the ability to assess each strikes effectiveness.

o. Whilst their account of the encounter, which was done much later and when in a much calmer and safe environment, can sometimes appear quite clinical. This is very different as to how they felt at the time and very rarely reflects the urgency or stress they were under at that moment. Whilst I suspect that this was the case with PC Tomlinson it will be for him to explain exactly how he felt at that time when he delivered the strikes to Mr Bayoh.

p. At this point PC Walker re-joined the incident now in possession of PC Paton's baton. He describes considering striking Mr Bayoh to the head as PC Tomlinson had done. His thought process appears to have been very similar and was based on the level of violence being offered by Mr Bayoh and the risk to all the officers on the scene.

q. As he approached the subject he raised his hands and PC Walker decided that a baton strike was not viable so he changed his choice of tactical option, dropping his shoulder and knocked the subject backwards to the ground away from PC Short. He describes this as a 'shoulder charge' and PC Tomlinson describes this as a 'bearhug'. Not being in control of the subject as they go to the ground can increase the chance of secondary injury as other takedown techniques provide. In this situation the close proximity required to carry these out on the subject could have placed PC Walker in additional risk, due to the fact of him possibly being armed with a knife.

r. Whilst not a standard 'take down' this was effective, probably due to PC Walkers size and body weight and in my opinion totally justifiable in the circumstances, considering the violence offered and risk that the subject might still be in possession of a knife.

s. PC Walker also fell to the ground at this time dropping the baton he had taken from his colleague. He states he ended up on his knees next to Mr Bayoh who was on his back.

**The taking to the ground and restraint of Mr Bayoh**

a. There is a distinct separation between the initial contact and control of a subject to that of full restraint. It can on occasions take some time to control a violent or resistive subject before they can be placed under physical restraint or in mechanical restraints (handcuffs). Therefore, taking or directing a potentially resistive subject to the floor is often the safest option in such situations. Whilst it can appear 'over the top' to the onlooker or third party it puts the officer in a position of advantage where they can disengage if the threat and resistance prevents them from controlling the subject. It can also act as an 'extra officer' providing a stable platform in such situations.

b. The restraint of an individual by one or even two officers is extremely difficult if not unachievable and can lead to the use of other tactical options such as strikes and pain compliance techniques to establish control.

c. A number of 'take downs' or balance displacement techniques are taught which assist officers to control a subject. These include using the head as a fulcrum or pivot point to

move a subject. These are not always effective or result in the subject ending up where they are expected to be. This can be due to a number of reasons including;

- poor application
- the strength of the subject
- their response to pain due to alcohol or drug intoxication
- the space available to conduct the technique including any obstacles

In such circumstances, tackles, using body weight, 'bearhugs' or other methods are likely to be employed to get the subject to the ground.

d. The whole restraint period appears to have been no longer than 4 minutes. Whilst this may look like a long period for three or four officers to get someone under 'control' I have examined many such incidents and this is by no way a prolonged period of time to establish full restraint of a strong, violent, resistive subject who was under the influence of various drugs.

e. At the start of this process PC Walker describes the subject lying on his left side with him behind on his knees. He states he attempted to get hold of Mr Bayoh and was placing some downward pressure on his shoulder with his upper body.

f. Mr Bayoh is resisting quite violently and strikes out at PC Walker. He is not aware if any of the blows hit him, which again is not unusual in such situations. In an attempt to subdue Mr Bayoh and prevent him from striking out he punches subject to the face/left cheek area a couple of times.

g. Again, strikes to the face carry an increased risk of more serious injury as against strikes to other parts of the body. As the previous strikes to the head they had little or no effect on Mr Bayoh, therefore I doubt such strikes would have been effective in this situation.

h. PC Tomlinson delivers baton strikes to the back of Mr Bayoh's legs in an attempt to control them as he is kicking out. The use of these dysfunction strikes to the muscle groups are standard tactical option when faced with such a situation. These were unsuccessful in preventing the subject from kicking out. PC Tomlinson stopped and changed his tactics to using his body weight and lying across the subjects legs to control them

i. It is interesting that after this no further strikes are used during attempt to gain control of the subject on floor as I would suggest the officers had realised that they were an ineffective means of control and other methods would have to be used to control Mr Bayoh.

