

1 **Transcript for Inquiry**

Friday 10 March 2023

2 (10.00 am)

3 (Proceedings delayed)

4 (10.05 am)

5 DETECTIVE CHIEF SUPERINTENDENT PATRICK CAMPBELL (continued)

6 Questions from MS GRAHAME (continued)

7 LORD BRACADALE: Good morning.

8 THE WITNESS: Good morning.

9 LORD BRACADALE: Ms Grahame.

10 MS GRAHAME: Thank you.

11 Good morning, Detective Chief Superintendent.

12 A. Good morning.

13 Q. Just at the close yesterday, we were about to turn to
14 Martyn Dick's house.

15 A. Yes.

16 Q. And I asked you to explain why the house was of interest
17 to your investigation, and you talked about being aware
18 at that time that Mr Bayoh had gone to watch the boxing
19 at Martyn Dick's, and you were looking at what
20 Zahid Saeed's position was at that time --

21 A. Yeah.

22 Q. -- and you noted that the deceased was acting out of
23 character, there was mention of maybe someone, or

1 Mr Bayoh considering that someone had disrespected him?

2 A. Yeah.

3 Q. And then he left that house, and you talked about
4 keeping an open mind in the investigation. We'd talked
5 about the various hypotheses that you were --

6 A. Yeah.

7 Q. -- considering.

8 And you said at the end you thought:

9 "It's quite easy to say the fact there was no
10 relevance but we didn't know at that time how relevant
11 the house would prove to be"?

12 A. Yes.

13 Q. And that's why you were keeping an open mind.

14 Am I right in saying that you had delegated the
15 loci, including Martyn Dick's house, to Stuart Houston;
16 is that right?

17 A. That's correct.

18 Q. And what would you have expected to be done by
19 Stuart Houston in relation to the Martyn Dick house?

20 A. So, as I was saying yesterday, it was about keeping
21 an open mind, we were aware that Mr Bayoh's behaviour
22 was erratic, out of character, from what we got from
23 Mr Saeed. The mention of disrespectful. So again, with

1 that information, who disrespected him; was it someone
2 within that house, had there been some sort of
3 altercation within there as well? Had his behaviour
4 deteriorated whilst within there due to intoxication or
5 taking something within that property?

6 So again, it was about keeping that open mind, being
7 transparent and open around it, and ensuring that we
8 had -- we had control of that location at that time.

9 Q. When you say "control", what do you mean?

10 A. Just we had secured it -- we'd secured it as such, we
11 had removed Martyn and his partner Kirsty from the
12 house, and we were thereafter just assessing exactly
13 what was required in it. So again, the options around
14 looking at crime scene manager deployment, do we need
15 a bring a search adviser in, we're looking at do we need
16 any other specialists from the forensic side,
17 biologists, chemists and such. So again, that
18 discussion was delegated to DCI Stuart Houston in
19 consultation with the individual crime scene manager for
20 that location and they would have worked out a strategy
21 around exactly what was required in it.

22 Q. Before we move on to that, let's look again at the
23 forensic strategy document which is PS01298, and I think

1 Mr Dick's house is on page 4 of 7. That's on the
2 screen. Listed as locus 4.

3 A. Yeah.

4 Q. And it says here:

5 "In this initial phase this locus will remain under
6 protection with a scene entry log in place."

7 A. Yes.

8 Q. So in the initial phase was the plan to seize the house?

9 A. Yes.

10 Q. And that's the keeping control of the house?

11 A. Yeah.

12 Q. And seizing the house means removing the occupants,
13 effectively?

14 A. Yeah, it's maintaining the integrity of the house for
15 any subsequent examination that we may want to carry out
16 on that property, but also removing the occupants, yeah.

17 Q. There's no mention in the forensic strategy log of
18 a search being conducted. Bearing in mind you're
19 keeping an open mind, explain that process where you
20 initially have a decision to seize the house, but then
21 you ultimately decide to search the house. Can you
22 explain how that progression happens?

23 A. Yeah, so the locations that are identified within the

1 forensic strategy document are locations that the
2 deceased, through the timeline of his activity from
3 2 May into 3 May and thereafter, through to the
4 altercation in Hayfield Road, that he basically was
5 involved in, so he came into contact with individuals
6 within each of the loci.

7 So it was important, as we would do for any
8 investigation, that relevant locations that are -- that
9 the deceased has been involved in throughout that
10 timeline, that we basically secure as best we can the
11 property at that time, or the street or the location or
12 the motor vehicle, and thereafter we will thereafter
13 pull together, as I say, the forensic strategy briefing
14 around that.

15 Now, the forensic strategy document is a high level
16 document, it does not go into detail round about,
17 "Search the bedroom, make sure you search the bathroom,
18 can you look at the back garden". So that would come
19 with the briefing, the one-to-one, through the crime
20 scene co-ordinator, with the crime scene manager who's
21 waiting to be disappointed there, so they would have
22 that more informal briefing round about exactly what do
23 we have here and what exactly are we looking for here.

1 And ultimately what we are looking to do in any
2 incident we deal with is return the house or the
3 property back to the owner as soon as reasonably
4 practical. We don't have any benefit of holding on to
5 these properties because we have resources tied up
6 securing them, standing by them in cordons. So again,
7 as soon as we can stand some of these locations down and
8 give them back to the owner, we do that.

9 Q. So when you were discussing the forensic strategy
10 document with Houston, was the decision in relation to
11 Martyn Dick's house that you would take control of that
12 property?

13 A. Yes.

14 Q. Seize it?

15 A. (Witness nods).

16 Q. So that decision was made before anyone had even gone to
17 the property?

18 A. No. So we'd already seized the house, once that
19 document's developed. We had the property, we had
20 secured the property and the occupants had been removed
21 from it at that time.

22 Q. So tell me who had made that decision?

23 A. So that decision was -- it ultimately came to myself to

1 make that decision.

2 Q. When did you decide that?

3 A. So that was during the course of the morning, once we
4 basically began to have that more definitive timeline
5 around the deceased's movements, and the relevant
6 locations thereafter became apparent. So my decision,
7 my overarching decision round about the relevant scenes
8 was to basically secure and maintain the integrity of
9 all the scenes at that particular time and thereafter
10 basically stand back from it, pull together a forensic
11 strategy briefing with the PIRC, who were also round the
12 table at that time, and explain to them exactly how we
13 would plan to basically thereafter take on the
14 examination of each of the locations.

15 Q. Looking at your daybook, that we looked at yesterday,
16 I think, page 5, do we see what time you made that
17 decision to seize Martyn Dick's house?

18 (Pause).

19 When we talked yesterday, you see on the left-hand
20 side of this page Collette Bell?

21 A. Yeah.

22 Q. And we discussed the information she was sharing with
23 officers, and we see the names Martyn Dick and

1 Zahid Saeed.

2 A. Yeah.

3 Q. Then can we see on any part of the other pages --

4 A. No. Ultimately, because it's not written down doesn't
5 really mean it didn't happen. I mean, these things are
6 really fluid, so as we're going out to each of these
7 locations the direction from myself via Stuart and via
8 Colin Robson was, "Let's just secure what we can at this
9 stage", and thereafter, once PIRC become involved, 1.30,
10 1.35, we'll have a better assessment of it. And, as
11 I say, thereafter we went into a meeting with the PIRC
12 round about the assessment of the properties and who
13 would do what, who would take the lead on each of the
14 different locations as such. And thereafter Gold Group.
15 Occurred after that as such.

16 As I say, a normal course of any activity for any
17 major incident or major investigation is that we would
18 simply go through the aspect of identifying relevant
19 locations and thereafter securing.

20 Q. So you made the decision to seize the house --

21 A. Yes.

22 Q. -- before anyone's gone to speak to Martyn Dick or to
23 look at the house. What is the rationale for seizing

1 the house before anyone has gone to assess it?

2 A. So we were aware from Zahid and from the earlier
3 discussion with Zahid that there was potential relevance
4 to Martyn Dick's house because of the issues I've
5 already discussed round about his attendance there and
6 him acting out of character, the fact that it
7 appeared -- he indicated that someone had disrespected
8 him. So again, as I said before, we were unsure at that
9 time what that actually meant.

10 So again, it's a judgement call around various
11 locations such as this when you're involved in it, you
12 have to basically make that decision really based on the
13 evidence that you have at that particular time, because
14 the danger is if you do not secure the property and
15 thereafter it becomes relevant for a particular matter
16 later in the investigation, it's extremely difficult to
17 go back retrospectively and thereafter emphasise why you
18 didn't take it at the time and why you didn't maintain
19 the integrity when you were aware there was some sort of
20 relevance to it.

21 So again, it's about treating the scenario and the
22 incident, as we would any such, as a homicide, so we
23 start at the worst case scenario with any investigation

1 and secure what you can, and thereafter look at it, and
2 if you have to thereafter bring it back down to a more
3 reasonable level as the day progresses or the
4 investigation progresses, you've not lost anything at
5 that stage, so it's easy enough to basically stand it
6 down at that point.

7 Q. So before any officers even attend at Martyn Dick's, the
8 decision has been taken by you to seize that property,
9 and what then was your thought process in terms of what
10 would happen next?

11 A. So basically we would assess through the forensic
12 strategy briefing, there was a further meeting before
13 that with PIRC around the scene assessment which we went
14 into a meeting just before the forensic strategy meeting
15 just round about the prioritisation of what we were
16 looking at. So with the resources we had, in particular
17 the resources for scene examination with
18 SPA Forensic Services, we wanted to prioritise the
19 scenes that we deemed to be most significant. So
20 Hayfield Road was obviously a significant scene, the
21 deceased, obviously we were looking to do what we had to
22 do in the hospital before conveying him to the City
23 Mortuary, so that was a significant scene. So again it

1 was about that prioritisation and thereafter how we
2 would work through almost, this is a priority down to
3 number 5, this is ...

4 Q. Where did Martyn Dick's house come in terms of your
5 order of priorities?

6 A. So it was further down the list of priorities, to be
7 honest with you. It was important, we didn't know how
8 significant it was, but regarding the various -- the
9 prioritisation exercise that I was taking in my head and
10 running through was that Hayfield Road was more
11 significant, the deceased was more significant,
12 Collette Bell's house was more significant, and
13 thereafter you had Saeed's house, car and also you had
14 Martyn Dick. So again probably to the end of that level
15 of kind of high prioritisation, they were at the lower
16 level as such.

17 Q. So when we look at the forensic strategy document and it
18 is locus 4 but Zahid Saeed, his family home address and
19 the car is locus 5, was the car more of a priority than
20 Martyn Dick's house?

21 A. Not particularly, no.

22 Q. So was Martyn Dick's house and the car and Zahid Saeed's
23 home address were they on a par really --

1 A. Yeah, and that's why they're locus 4 and 5, as you see,
2 it's that kind of level of prioritisation.

3 Q. Then what was your intention in relation to --
4 I appreciate this wasn't a priority, but what was your
5 plan in relation to actually searching the house?

6 A. Yeah, so my intention through discussion at the forensic
7 strategy briefing was that we would search all
8 properties.

9 Q. When did you make that decision?

10 A. So that was a discussion at the forensic strategy
11 meeting.

12 Q. Was this the one that we looked at the minutes of --

13 A. Yeah.

14 Q. -- at the end of the -- so that was 4.45 on 3 May,
15 page 6 of 7. So had you made the decision to search all
16 the properties at that meeting?

17 A. Yeah, so there was a general discussion that we had,
18 every location that was relevant to the investigation at
19 that stage.

20 Q. You had them all seized by then?

21 A. Yes. So it was a case of, as I say, that prioritisation
22 exercise and also some of the work that PIRC would want
23 us to prioritise as well was discussed. But in general

1 through the membership that was there it was that we
2 would be carrying out a search on all the properties,
3 just about anything of any relevance.

4 We did not discuss that in detail, as I say, that
5 was more delegated through to DCI Stuart Houston who had
6 a number of separate forums with crime scene managers,
7 with PIRC crime scene individuals, and thereafter kind
8 of drawn down into the kind of -- more the mechanics of
9 what they were going to do at each of the locations.

10 Q. I don't see anything in the minutes of this meeting
11 about a discussion to do with searching the properties.

12 A. Yeah.

13 Q. But it may be that I'm missing --

14 A. No.

15 Q. Would you help me see if there's anything in these
16 minutes?

17 A. No, they're very, very brief, the minutes, and at that
18 time the priority was, as I say, Hayfield Road, which we
19 were progressing it. Even at that stage there was work
20 getting done at the scene at Hayfield. But the priority
21 for ourselves and the discussion at the forensic
22 strategy meeting was round about the deceased and about
23 ensuring integrity of the deceased and his remains and

1 thereafter the conveyance to the City Mortuary in
2 Edinburgh for the post-mortem examination. So you'll
3 see there's all that detail about what we were going to
4 do.

5 Q. Yes, on page 6 of 7 there's some detail there.

6 A. So the aspect of the general search of a property, that
7 was just a general discussion that we would naturally
8 search a property to see if there was anything linked to
9 the investigation at that stage, unless it became clear
10 that there was no relevance and we would simply hand the
11 property back. But, as I say, the mechanics of each of
12 the particular scenes was delegated through to Stuart
13 and crime scene managers from both PIRC and from
14 Police Scotland.

15 Q. Is it pretty much automatic that once you've seized
16 a property that you will search and see if there's
17 anything of relevance?

18 A. No.

19 Q. No?

20 A. It's not the case. If we -- I mean, there's been
21 occasions whereby I can recall we've seized such as
22 multiple vehicles that we believe that the injured party
23 maybe touched or came across and there was maybe blood

1 on, but thereafter when we've viewed CCTV the injured
2 party has not went that particular way and basically has
3 gone down a side street. So again, if there's no
4 requirement we basically stand the area -- the cars
5 down, we don't need any involvement in them at that
6 particular stage because they're eliminated.

7 Q. So you've kept an open mind, you're not sure about the
8 relevance of Martyn Dick's house?

9 A. No.

10 Q. You decide to seize the house --

11 A. Yeah.

12 Q. -- which you do, and we've heard about officers and
13 scene entry logs and things like that?

14 A. Yes.

15 Q. We've heard evidence about that. At what point do you
16 decide that there is relevance to the investigation and
17 you will instruct a search to be carried out?

18 A. That was delegated to DCI Stuart Houston just round
19 about the mechanics of that.

20 Q. The decision, however, the decision to --

21 A. No, no, the decision was mine to basically search the
22 property so --

23 Q. So when did you decide that?

1 A. So that was at the forensic strategy meeting. They were
2 all relevant scenes and we were going to search every
3 one of them.

4 Q. So it was at that meeting you made that decision?

5 A. Yes.

6 Q. Is there any record in any of your policy file or your
7 daybook that would help us understand what you were
8 thinking the relevance was at ...?

9 A. I'd need to check my policy file again.

10 Q. Do you want to look at that again? You've got a hard
11 copy of that. So it's PS17854.

12 (Pause)

13 A. I don't think there is any. I think there's certainly
14 mention of the house being given back to the householder
15 at the time.

16 Q. Well --

17 A. Through discussion with PIRC. But there's nothing at
18 all, no -- that discussion in the documentation, the
19 forensic strategy document we've produced, the minutes
20 are the footprint for that discussion.

21 Q. Right. There's certainly mention of the forensic
22 strategy --

23 A. Yes.

1 Q. -- on decision 15, which is 61463, and you certainly
2 note:
3 "Endorsement of the forensic strategy~..."
4 A. Yeah.
5 Q. I think that says:
6 "... by DCI Stuart Houston."
7 A. Yeah.
8 Q. And you told us yesterday that Stuart Houston had
9 prepared it?
10 A. Yes.
11 Q. It's 15, please, 61463. So then we see that that was
12 endorsed and then the reasoning, perhaps you could read
13 that for us, if we move down the page, please.
14 A. So:
15 "Governance/framework around investigation and
16 recovery of all identified loci".
17 Q. Right, so nothing really there about specific
18 properties?
19 A. No, and to be honest with you I would -- I was surprised
20 if I would find it in my daybook or in my policy file,
21 it is something that really is just discussed at the
22 forensic strategy briefing. We wouldn't naturally
23 detail, I mean, the reasons for search in a policy file

1 or I certainly wouldn't.

2 Q. Can you explain, between the decision to seize the
3 property at Martyn Dick's house and your decision to
4 then search it, what new information came to light or
5 what crystallised your view that a search should be
6 carried out?

7 A. There was no real change from what we had at the start,
8 from the statement from Zahid and we knew that of the --
9 the presence of the deceased there, his behaviour within
10 that property, and the aspect of being disrespected. So
11 again, going back to the hypotheses and keeping an open
12 mind, exactly what did occur? Was there an altercation
13 within there with someone? Had he taken something, some
14 controlled substance within the property, either been
15 given to him or taken by his own accord? Why had his
16 behaviour changed so dramatically whilst within
17 Martyn Dick's house?