j. At this time there are differing accounts of the body position of Mr Bayoh. PC Tomlinson, Smith and Mr Nelson *(see paragraph o below)* appear to have him on his front with PC Walker lying over his upper body. PC Walker describes this as being on his knees with his upper body over the subjects right shoulder with him lying on his left side.

k. Taking into consideration the fact that all the officers state he was struggling violently against them and was trying to get up, I would suggest that Mr Bayoh moved into a

number of positions and this probably included lying at times on his front during this phase of the attempts to restrain him.

l. I would also be very surprised that during this time PC Walker was not at times lying across the upper body of Mr Bayoh and putting a degree of pressure onto him. I do not think this could have been sustained or prolonged pressure due to my comment in the next paragraph and continued resistance of Mr Bayoh until full restraint was achieved.

m. PC Tomlinson provides an example of this when he states that Mt Bayoh was 'bench pressing' PC Walker, who is a substantial weight, off the ground. In this position the fact that PC Walker was on his back would not have placed any pressure on his chest if this was not on the ground and Mr Bayoh would have been able to breath in this position.

n. PC Paton now joins the attempts to restrain Mr Bayoh but is still under the effects of his CS spray. He says that Mr Bayoh was on his back at this time and remained in this position until he was fully restrained. As he had given his baton to PC Walker he sees another extended baton lying on the ground. PC Paton places this across Mr Bayoh's bicep and pushes down with his body weight. Whilst this is not a taught technique to Scottish officers I am aware of some forces that show this as a way of restraining a person and applying pressure across a nerve cluster in a major muscle group. It used to be included as part of the multi officer restraint process where it could be used over the ankle. This was prior to leg restraints being introduced. Whilst it can cause pain and therefore assist with gaining control, unless it is kept on for a prolonged period of time the injury potential of this technique is normally minimal. *(see dysfunctions and pressure point control)*

o. Mr Nelson who witnessed most of the incident did not see Mr Bayoh being taken to the ground. Having observed the interaction between PC Tomlinson and Short he left his house to get a better view from his front gate. He states that this took him 10-20 seconds. I would suggest this is likely to be nearer the higher number unless he ran out which he does not state in his statement.

p. When he gets to the front gate he states that Mr Bayoh is on his front. This differs from the account of the other officers and most of the body position images provided. It could be that from the angle he viewed the incident that either 'flyaround' 7 or 8 could have looked like the subject was lying on his front.

q. During the restraint an officer can be heard saying 'suspect in cuffs still struggling, the officer is clearly stressed with a high pitch in their voice and breathing heavily. This indicates the amount of effort the officers had and were continuing to apply to controlling and restraining Mr Bayoh. *(Airwave audio track 2)*

r. Following the arrival of PC Smith, the three officers now involved in the subjects restraint manage to get handcuffs onto one wrist. Mt Bayoh initially manages to pull his arm free but eventually they manage to handcuff him to the front. Whilst it would have been safer and more tactical sound to handcuff him to the rear this was not possible due to the degree of resistance her was offering. Again, a sound and reasonable option when faced with a violently struggling subject they are having

problems in controlling with the likelihood that fatigue would now be setting in for them to maintain control of his physically by holding onto Mr Bayoh.

s. The final point on the restraint is the application of leg straps. These mechanical restraints are widely used across the UK and can replace the need for officers to physically hold onto a subjects legs. They have proven invaluable in reducing injuries to both subjects and officers and can negate the need for further control measures such as strikes or pressure point techniques being applied. In this incident I find them to be both a viable and sensible option.