18 So again, it was extremely reasonable and the
19 rationale was there to seize and search the property as
20 far as I was concerned.

21 Q. We talked yesterday about the authority, and I think you
22 talked about consent --

23 A. Yes.

1 Q. -- as being a possibility, a warrant as being
2 a possibility --

3 A. Yeah.

4 Q. -- and I think your Inquiry statement talks about having
5 common law power.

6 A. Yeah.

7 Q. When you made the decision to have the property
8 searched, tell us what your thought processes were about
9 how you would gain the legal authority to search
10 Martyn Dick's house?

11 A. So that was with consent.

12 Q. With consent?

13 A. Yes.

14 Q. And did you make that clear to Houston?

15 A. Yeah, so that was discussed at the forensic strategy
16 meeting, that there was -- we had no indication from any
17 of the householders that there was any conflict with
18 consent to search the properties, and if there was that
19 we would simply be referred to the Procurator Fiscal for
20 application for a warrant.

21 Q. When you say that there was nothing to indicate they
22 weren't consenting, were you satisfied that the officers
23 had obtained consent for a search from Martyn Dick when

1 they'd removed him and his partner from the house?

2 A. Yeah. So, I mean, the forensic strategy meeting, as you
3 see the membership there, it is not with the officers
4 who had dealt particularly with Martyn Dick, so the
5 information is coming second-hand to Colin Robson,
6 Stuart Houston and thereafter they're feeding into the
7 forensic strategy meeting which I'm chairing. So the
8 information I'm getting is that consent has been agreed
9 for all the properties to search.

10 Q. So when you say the information you're getting, does
11 that mean somebody had said to you, "We've got consent"?

12 A. Yes, so there was a discussion --

13 Q. Who was that?

14 A. -- around about searching the properties and about the
15 powers around that, and, as I say, the discussion was
16 around the fact that every individual that we had, all
17 the properties that we'd seized, they were all
18 witnesses, there were no suspects, so they were
19 categorised as witnesses, and the information as chair
20 of that forensic strategy meeting and as SIO was that
21 they were -- there was no conflict with the fact, that
22 they were quite content for us to search under their
23 consent, it had been explained to them by the individual

1 officers the reason and the rationale why we were there.
2 So again, there was nothing coming back to me as SIO
3 causing me any concern round about what we were planning
4 to do.

5 Q. Where did you get that information from?

6 A. So that came through the forensic strategy meeting, from
7 Stuart Houston.

8 Q. That was from Stuart Houston?

9 A. Yeah.

10 Q. Who was the crime scene co-ordinator at the time?

11 A. Correct.

12 Q. Would you have expected any issues about complaints or
13 concerns to be shared by --

14 A. Yeah.

15 Q. -- the lower rank officers and come through Houston to
16 you?

17 A. Yes.

18 Q. So it's not a situation where you would have spoken
19 direct to lower level --

20 A. No.

21 Q. -- lower rank officers or --

22 A. And I said yesterday there has been occasions where
23 consent has not been granted and we've had to basically

1 re-assess that and go for a warrant in respect of
2 searching the property, at other investigations I've
3 been involved in.

4 Q. And if consent had not been sought or obtained from
5 Martyn Dick --

6 A. Yeah.

7 Q. -- you've explained the process would be to go to the
8 Procurator Fiscal?

9 A. Yes.

10 Q. And to seek a warrant?

11 A. Yes.

12 Q. Would that be done by lower rank officers as well?

13 A. Yes.

14 Q. Would Houston have an involvement in that if a warrant
15 was ultimately to be sought?

16 A. He would have oversight of it but it was likely to be
17 the crime scene manager or one of his team who would
18 actually phone the Fiscal and basically ask for
19 authority for a warrant.

20 Q. Do you know who the crime scene manager for
21 Martyn Dick's house was?

22 A. I don't, apologies.

23 Q. That's not in any of the paperwork --

1 A. No.

2 Q. -- we have. What would the grounds of a warrant have
3 been in relation to Martyn Dick?

4 A. So the grounds would be --

5 Q. For searching his house.

6 A. Yeah. So basically the location is extremely relevant
7 and the fact that we had identified -- we were
8 investigating an unexplained death at that particular
9 stage, and again with the hypotheses that were still
10 open at that point we really didn't know what we were
11 looking at in respect of restraint, drink, drugs
12 overdose, medical condition.

13 So again, all of these hypotheses were still very
14 much open, so it was relevant that we searched that
15 property and again there would be that discussion with
16 the Procurator Fiscal who would be on call around: this
17 is what we have at this particular stage. We would
18 probably need to put it on paper, I would imagine, to
19 them, saying: these are the circumstances and this is
20 the relevance of this location, identifying he'd been
21 there, he began to act erratically and out of character
22 whilst he was there. There was indication that there
23 was some aspect of he'd been disrespected whilst within

1 there. So again, we were unsure exactly how relevant it
2 is and what is within there that we would be looking for
3 as such. So again, it was just -- there would be that
4 discussion with the Procurator Fiscal round about the
5 relevance of that and ultimately it would be the
6 Procurator Fiscal's decision whether or not that's
7 granted.

8 Q. And we understand that that would be a decision for the
9 Fiscal?

10 A. Yes.

11 Q. It's not something the police can simply go to
12 a sheriff --

13 A. No.

14 Q. -- and seek a warrant?

15 A. No.

16 Q. In relation to the warrant, if it had been sought in
17 relation to Martyn Dick's house, would you have been
18 seeking that for searching the whole entire house or
19 parts of the house?

20 A. It would be the whole entire house. It generally is
21 with any search warrant, it usually is the property plus
22 any outbuildings, that's usually how it's worded.

23 Q. But that was not done --

1 A. No.

2 Q. -- in relation to Martyn Dick's house?

3 Were you satisfied at the forensic strategy meeting
4 that you had the necessary authority to search
5 Martyn Dick's house?

6 A. Yes.

7 Q. And that had been as a result of information you
8 received from Stuart Houston?

9 A. Correct.

10 Q. I wonder if we can actually have a look at
11 Stuart Houston's statement. He's given us an Inquiry
12 statement. So it's SBPI 00214, please. You'll see this
13 is a statement in the same sort of idea as the statement
14 you've given us. It was taken by a member of the
15 Inquiry team on the dates on the screen, last year, and
16 it's a number of paragraphs, it's been signed by him.

17 Can we look at paragraph 249, first of all. He's
18 been asked to tell us about his involvement with
19 the enquiry, and actually if we move up the page
20 slightly, we'll see that the heading of this section is:

21 "Sheku Bayoh's address~..."

22 Which is also Collette Bell's address:

23 "... and Martyn Dick and Kirsty MacLeod's address."

1 Which we're talking about.

2 Have you had an opportunity to --

3 A. Yeah.

4 Q. -- have a look at this?

5 Let's start with 249. I'd like to just very quickly
6 refresh your memory on a number of paragraphs and then
7 I'll ask you some questions if that's okay.

8 A. Okay.

9 Q. So at 249 you will see that he says:

10 "The legal basis is that they are scenes that may be
11 linked to this death."

12 So he's talking about the legal basis for seizing
13 and searching the houses and they're linked to
14 Sheku Bayoh's death:

15 "As far as I was aware there were no warrants at the
16 location."

17 That's confirmed, you've confirmed that today?

18 A. Yeah.

19 Q. "But you'd protect the loci in order to get warrants
20 further down the line."

21 I think that's essentially what you've been telling
22 us?

23 A. Yeah.

1 Q. Then 250 he has said towards the end of that:

2 "I'm not sure if the occupiers were asked to move,
3 that was done before my involvement."

4 So it seems to be suggesting that he wasn't involved
5 at that stage, and he doesn't know if the occupiers were
6 asked to move. But he was made aware that police
7 officers were present at each location.

8 A. Yeah.

9 Q. And then 251:

10 "The fact is, we're not going to get to them on
11 3 May. My thought process was, as long as they're
12 preserved, I don't need to go there at this time. I'm
13 making a guess, but I think they were secured by
14 uniformed police, so you can seize anything that's
15 relevant to an investigation. To be blunt, because
16 they're protected by police, I maybe didn't give those
17 loci the attention they needed at that time. That's
18 prioritisation in doing the things that need to get
19 done."

20 Then 252:

21 "I can't speak to what happened before I was there.
22 My interpretation is if you've got something that might
23 be subject to an investigation, you'd tell them and ask

1 them to leave and examine it as a consensual crime
2 scene ..."

3 That's presumably a crime scene where you have
4 consent?

5 A. (Witness nods).

6 Q. "... or take a warrant. That would be from the people
7 who were there. I know the [redacted] one, something
8 happened at that address, the [redacted] one I'm not too
9 sure about."

10 253:

11 "There was a suggestion that the knife came from one
12 of the addresses. So, again, that would be your
13 justification for shutting the scene down and seeing
14 what was in there."

15 254:

16 "My understanding is the searches were done long
17 after I was done. I've no detail of anybody searching
18 those houses in the time I was involved. I don't know
19 what was found in the searches."

20 255:

21 "I've written in the forensic strategy document~...
22 that the loci are under protection so it falls within my
23 remit. But the SIO is in charge of the overall

1 investigation. Ultimately the SIO agrees the forensic
2 strategy."

3 Two to go. 256:

4 "I've been asked where the occupiers of [redacted]
5 were relocated to. There will be something put in
6 place, I'm not entirely sure, maybe went to family?
7 This specifically I don't know. I would expect who was
8 there would make arrangements."

9 257:

10 "On some occasions I've taken houses for months.
11 I'd like to think it was the original attending
12 officers. It's been seized and shut down by the time
13 I get there. Absolutely if the SIO or someone else is
14 wanting them to take their house there would be
15 a responsibility of who is securing their house.
16 I don't know the answer to that on this occasion."

17 So I think if I can summarise what we've just read,
18 if we can go back up to the top of that, to 249 -- and
19 if you want to look at any of these paragraphs again
20 you're very welcome to do so -- there's no warrants, he
21 doesn't make any comment about how consent was sought
22 from homeowners or even that he knows that consent was
23 definitely sought. He doesn't know if occupiers were

1 asked to move. He says that was before his involvement.
2 He said they were seized and shut down by the time he
3 got there. He's given no detail of anyone searching the
4 houses in the time he was involved. He doesn't know
5 what was found. He's not sure about where occupiers
6 were relocated to, and he expected who was there would
7 make arrangements.

8 So from his description in this -- we've not heard
9 evidence from Houston --

10 A. Yeah.

11 Q. -- but we've got his signed statement which constitutes
12 evidence. From this description it looks like these
13 houses, Collette Bell's house and Martyn Dick's house,
14 were seized prior to his involvement, and he wasn't
15 aware of any searches being done.

16 Now, having gone through that with me, does any of
17 this cause you concern?

18 A. Not particularly, no.

19 Q. Right. Tell me why?

20 A. So Stuart Houston became involved round about half past
21 11, 12 o'clock that first morning on 3 May. I'd
22 contacted him about 10 o'clock, back at 10 o'clock to
23 come through to deal with the crime scenes, and he quite

1 rightly points out by that time he came through, about
2 midday or thereabouts, both of those locations had
3 already been secured. And again, I'm more than content
4 with that. That is -- as an SIO, one of my priorities
5 was to secure the scenes around that.

6 Again, the aspect of the searches of both those
7 properties not having been concluded while he was still
8 involved in the investigation is accurate. Stuart stood
9 down on 4 May round about midday on the Monday or
10 thereabouts, so he was over for one of the morning
11 meetings with myself at Kirkcaldy and thereafter he
12 reverted back to his post within -- within Edinburgh at
13 that point. But by that stage we had a clear framework
14 for deployment at each of the locations, we had crime
15 scene managers, we had specialist resources to basically
16 be deployed around that.

17 So regarding the strategy, although Stuart wasn't
18 aware of the initial seizure of the properties, he was
19 very much aware, as the day progressed, how significant
20 they were, and developed the forensic strategy around
21 that as such.

22 So I don't have any real concern around that. The
23 discussion at the forensic strategy meeting was round

1 about the aspect of -- we discussed consent and about
2 the aspect of search, and at that point the decision was
3 made that there was no requirement for warrants unless
4 there had been any conflict at each of the locations.
5 But there wasn't, as far as I was aware.

6 Q. Does it cause you any concern that he doesn't give us
7 a clear description of consent being obtained from
8 Martyn Dick, for example?

9 A. I don't know if he's actually been asked that.

10 Q. Right. And you can see that he's been asked
11 questions --

12 A. Yeah.

13 Q. -- about the authority, he says there was no warrants.
14 If he was asked that and wasn't able to give a clear
15 explanation that consent was obtained from Martyn Dick,
16 would that cause you concern?

17 A. I'm actually just assuming what you're asking. I mean,
18 its' -- I don't know, I need to -- you'd need to really
19 ask Stuart Houston exactly round about the aspect of --

20 Q. Of course.

21 A. -- what he knows about concern.

22 Q. But if we interpret this statement as meaning that he
23 does not know whether consent was obtained from the

1 homeowner, does that cause you concern, as SIO?

2 A. No, because at that meeting there was a general
3 discussion around the fact that there was no issues with
4 any of the locations that we had secured and that the
5 aspect of search was going to be done with consent. We
6 didn't require any warrantry at that particular stage.
7 At that point if there was any issue with Martyn Dick's
8 house, for example, we would have simply have reverted
9 to the Procurator Fiscal for a warrant. There wouldn't
10 have been any complications with that. As I say, that's
11 a normal course of events. I don't have any issue with
12 it.

13 Q. We've heard evidence from Martyn Dick and I asked him if
14 he was asked for permission to allow the police to
15 search the house and he said no, that that wasn't done.
16 Does that cause you concern?

17 A. It -- I mean, it does, and again with the balance of
18 that with what the officers who were involved with
19 Martyn Dick has fed back through to Colin Robson and
20 Stuart Houston, that it was quite clear that they were
21 aware that we were going to search the property and the
22 relevance of it. So again, I do appreciate that
23 position of Martyn, that he doesn't believe that consent

1 was given around that, but I can only base this on 2015
2 and the information I had.

3 Q. The other thing I'd like to ask for your help with is
4 why, when officers arrived at Martyn Dick's house, four
5 crews were sent. You've heard evidence about this.

6 A. Yeah, yeah.

7 Q. Can you explain to us why there were four crews of
8 officers?

9 A. I was unaware, to be honest with you, and that -- that's
10 not surprising that I was unaware because this was
11 an issue that was getting managed by Stuart and
12 Colin Robson and the investigative team around that. So
13 the rationale behind that, I can only think that they
14 potentially thought that there were other persons within
15 that property and they would have to potentially remove
16 other persons other than the two householders from it.

17 Q. Why would they think that?

18 A. I've absolutely no idea, but again, with the limited
19 resources we had at that particular stage I was quite
20 surprised when I heard of the numbers that attended
21 there, but I can only think that there was some aspect,
22 that there may have been other -- that there may have
23 been more than the two individuals within the property

1 at that point. But I don't really know because I wasn't
2 involved in it.

3 Q. And you think that would have been from Robson or
4 Houston?

5 A. Yeah, yeah.

6 LORD BRACADALE: Detective Chief Superintendent, could
7 I just pick up on something that you said a moment ago
8 in the context of consent in relation to Martyn Dick's
9 house.

10 You said that:

11 "Answer: ... the officers who were involved with
12 Martyn Dick has fed back through to Colin Robson and
13 Stuart Houston, that it was quite clear that they were
14 aware that we were going to search the property and the
15 relevance of it."

16 Now, that doesn't sound to me like a statement of
17 consent. That sounds like they were made aware that the
18 house was going to be searched.

19 A. I don't know if it's the language I have used there
20 around that. What my understanding, not actually being
21 and engaging with Martyn Dick at the time, was that the
22 officers had explained the rationale and the reason for
23 the necessary -- the necessity to basically search the

1 property.

2 So, as I say, there was no issues that I was aware
3 of coming back, that that was refused, that the
4 explanation given round about the reason why we had to
5 search the property or were going to search the
6 property, there was nothing at all coming back from the
7 officers that Martyn Dick or his partner had refused or
8 had questioned the reason for it.

9 LORD BRACADALE: Thank you.

10 MS GRAHAME: We've heard evidence from a DC Bellingham, who
11 was one of the officers that was there. Are you aware
12 of his evidence?

13 A. I know that -- I know the officer, yeah.

14 Q. He said he wasn't searching the house, he was only there
15 to secure the house and it would have been a decision
16 for the SIO --

17 A. Yeah.

18 Q. -- whether to search the house, but he wasn't there for
19 searching the house at all.

20 A. That's correct.

21 Q. Is that correct?

22 A. That's correct.

23 Q. He didn't give the impression he was aware of the fact

1 the house was to be searched or who was doing that?