t. It is accepted that any combination of the risk factors can increase the possibility of a person suffering from positional asphyxia. In this incident Mr Bayoh was subject to the following risk factors: -
   - The subject struggled for some time therefore increasing the need for oxygen
   - Due to this struggle he would have had respiratory muscular fatigue reducing the ability to take in oxygen
   - The subject was restrained on the ground
   - At stages during the restraint pressure was placed on his upper body
   - Although not known to the officers had taken drugs
   - Was of large muscular build therefore would need more oxygen

u. That said and considering the above we must also take into account the following: -
   - Mr Bayoh was handcuffed to the front which does not interfere with the breathing mechanism
   - At times during the restraint he was lying on his side taking pressure off his chest and abdomen
   - Continued to struggle against the officers increasing his need for oxygen
   - Was checked by two of the officers who stated he was breathing
   - Once fully restrained was held on his side which is the recognised position of control to assist breathing

v. Whilst I am not a medical expert in such matters I have dealt with and reviewed many such cases and this is not one that jumps out as a typical case of positional asphyxia. It does have some of the hallmarks but due to the short time of restraint (4 minutes), the constant movement of Mr Bayoh and his opportunity to take breaths during the restraint process I do not believe this was a major contributing factor to his unfortunate death.

w. In relation to this incident I would like to highlight the following specific points in relation to ABD/Excited delirium. Firstly, PC Smith who is an officer safety trainer, states he considered Excited Delirium but discounted it. Other officers also mention this in their accounts but none raise any concerns over it.

x. Whilst I do not think it would have changed the outcome of the situation due to the speed at which the incident developed it is my opinion that a number of the tell-tale signs of ABD were present. These included: -
   - Bizarre and/or aggressive behaviour (walking down middle of road armed with a knife chasing and threatening people)

- Impaired thinking (not responding to officers verbal commands, looked 'crazy' PC Paton)
- Violence towards others

These points were known to PC Paton and Walker on arrival.

- Apparent ineffectiveness of irritant sprays (both CS and PAVA)

This became apparent to PC Paton and Walker once they engaged with Mr Bayoh.

- Shouting (at officers)
- Violence towards others (PC Short)
- Unexpected physical strength (lifting PC Walker off him)
- Apparent ineffectiveness of irritant sprays (both CS and PAVA)
- Significantly diminished sense of pain (hit on head and face no apparent response)

This became apparent to all the officers present as the incident progressed.

y. Whilst these should have been taken into consideration by the officers their safety and that of the public MUST take precedence in such incidents. As such other subjects can display similar signs but there is a specific difference between someone who is 'just violent' and someone who is suffering from ABD.

z. Therefore, it is my opinion that the officers should have made the connection and at least considered the possibility that Mr Bayoh was not acting 'normally' or 'rationally' and therefore could have been suffering from ABD/Excited delirium. *(also see paragraph w above and bb below)*

aa. It is also important to note that the officers were unaware of the fact that Mr Bayoh had a number of drugs in his system and had been displaying aggression and violence earlier in the day with his friend.

bb. However, the underlying advice in such cases still remains an important part of reducing the risk to the subject. Therefore, the only effect I believe not recognising the signs of ABD/Excited Delirium during this was that an ambulance was not called earlier but this would have only been a few minutes difference from when it was called.

cc. One additional point of note is that I find it strange that none of the officers mention any communication from Mr Bayoh during the attempts to restrain him. Verbal responses show that the person is breathing. Also, this in its self is unusual and I believe lends further credence to my comments. *(see paragraphs w – z above)*

**Arrival and actions of other officers and PC Smith**

a. Apart from PC Smith it would appear that none of the other officers present actually applied any force to Mr Bayoh during the restraint, other than PC McDonagh assisting in applying the leg restraints *(see paragraph r above)*. I will therefore concentrate on the actions of PC Smith.

b. It is important to note that PC Smith is both an officer safety and first aid trainer. I would therefore expect his knowledge and skill level to probably be higher than that of a none

trainer. Also in the absence of any supervisor I would expect him to take a lead in such restraints where practicable.

c. He makes comment as to his assessment of the level of resistance Mr Bayoh was presenting. He describes this at the time as being 'active resistance'. Examples of this include pulling their arms away or attempting to escape being taken hold of. It is my opinion that taking into consideration all the impact factors that Mr Bayoh was presenting both 'assaultive' and 'serious/aggravated' resistance.

d. In light of this the proportionate level of force (reasonable officer response options) that could reasonably be used to combat these levels of resistance could be much higher and sit at level 4 or even 5. *(see PRO 547 page3 21-23)*

e. On initial arrival PC Smith also selected his CS spray as the preferred tactical option to control Mr Bayoh. PC Walker informed him that this had already been tried and been ineffective. This was a sound decision on his part as spraying in such circumstances where officers were attempting to control the subject would have most likely resulted in the officers being further cross contaminated.