2 A. Mm-hm.

3 Q. He wasn't able to help us with any of that.

4 A. Right.

5 Q. So it appears that at least one of the officers there

6 wasn't aware that the house was to be searched or the

7 relevance of it.

8 A. Yeah, I'm unsure who actually led the attendance at

9 Martyn Dick's house, to be honest with you. As I say,

10 as SIO I wouldn't know the details of that, but whoever

11 attended there with, as you say, the four crews, someone

12 would have been leading on that aspect of it, who would

13 have explained to the householders why they were there

14 and the requirement to thereafter search the house at

15 some time and also remove them from it at that stage.

16 Q. We heard from Martyn Dick that there were about nine or

17 ten officers there --

18 A. Yes.

19 Q. -- that day, and I think we have a statement from

20 Kirsty MacLeod that thought there was about nine

21 officers. I think from memory, and I may be incorrect

22 on this, he said two of them at least were not uniformed

23 officers.

- 1 A. Right.
- 2 Q. Would that give you any assistance in working out who
3 was leading that?
- 4 A. No, I really can't recall. I mean, it's -- as I say,
5 it's -- I was dealing more strategically with the
6 overarching investigation rather than going into the
7 details of individual searches.
- 8 Q. We've also heard evidence from Martyn Dick that at
9 a later stage he became aware that the police had found
10 what they described as "herbal matter", you may have
11 heard evidence about that, and they said they were going
12 to take it, and he was concerned because he'd never been
13 shown a search warrant for the property. And his
14 evidence was:
- 15 "They must have looked for the herbal matter because
16 they found it in a drawer under my bed that wasn't
17 laying out."
- 18 Were you aware of that evidence?
- 19 A. I was aware after --
- 20 Q. After?
- 21 A. -- yeah, that it had been recovered, yeah. But not at
22 the time.
- 23 Q. So if Martyn Dick is correct in his evidence that

1 a search was conducted in his house, and herbal matter
2 was found in a drawer under his bed, which had been
3 opened, it wasn't lying out in plain sight, so it
4 appears that a search was carried out on the property.
5 If he didn't give consent, which is what his evidence
6 is, and you've accepted there was no warrant, can you
7 explain: would there be another basis on which that
8 search would be carried out on Martyn Dick's house?

9 A. Not at that time. It was carried out, as far as I'm
10 aware, with consent. I'm aware of the herbal material
11 being recovered and at that time I believe the search
12 was stopped and the Procurator Fiscal was contacted, as
13 we would normally do if we do find something which maybe
14 constitutes an additional offence.

15 So again, the discussion with the officers at the
16 location with the Procurator Fiscal on-call was around
17 the necessity at that particular stage for a warrant
18 under the Misuse of Drugs Act, for example, so again
19 that discussion did take place and that is proper
20 protocol and procedure what we would do.

21 Q. Right. If a search is done without consent, without
22 a warrant, who -- in terms of the investigation -- is
23 ultimately responsible for that?

1 A. That ultimately is me.

2 Q. So you would be ultimately responsible?

3 A. As SIO, yes.

4 Q. In your role as SIO?

5 A. Yes.

6 Q. The other evidence that we heard from Martyn Dick was
7 that an officer was sent upstairs with him, when he got
8 changed, and he was asked to leave his clothes that he'd
9 been wearing the night before and to leave them out,
10 I think he said he had left them on his bed, and the
11 same happened with Kirsty MacLeod. And then they were
12 separated, taken into separate police cars and taken
13 back to Kirkcaldy Police Office. And he said that:

14 "The officer stood outside my room, not inside the
15 room, but it still strikes me as strange, especially in
16 hindsight now."

17 And Kirsty MacLeod has given a statement saying
18 that:

19 "They explained about the clothing, that they might
20 have to rule out my DNA from Shek, as I had earlier told
21 them that I had cuddled Shek when he arrived at the
22 house that morning."

23 And then:

1 "Martyn went upstairs to our bedroom to get
2 changed~..."

3 As did she and an officer stood outside the bathroom
4 door on the upstairs landing while she was getting
5 changed.

6 Now, can you comment on that? You've said this is
7 all with consent.

8 A. Yeah.

9 Q. They are witnesses.

10 A. Yeah.

11 Q. They're not suspects. They're in their own home, it's
12 a Sunday. Why would officers be following them and
13 standing outside a bedroom door or a bathroom door while
14 they were getting changed?

15 A. I know it may appear strange, as Martyn has indicated
16 there, but it's not. It generally is normal protocol
17 that we would take on for any unexplained death or any
18 investigation whereby we would -- it's about the
19 integrity of the scene, about the integrity of clothing
20 that they're wearing at the material time. So in
21 respect of, did we follow major investigation protocols,
22 forensic protocols, around aspects such as this? Yes,
23 we did. Was -- does it appear to be potentially over

1 the top? It probably does to someone who is not
2 familiar with the processes involved in major crime
3 investigation. However, it was done with the best of
4 intentions in respect of the process and the protocols
5 we did follow.

6 What you're telling me is very familiar to me, that
7 happens, and it still happens today. So again, even
8 though they were witnesses we were unsure exactly how
9 relevant they were to the investigation, so it's really
10 crucial that you do maintain the integrity, forensic
11 opportunities around areas such as clothing, and they
12 were right within -- and I totally endorse what they did
13 do, to be honest with you.

14 Q. Does it cause you any concern that none of the officers
15 were wearing forensic suits?

16 A. No. No. Not at that stage, no.

17 Q. Why did it matter to your investigation that
18 Kirsty MacLeod had cuddled Sheku Bayoh when he arrived
19 the night before?

20 A. That wasn't the aspect of it, it was just we were
21 unsure, we didn't know, at that point of the day in the
22 investigation, exactly how relevant Kirsty or Martyn
23 were to it. And although it does, as I say, it appears

1 that we have almost managed them like suspects, it
2 wasn't meant to basically look like that, it was more to
3 do with the fact -- to maintain the integrity of what we
4 were actually doing, to carry out the protocols and
5 processes that the officers are trained in, in respect
6 of ensuring integrity, like seizure of clothing which
7 they would have taken and put into production bags and
8 so on and so forth at the location.

9 So what, as I say, you have described is normal
10 protocols for what we encounter on a day-to-day basis.

11 Q. Have you any comment on this explanation that
12 Kirsty MacLeod says she was given, that the explanation
13 was:

14 "... that they might have to rule out my DNA from
15 Shek, as I had earlier told them that I had cuddled Shek
16 when he arrived at the house that morning."

17 What about this explanation that they'd have to rule
18 out her DNA; what would her DNA have to do with the
19 events at Hayfield Road?

20 A. I can't really see any relevance, to be honest with you,
21 with it. But, as I said before, it's difficult
22 retrospectively to go back and attempt to ensure the
23 integrity of a scene or clothing or an individual two or

1 three hours later when you've maybe not done what you
2 had the opportunity to do at that time. So what was
3 done was done with the best of intentions. I think
4 maybe the description of the officers why we had to do
5 it was maybe a bit flawed around the fact that they had
6 to eliminate DNA because she cuddled him earlier on that
7 evening. But as I say, that -- what was described there
8 is normal protocol in respect of anyone through the
9 course of an unexplained/suspicious death investigation
10 that we would basically take on and deal with as such.
11 And once it's eliminated, or once there is absolutely no
12 involvement, we would return as soon as possible either
13 the location, the clothing or mobile phones or whatever
14 else to them.

15 So again, it does appear strange to people who are
16 not familiar with investigation of incidents such as
17 this, but that is normal process and normal protocol.

18 Q. Was that the normal protocol or process in 2015?

19 A. It was, yes.

20 Q. Now has the position changed?

21 A. No, no, I think we -- I mean, from my understanding we
22 would still do that with individuals involved, about
23 taking the clothing, seizing their clothing, seizing

1 their mobile phones and whatever around that, that would
2 still take place.

3 Q. Just for witnesses like Kirsty MacLeod and Martyn Dick?

4 A. Yeah, as I say, at that time we are keeping an open mind
5 round about the relevance of them at that stage. They
6 are clearly witnesses, however what you do not know is
7 at some time later on that day or on subsequent days
8 that you get information or something comes in that
9 there has been a fight in a bedroom between
10 an individual and the deceased that we were unaware of
11 on day one but thereafter we can say: we seized their
12 clothing so let's sit down with a biologist, a forensic
13 team and work out how do we look at transference of DNA
14 and so on and so forth. So again, as I say, it was done
15 with the best of intentions.

16 Q. And if, in the days to come, it had proved to be the
17 case that there had been a fight in a bedroom and the
18 clothing was relevant --

19 A. Yeah.

20 Q. -- what impact would it have on that evidence that they
21 had not been recovered using forensic -- forensically --

22 A. It's down to integrity. It's down to integrity, it's
23 down to best evidence. So, as I say, that's the

1 whole --

2 Q. What would the impact on the integrity of the evidence

3 be --

4 A. Well --

5 Q. -- if the clothes had been recovered without any

6 forensic clothing?

7 A. So it's about maintaining integrity to ensure the

8 optimum forensic capture during examination, so the

9 decanting of the clothing into brown bags, the

10 production bags that we have, thereafter they're sealed

11 and thereafter we can submit them to the lab or wherever

12 we are, submit them for examination at that time.

13 Q. Was that done with Martyn Dick and Kirsty MacLeod's

14 clothes?

15 A. I wasn't there, but I would imagine with the process

16 you're saying that that's what would have been done

17 around that, that is normal process.

18 Q. We heard evidence -- you've mentioned mobile phones, we

19 heard evidence from Martyn Dick that his phone was

20 seized. Again, can you explain why that was done?

21 A. I don't know. I was unaware of that. But again, that

22 would probably have been normal, if he had indicated in

23 his statement that he had had any conversations with the

1 deceased in the lead-up to his death or on him coming
2 round to the property. And I think from Martyn Dick's
3 statement I think he's also contacted by Mr Saeed some
4 time later that morning around the conduct of the
5 deceased. So again the phone becomes relevant to paint
6 that wider picture of contact and the discussions and
7 perhaps text messages indicating what they believe has
8 occurred.

9 So again, it's part of that evidential chain, it's
10 about seizing while we can seize, while it's there, with
11 the intention that we can return it as soon as possible.
12 I think what I would say in 2015 the aspect of seizing
13 mobile phones was, once we seized it, very little times
14 they actually got it back in some sort of working
15 condition.

16 Q. We did hear from Martyn Dick that he had never had his
17 phone back.

18 A. Yeah. That's changed today. It's such an integral part
19 of your lifestyle, your mobile phone, so we do try to
20 return them as soon as possible. We have kiosks that we
21 can download the relevant information very, very quickly
22 and we return it as soon as practical. However, I take
23 your point, in 2015 that wasn't the case.

1 Q. We've also heard from Martyn Dick that he wasn't
2 permitted to get dog food from the house, and the
3 officers wouldn't provide him with the dog food for his
4 dog, and we've also heard that he wasn't permitted to
5 get his van keys, he needed his van, I think, for work
6 that night, but they wouldn't permit him to do that.

7 Can you help us understand what the normal process
8 is, when people are removed from a house --

9 A. Yeah.

10 Q. -- with consent, if they've left something in the house
11 or they've forgotten to take something, we've heard
12 evidence about various situations where sometimes the
13 officers will go back and get something for people, but
14 sometimes they won't. Now, with Martyn Dick they
15 wouldn't get dog food and they wouldn't get the van
16 keys, and I'm wondering if you can explain the normal
17 procedure in 2015?

18 A. Yeah, it's hard to describe any kind of normal
19 procedure, it's almost on a case-by-case basis. I mean,
20 in 2015 we also did our best to accommodate people to
21 get particular witnesses to get property from their
22 house, I'm quite surprised round about the dog food or
23 the car keys at that property because that would have

1 been easy enough to do.

2 There are, however, more significant scenes when you
3 look at -- and again, I keep going back to homicide
4 where you have perhaps a deceased within a house, where
5 there are perhaps bloodstained footprints and whatever
6 else in that property, there will be occasions whereby
7 because of the forensic opportunities that exist and to
8 maintain the complete integrity of that scene, that we
9 wouldn't permit anyone access to. So I think it's
10 difficult to put in words that there's one rule for
11 everything around that, it really has to be dealt with
12 on a case-by-case basis. But Martyn Dick's house, from
13 what you're telling me, I don't see any great issue with
14 us attending, even if we're in forensic suits, to go in
15 and remove keys and dog food.

16 Q. We've heard about one process which someone could adopt
17 where if a request is made to get something from the
18 house they can phone a more senior officer to --
19 effectively the officer can get authority to remove
20 an item from the house. Was that something that was
21 possible?

22 A. Yes.

23 Q. Was any of this information made known to you?

1 A. What, the dog food and the keys?

2 Q. Well, any of the information we've been discussing about
3 the clothing and the --

4 A. No.

5 Q. -- keys and the dog food and --

6 A. No.

7 Q. -- the issues regarding consent and -- none of that?

8 A. And at that early stages of day one, I wouldn't have
9 expected it to be, I would probably get that at the
10 debrief at the end of day one, round about what had
11 taken place at each of the locations. So they usually
12 briefed me about what had actually taken place as such.

13 Q. So did you find out at the end of day one?

14 A. So there was a Gold Group at 19.50, I think at
15 20.00 hours at the end of day one and I had a better
16 understanding -- there wasn't an actual briefing because
17 people were still out and about dealing with various
18 actions at that stage, but I had got a more thorough
19 update from Stuart at that time round about how each of
20 the scenes were being progressed.

21 Q. So did Stuart Houston, at the end of 3 May, give you
22 a briefing that included information about what had
23 transpired at Martyn Dick's house?

1 A. Not in as much detail as seizing clothing and dog food
2 and keys, no, it was more high level, just round about
3 what had been done.

4 Q. What briefing did he give you at the end of the day?

5 A. Just a synopsis of each of the five locations and where
6 we were with each of them at that particular stage.

7 Q. Now, you said yesterday about people staying
8 overnight -- staying away overnight, we heard evidence
9 from Martyn Dick that him and his then partner Kirsty
10 did require to stay overnight from their property as
11 well, and although he'd phoned the police four or five
12 times he wasn't allowed back into the house that
13 evening. He missed work that evening as a result.

14 Can you explain why the house was retained
15 overnight? You've said it a moment ago actually, you
16 try and return houses as soon as possible.

17 A. Yeah, and I think I've already said as well when you
18 look at the kind of prioritisation of the various loci,
19 Martyn Dick's house was quite far down, so there are
20 limited resources particularly round about
21 SPA Forensic Services and round about examination that
22 we can put in over a period of time. So, as I say, the
23 16.45 hours forensic strategy meeting, other than

1 Hayfield Road we weren't actually progressing anything
2 until kind of early evening. So again I think, as
3 Stuart quite rightly points out in his Inquiry
4 statement, there was no way we were going to complete
5 all the loci on the first day.

6 Q. Right. You mentioned going to the Procurator Fiscal for
7 a warrant earlier. We've heard evidence from
8 Dev Kapadia, who was the senior Fiscal on-call on 3 May.

9 A. Yeah.

10 Q. And this again is in connection with the herbal matter
11 that was found in Martyn Dick's house.

12 A. Yes.

13 Q. Are you aware of that evidence?

14 A. Yes.

15 Q. Now, Dev Kapadia did not put -- there was a warrant
16 made -- sorry, an application or a phone call with the
17 Fiscal, with one of the officers, the officer was
18 seeking an application to be made to a sheriff --

19 A. Yes.

20 Q. -- for a warrant to recover the herbal material.
21 Mr Kapadia explained that it was his view -- he refused
22 that request, and it was his view that there was a, what
23 he described as a tenuous connection between the death

1 of Mr Bayoh and the property of Martyn Dick. And he was
2 not prepared to put an application for a warrant before
3 the sheriff. He described the offence relating to the
4 herbal matter as being de minimis. We heard from
5 DC Finch that the quantity of the herbal matter was less
6 than one gram. It was never tested. And Mr Kapadia
7 said:

8 "It was so small, it would not be marked for
9 prosecution."

10 I'm interested in your comments on this situation
11 where this is apparently a search having been conducted
12 with consent, in your understanding.

13 A. Yeah.

14 Q. An application is made to get a warrant or a request was
15 made over the phone to get a warrant from a sheriff.
16 That's refused by the Fiscal as de minimis and wouldn't
17 likely be prosecuted.