f. PC Smith assist PC Walker and PC Paton in applying handcuffs to Mr Bayoh who continued to struggle. He then moved down to assist PC Tomlinson in controlling the subjects legs. Leg straps were then applied around the knee and ankle areas as per training to prevent Mr Bayoh kicking out and injuring one of the officers.

g. PC Smith then gives an account of standing back and surveying Mr Bayoh once full restraint had been achieved. He mentions the subjects position as not fully prone but tilted to the front but that now under control he was placed on his side by PC Walker and the other officers. He notes that Mr Bayoh was not talking but moaning.

h. PC Smith now commenced a check of the male and raises his concerns around excited delirium due to certain signs and Symptoms he mentions *(see paragraph w – bb above)*. He states that there was nothing that was giving him immediate concerns about the males condition. It is my opinion that if an officer has concerns regarding possible ABD/Excited Delirium then it would be good practice to treat it as such, follow the guidelines and either call an ambulance or seek medical assistance. I do however accept that it was a very short delay until an ambulance was called for him but in relation to his then unconscious/none responsive condition *(see below)*.

**The provison of first aid**

a. Following my comment above and ambulance had already been called for PC Short due to her head injury and blows to the body. The airwave recordings then indicate the first update on Mr Bayoh's medical condition and PC Smith requests an ambulance for him stating that the subject is now unconscious, breathing, not responsive ambulance required for him *(Airwave audio track 3)*. This is approximately 30 seconds after the previous request for the first ambulance.

b. This request by PC Smith came about from him now checking Mr Bayoh's responses and making an initial medical/first aid assessment of his condition. He describes checking using the AVPU method: -

- **A**lert, responds to questions and gives coherent answers
- Responds to **V**oice commands such as open your eyes, squeeze my hand
- Responds to **P**hysical stimulus, touching, rubbing prodding or pinching
- Or they are **U**nresponsive

c. PC Smith decides due to the lack of response form Mr Bayoh that he is unconscious or **Unresponsive.** If unresponsive a subject should be placed in a position where their airway can be checked, opened and maintained. This is normally with the person lying on their back. I would suggest in this situation that this is partially done as Mr Bayoh is being held in a position similar to that of a recovery position. This is used for an unconscious casualty who IS BREATHING.

d. Once this has been done then a check on their breathing should be carried out for a minimum of 10 seconds. Looking, listening and feeling for breath. PC Smith describes doing this and PC Paton also refers to seeing that Mr Bayoh was breathing. This can sometimes be difficult to do when your own heartrate is elevated and you are breathing heavily.

e. Following being informed by PC Tomlinson that he had struck Mr Bayoh on the head with his baton PC Smith checked for any visible injury but could not finds any. The ambulance attendance was checked by the supervisor and they were given an update as to use of CS, PAVA and baton strikes to the head *(Airwave audio track 4).*

f. As the qualified first aid trainer ion scene, PC Smith took responsibility for monitoring Mr Bayoh at this time. He continued to monitor him and after a short time, he states 3 minutes he became concerned that the subject may have stopped breathing. On checking if he was breathing PC Smith established that he was not and immediately place Mr Bayoh on his back and instructed PC Walker to commence CPR.

g. This follows standard practice and complies with current first aid training. The ambulance service were updated re Mr Bayoh's condition as this should have prioritised the response from the ambulance.

h. A face shield was provided by PC Paton to allow PC Smith to commence rescue breaths, as per first aid protocol. Unfortunately, these are only designed for short term use and can easily break or become contaminated quite quickly. They are also inherently difficult to use and get a good seal to deliver effective rescue breaths. I would therefore expect that the first aid kits in the police vehicles would carry more substantial protective face masks to facilitate prolonged rescue breath delivery.

i. Unfortunately, the provided face shield become unusable as PC Smith describes it becoming contaminated with saliva and mucus from Mr Bayoh. This presents a risk to the officer providing the rescue breaths by way of possible infection.