18 A. Yeah.

19 Q. Were you made aware of that situation where a request
20 had been made to the Fiscal and had been refused?

21 A. No, not until a number of days after that. I wasn't
22 aware at the time.

23 Q. When did you find out about this?

1 A. I can't remember, I think it was the 5th I was aware
2 that there had been a phone call to the on-call Fiscal
3 at that particular stage. However, what I would say,
4 that's not unusual for us to do that. That's again
5 proper protocol, whilst we're carrying out a search
6 under consent, that we come across what we suspect to be
7 controlled drugs, a firearm, or, I mean, anything else
8 which would appear illegal.

9 So again, we would normally stop the search at that
10 stage and contact the on-call Procurator Fiscal and give
11 them the place around, are they happy for us to continue
12 at that stage because -- and going back a number of
13 years now, I mean, over the period, I distinctly recall
14 contacting various Fiscals from various locations where
15 we found what -- again, similar to this, what is
16 described as personal amounts of controlled drugs, and
17 at that stage the process was if there was no other
18 evidence and nothing else that had been recovered that
19 would indicate that there was any further controlled
20 substances within the property or anything indicating --
21 concerning supply, for example, they'd basically just
22 ask you to seize it and report it as such but not to --
23 no warrant was required. So I'm not surprised that that

1 was the direction given.

2 Q. So you're not surprised at the Fiscal's refusal?

3 A. Yes.

4 Q. And given the amount that was being discussed, I don't

5 have the exact wording of Mr Kapadia's evidence in front

6 of me, but -- and it will be a matter for the Chair --

7 but if he gave the impression during his evidence that

8 he'd really not come across situations where a request

9 was made for such small amounts, and he was a very

10 experienced -- he was a senior Fiscal with many --

11 A. Yeah.

12 Q. -- years of experience. Does that, although you're

13 saying it's a normal part of the process, does it cause

14 you any concern that it was for such a small amount?

15 A. No, because we are searching under consent, and

16 thereafter if you do come across such as no matter what

17 quantity of controlled drugs or suspected controlled

18 drugs, the normal process would be to stop the search at

19 that particular time and contact the Fiscal. That's, as

20 far as I've been involved in drug searches for 25 years,

21 that's been the normal course of events.

22 Q. Can you help us understand why, if a search is being

23 carried out with consent --

1 A. Yeah.

2 Q. -- why you need to get a warrant?

3 A. Because although it has initially been with consent what
4 you come across is either a related or a non-related
5 aspect of criminality or suspected criminality, so you
6 would normally stop the search at that time and make
7 that call to the on-call Procurator Fiscal.

8 Q. Again, looking at the -- in terms of what's going on or
9 what went on in Martyn Dick's house, would you again be
10 ultimately responsible --

11 A. Yeah.

12 Q. -- for any steps taken by the officers?

13 A. Absolutely.

14 Q. We've also heard, I think ...

15 (Pause).

16 So given your last answer, there was no -- was there
17 any connection that you could see between the small
18 amount of herbal matter and the ultimate death of
19 Mr Bayoh?

20 A. No.

21 Q. No, there was no connection --

22 A. No.

23 Q. -- at all?

1 So there was no part of the investigation at that
2 stage that was looking for herbal matter --
3 A. No.
4 Q. -- in Martyn Dick's house?
5 Can I move on to another property, the property of
6 Zahid Saeed?
7 A. Yes.
8 Q. If we go to the forensic strategy document, I think you
9 have this, this property mentioned on page 4 of 7, so
10 this is PS01298 and we'll get this up on screen. Page 4
11 of 7, and this is locus 5.
12 A. Yeah.
13 Q. I think there's more detail given in this strategy
14 document on this.
15 A. Yes.
16 Q. So we see it's:
17 "Saeed home address and ... motor car~..."
18 It says:
19 "From witness statements it was established that
20 Zahid Saeed had during the course of the evening [on the
21 2nd] and the early hours of [the 3rd], conveyed the
22 deceased within his Seat Toledo motor car ... It was
23 also provided by Zahid Saeed that following

1 an altercation with the deceased he had driven himself
2 home and had placed his clothes within a laundry basket
3 in the house."

4 Three bullet points:

5 "To examine and forensically recover the clothing
6 and any other items within the scene as described by
7 Zahid Saeed.

8 "To record and forensically recovery the Seat Toledo
9 motor car~...

10 "To identify and maximise all forensic opportunities
11 at the crime scene."

12 Now, we've heard others say the crime scene is
13 effectively the house.

14 A. Yeah.

15 Q. Can I look at bullet point 1:

16 "To examine and forensically recover the clothing
17 and any other items within the scene as described by
18 Zahid Saeed."

19 So was this in connection with the statement that
20 you had obtained from Zahid Saeed by this time?

21 A. Yes, that's correct.

22 Q. I'll come back to that in a moment, but you were -- you
23 were aware obviously by this stage, at the point that

1 this document was prepared, that he had placed clothes
2 from that evening in a laundry basket --

3 A. Yes.

4 Q. -- in the house, and you were aware, I think, from your
5 earlier evidence, that he'd been in an altercation --

6 A. Yeah.

7 Q. -- with Mr Bayoh. So was that really the main relevance
8 of this property to your investigation?

9 A. So it goes back to the hypothesis that I described
10 yesterday was: had he been involved in some sort of
11 physical altercation with an unknown male or Zahid, as
12 we are now aware that there was the altercation in the
13 rear garden of the address at Arran Crescent.

14 So again, we are aware of that from the admissions
15 Zahid from his statement, and also with some
16 contributions from Collette Bell's statement as well.
17 So again what was that altercation? How -- to what
18 extent could that have contributed to Mr Bayoh's death?
19 So again it's about keeping that open mind, keeping that
20 hypothesis running at that stage and looking at what
21 relevance Mr Saeed is to the investigation.

22 Q. And in terms of the -- looking at securing that house,
23 to what extent would you need to secure the house or

1 control the house in order to facilitate recovery of
2 those items for your investigation?

3 A. Yeah, again it was significant, it was crucial we did do
4 that, yes.

5 Q. Would that require you seizing the whole house or part
6 of the house only?

7 A. The whole house, yeah.

8 Q. And why would it be the whole house that you would need?

9 A. I don't think I've ever seized part of a house.

10 Q. Oh, is that not commonly done?

11 A. No. I mean, if you seize a house, you seize a full
12 house.

13 Q. So even though the focus seems to be clothes within
14 a laundry basket --

15 A. Yeah.

16 Q. -- you wouldn't simply seize part of the house?

17 A. No, as I said before, you know, I mean, it's -- Mr Saeed
18 was interesting initially around not just what -- the
19 admissions he makes to ourselves with the statement, but
20 also with the phone call to Collette Bell and he's
21 almost in a state of distress round about, "Don't go
22 back to your house", and so on and so forth.

23 So again, how relevant was Mr Saeed to the

1 investigation, had there been something more significant
2 that we were unaware of at that time? So again, at that
3 stage we were unaware, so again it was really relevant
4 round about the: was there anything else in that house
5 that we had to recover that was relevant to the
6 investigation as such?

7 Q. When the strategy document was prepared, were you aware
8 that this was Mr Saeed's family home?

9 A. I wasn't, no.

10 Q. Were you aware that members of his family lived there?

11 A. No, I wasn't.

12 Q. And this is quite a different description of the
13 strategy in relation to this property --

14 A. Yeah.

15 Q. -- compared to the Martyn Dick one.

16 A. Yeah.

17 Q. In terms of the plan that you had in your mind about the
18 authority for searching this house, or first of all the
19 authority for seizing the house, what was your view on
20 how that would -- what basis would -- (inaudible -
21 overspeaking) --

22 A. So the initial seizure was part of an investigation into
23 an unexplained death, so it was common law to seize the

1 property.

2 Q. Right.

3 A. And again, the power of search, as with all other

4 properties, my understanding was through consent.

5 Q. Right, so the actual seizing was common law?

6 A. Yeah.

7 Q. And I'll ask you in a moment to explain that further.

8 A. Yeah.

9 Q. But the searching was consent?

10 A. Yeah.

11 Q. Can you explain from whom you would have sought consent?

12 A. So it would be naturally the householder, but, as I say,

13 I wasn't involved in the intricacies of the engagement

14 with the family at that address.

15 Q. You mentioned a common law power, we've heard your

16 explanation of consent and warrants, can you explain to

17 us what you mean when you talk about a common law power

18 to seize a property?

19 A. Yeah, I mean, just the general understanding that police

20 investigating any serious crime or any crime in general,

21 there are common law powers for to seize -- not to

22 search -- anything that you deem to be relevant to that

23 investigation.