j. Also, PC Smith describes that the rescue breaths were not gong in successfully. He carried out the required re check of the head and jaw position and again attempted to put breaths in following PC Walker doing the chest compressions. As these were also unsuccessful he made the decision to just do the chest compressions. Where it is not possible to do rescue breaths this is a viable and sensible decision.

k. With the apparent reason for the lack of success not being a blockage, I would have expected that either another face shield would have been tried, as I believe all officers carry them as personal issue, a face mask would have been available, as previously mentioned above or one of the other officers would have attempted the rescue breaths.

l. That said, it is also worthy to mention that as Mr Bayoh was contaminated with both CS and PAVA at this time this would have hampered attempts for the officers to deliver rescue breaths as they would have quickly become cross contaminated therefore affecting their breathing and ability to deliver rescue breaths.

m. When the ambulance crew took over PC Smith approached Mr Nelson who was still standing at his gate. PC Smith describes having been affected by CS from attempting rescue breaths on Mr Bayoh. Mr Nelson states that the officer who came and asked for water (PC SMITH) was red faced and visibly shaken.

n. Other than my comments above I can see no issues with the level of first aid provided or the processes followed by the officers in what appear to be difficult and challenging conditions.

**Other witnesses**

a. Whilst I have covered a great deal of the supporting information and opinion above I would like to add some specific observations from the various other officers and witnesses. Whilst I have considered all the materials provide I have listed those that that have directly impacted on my opinion due to where and when they were present and having differing vantage points of the incident as it unfolded. Some of these corroborate what the officers involved have said whilst some others appear to contradict some of the accounts and recollections above.

b. Mr Mullen sees the initial interaction between PC's Tomlinson and Short and Mr Bayoh. He thinks he sees Mr Bayoh get sprayed but he wipes it away like water. He also sees PC Short knocked to the ground. His other observation as he drove past in his car, which is interesting to note, was that when the subject, who was now on the floor, was face down, not moving with 4 or 5 officers holding him down. He states he thought this excessive which is a common response for members of the public seeing a prone restraint.

c. The trained multi officer response can appear 'over the top' but is designed to minimise risk to both the officers and subject in such situations.

d. Mr Robinson was a passenger in Mr Mullen's car. He saw Mr Bayoh walking on the footpath holding something black in his right hand. He then witnessed the arrival of PC Tomlinson and Short and sees Mr Bayoh pick up PC Short and 'slam' her onto the ground. He also said that the subject fell on top of PC Short. This was viewed through the rear window of the car but does not conform to some of the other accounts of the attack on PC Short.

e. Both Mr Mullen and Mr Robinson state that PC Short sprayed Mr Bayoh but this does not match the officers account.

f. Mr Ali was also driving in his vehicle and came to where the road was blocked. He sees two officers holding someone on the ground who was moving and he states that they were putting pressure onto this person to keep them on the ground. He describes one officer lower down the subjects body and that they were kneeling on the person and using their hands to try and restrain them.

g. He appears to also see Mr Nelson and the fact that he was there before him and remained after he drove off after about a minute. Mr Ali said he saw nothing to shock him.

h. PS Maxwell first sees Mr Bayoh lying on his side with 3 officers kneeling next to Mt Bayoh. He describes his legs being controlled by PC McDonough. He also describes the condition of PC Walker and Paton as being under the effects of CS or PAVA and breathing heavily.

## 8. Summary of Conclusions

a. Some issues in relation to this case are evidence of fact and it will be for the investigator or court to decide which are correct and which are not. However, I believe that the following points need further consideration.

b. Taking into consideration some of the thought processes of the officers in relation to the fact that this could be a terrorist incident, the fact that a knife was involved and the lack of compliance from Mr Bayoh when confronted by officers I can only classify this incident as one of high risk.

c. In the circumstances I am not convinced that a 'softer' approach to Mr Bayoh would have altered his response to the officers. With the information available and possible risk to the officers I believe that the more assertive approach was appropriate.

d. Unfortunately, all the officers were affected by their own irritant/incapacitant sprays which would have greatly impacted on their ability to perform. This was still evident some minutes after the full restraint of Mr Bayoh had been achieved. *(see paragraph g below)*

e. Considering the level of resistance and extreme strength of Mr Bayoh I do not believe that the time taken to control and eventually restrain him was unreasonable or excessive.

f. In relation to all the variations in body position of Mr Bayoh and the officers I would suggest this fits with my explanation as to the fluidity of the control and restraint process and that there were indeed times when Mr Bayoh was face down and the officers were at times placing pressure onto him to keep him on the ground. However, I do not believe this was constant or prolonged.

g. I would therefore suggest that full 'control' of Mr Bayoh was not achieved until such time as the leg restraints were successfully applied and the officers were in a position to secure the subject on his side.

h. Once Mr Bayoh had been secured and fully restrained the officers monitored his wellbeing and quickly acted once they identified that he was not responsive. They provided what emergency first aid they could, with the equipment they had, whilst awaiting an ambulance.

i. Whilst a knife was found nearby and in an area where Mr Bayoh had previous been seen the fact he was not seen in possession of it by any of the officers does not remove or diminish the threat assessment or possible risk to them if their perception was that he 'could' have had it on his person.

j. It is fair to say that some of the tactics deployed by the officers were outside of their training. Simulation can never fully prepare an officer for some of the situations they might face as in this incident but I believe those that were outside of training can be justified in the circumstances.

k. Whilst strikes were delivered to the head and face, raising the risk of more serious injury, with the level of threat perceived by the officers and degree of violence shown by the subject, I again think these could be justifiable in these circumstances. Also, these do not appear to have been a contributing factor to the medical condition that caused the unfortunate death of Mr Bayoh.

l. In relation to the fact that Mr Bayoh was displaying signs of a person who 'could' have been suffering from ABD/Excited Delirium, the fact that the officers did not consider this *(PC Smith considered and discounted)* this did not unduly delay the recommended action in such cases of calling for an ambulance.

m. This was a tragic incident that resulted in the death of Mr Bayoh. The police have a duty of care to everyone they come into contact with but primarily must protect the public from possible harm. Therefore, when called by a number of people to a person allegedly armed with a knife they are duty bound to respond and deal with that individual.

n. Faced with a very difficult situation and having used the tool they had at their disposal in an attempt to minimise the risk and detain Mr Bayoh I believe the officers used what other options were left to bring him under control.

o. In closing, having been involved in similar restraints myself and having reviewed a number similar to this, it is very difficult for a third party to appreciate the difficulty, complexity and speed at which decision have to be made until you have actually been placed in that type of situation very difficult to say how you would react.

## 9. Literature, References and Exhibits

*Please see Appendix D for copies of documents relied upon*

## 10. Expert Declaration

I understand that my overriding duty is to the court and I have complied with that duty and will continue to comply with it. I am aware of the requirements of the Criminal Procedure Rules 33.3(1) (i) and (j) and Part 35 and Practice Direction 35 and the CJC Protocol for the Instruction of Experts to give Evidence in Civil.
I reserve the right to reconsider any aspect of this report should: -

- any misunderstanding arise due to my use of terminology, grammar or phraseological
- or any factual inconsistency be identified that could lead to my comments being misinterpreted
- or should further information or evidence come to light in the future that could change these opinions

I therefore reserve the right to make alterations to this report or produce a supplementary report in light of any of the points above becoming apparent.

## 11. Statement of Truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

This statement consisting of 41 pages each signed by me is true to the best of my knowledge and belief and I make it, knowing that if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature: [redacted]

Date: 13th April 2018

## 12. Appendices

A - Full Curriculum Vitae including Certificate of Service

B - Written Instructions

C - Full List of Documents Reviewed & Case Abstract

D - Literature and Reference Documents

From the ACPO/NPCC Personal Safety Manual

Item 1 National Decision Model & Conflict Management

Item 2 Use of Force

Item 3 Medical Implications

Item 4 Take Downs and Prone Restraint

Item 5 Handcuffs

Item 6 CS and PAVA

Item 7 Batons

Item 8 Strikes

Item 9 Communication

Item 10 Effects of Stress

From Police Scotland Officer Safety programme, SOPS Associated Training Materials

Item 11 Operation Quoich Forensic Services reconstruction disc

From other sources

Item 12 Daily Telegraph article re increased threat to UK Police officers from Terrorism