1 Now, that common law power has been developed
2 through stated cases and through other legislative
3 processes. So again, any investigation that we're
4 involved in, it's very difficult to seize a property
5 under a warrant when you know and you appreciate the
6 relevance to it, so again we would simply -- I think as
7 Stuart has indicated in his statement as well, any
8 investigation of a serious crime or an incident or
9 an unexplained death, we would simply secure it at that
10 time and thereafter go for consent or warrants to
11 actually search the property.

12 Q. So the first stage in your plan in relation to this
13 property would be using common law powers --

14 A. Yeah.

15 Q. -- in 2015? And then when did you make the decision
16 that this property should be searched? Because
17 obviously you said in this strategy document that you're
18 looking for clothing in a laundry basket, so can you
19 explain when you made the decision in relation to this
20 property that there was to be a search?

21 A. So that was at the forensic strategy meeting.

22 Q. Why was it not done at the point that you've prepared
23 the document, because you do seem in this document to be

1 identifying things you're looking for?

2 A. Yeah. So the document was produced by Stuart Houston
3 and endorsed and signed off by myself. However, we
4 hadn't actually ran it by PIRC at that stage. So the
5 point of the forensic strategy briefing was to have
6 Keith Harrower and the PIRC representatives round the
7 table, and I chaired the meeting explaining the various
8 locations and to ultimately get the sign-off of
9 Keith Harrower as SIO ultimately of that strategy moving
10 forward.

11 Q. Do we see that Keith Harrower is named as present or at
12 that forensic strategy meeting?

13 A. Yeah, I believe he is, yes.

14 Q. And that is in the agenda on page 6 of 7. Then is there
15 any -- when you see the overview on page 6 --

16 A. Yeah.

17 Q. -- do we see paragraph 3 of that overview --

18 A. Yeah.

19 Q. -- it says:

20 "It was agreed with the PIRC investigation team that
21 the priority scenes would be locus 1 and 2. It was also
22 agreed~..."

23 That's not the home of the family of Zahid Saeed:

1 "... that in relation to locus 5 [which was the
2 family home] once the clothing of Zahid and the vehicle
3 had been secured this would be returned to the Saeed
4 family~..."

5 A. Yeah.

6 Q. Can you give us a little more information about the
7 discussion about Zahid Saeed?

8 A. Yeah, I think it was really just to, it was ultimately
9 to try to do this as quickly as we possibly could do.
10 I mean, I appreciate with any -- the removal of any
11 family from a family home is traumatic, it's difficult,
12 it's challenging. I'm now aware of the more extended
13 family, with the Saeed family and some of the issues
14 with the members of the family in respect to health.

15 So I wasn't aware of that at the time, to be honest
16 with you. So I am aware now, but I can see round about
17 the fact that it is obviously extremely traumatic, that
18 they believe they're under suspicion, I would imagine,
19 but that there was, as I'd indicated, a requirement to
20 do that, to carry out the search for it. So it was
21 something we had to do and we wanted to do quickly and
22 return the property as soon as possible to the Saeed
23 family and we did do that I think on the first day on

1 3 May.

2 Q. Now, it seems to be agreed in that paragraph that loci 1
3 and 2 are the priority scenes?

4 A. Yeah.

5 Q. We know from your earlier evidence that the Saeed family
6 home, locus 5, is lower down in terms of priority.

7 A. Yeah.

8 Q. So was there any part of the discussion about the
9 timescale when this home could be returned to the
10 family?

11 A. No, there was no discussion round about timescales, it
12 was just as soon as possible to get all the scenes back
13 to the relevant families. But again, I think there was
14 an appreciation by ourselves and PIRC that it was going
15 to be extremely difficult to do that during 3 May.

16 Q. So that was something that you were conscious of --

17 A. Yes.

18 Q. -- at the forensic strategy meeting?

19 A. Yeah.

20 Q. And where it says:

21 "It was ... agreed~..."

22 So this is agreed with the PIRC team:

23 "... that in relation to locus 5 once the clothing

1 of Zahid and the vehicle had been secured this would be
2 returned to the Saeed family~..."

3 It would suggest that, first of all, you seemed to
4 know about the Saeed family by the time of this meeting?

5 A. Yeah.

6 Q. And that they would be -- would have to be removed from
7 that property. And it also seems to very much focus on
8 getting the clothing. We've seen in the previous
9 page --

10 A. Yeah.

11 Q. -- he'd put clothing in a laundry basket.

12 A. Yeah.

13 Q. There doesn't seem to be anything there suggesting that
14 it was a wider consideration of the property, it seems
15 to be focusing on the clothing.

16 A. Yeah, no, I mean, the focus would be on the clothing,
17 that's obviously why we were going into the property,
18 but, as I say, we don't generally seize kitchens and
19 bathrooms or living room areas, we'll seize the full
20 property and thereafter carry out -- I mean, I would
21 imagine -- I wasn't there but the seizure of the
22 clothing for the laundry basket would be done and
23 thereafter I would imagine a custody search would have

1 been carried out elsewhere in the property, but other
2 than that we were looking to return it as soon as
3 possible to the family.

4 Q. Can you explain why you didn't seek a warrant in advance
5 to search the property?

6 A. Because it was through consent.

7 Q. When you were at this meeting, were you under the
8 impression that consent had been obtained --

9 A. Yes.

10 Q. -- for a search?

11 A. Yes.

12 Q. Who told you that?

13 A. It was a general discussion between myself and Stuart
14 and other members of the forum that were there and there
15 was no issues identified to me on any of the locations
16 round about the need for any warrantry and consent had
17 been granted in respect of all the properties.

18 Q. If consent had not been obtained --

19 A. Yeah.

20 Q. -- what would you expect to have been done?

21 A. So again we would have referred to the Procurator Fiscal
22 and considered a warrant at that particular time.

23 Q. And would you have expected Houston to draw that to your

1 attention?

2 A. Yeah.

3 Q. And the grounds for the warrant, can you explain what
4 they would have been?

5 A. Yeah, I mean, the circumstances, the investigation of
6 an unexplained death, the circumstances of that, the
7 relevance of Mr Saeed to almost the last contact with
8 the deceased prior to the event on Hayfield Road, and
9 his actions in the aftermath through the phone call to
10 Collette Bell. And again, just by his own admissions
11 around the fact he'd been involved in
12 an altercation/fight with the deceased a short time
13 prior to his death.

14 So again, just with the circumstances around that,
15 we would have explained -- needed to explain to the
16 Procurator Fiscal round about: he is a witness at this
17 particular stage, but we are looking at -- we don't know
18 very much more just now, but he's changed his clothing
19 when he's went into the house. Again, why has he
20 changed his clothing when he went into the house? So
21 again, that whole hypothesis around exactly what has
22 occurred in the lead-up to the coming together at
23 Hayfield Road.

1 Q. And in terms of if you had been making an application
2 for a warrant and giving that explanation to the Fiscal,
3 what would you have expected or anticipated the warrant
4 would permit you to do?

5 A. Search for relevant property or items linked to the
6 investigation. I mean, I don't ... I'm not trying to
7 second-guess what the application would cover, sometimes
8 the warrants we get are pretty wide-ranging in respect
9 of incidents such as this, so they give a bit of scope
10 in respect of what we can search and seize as such. So
11 again, not having to do that, it's difficult to actually
12 put in words exactly what would be on it. But we would
13 be looking obviously -- the primary aspect would be the
14 clothing from the laundry basket.

15 Q. Would you have anticipated the warrant being limited to
16 the laundry basket in the bathroom of that property or
17 would you have expected it to be for the whole house?

18 A. I would expect for the whole house. As I say, I'm not
19 aware of ever coming across a warrant for a particular
20 part of a house.

21 Q. You've mentioned earlier -- we see that you've mentioned
22 the family there, and you've mentioned earlier that you
23 weren't aware --

- 1 A. No.
- 2 Q. -- about particular circumstances. I'd like to ask you
3 for your comments on that. In relation to evidence that
4 we've heard from Mrs Rashid, we've heard that she was
5 staying at that address at the time on 3 May, that she'd
6 recently had a caesarean section and had had a baby,
7 I think she said it was eight weeks old, the baby had
8 also had surgery at the time, she was breastfeeding.
9 Was any of that information --
- 10 A. No.
- 11 Q. -- brought to your attention?
- 12 A. None at all, nothing like that, no.
- 13 Q. Who would you have expected to bring that to your
14 attention?
- 15 A. Either through the kind of line management of the
16 officers that were at the location dealing with it, so
17 the crime scene manager who was there, and probably
18 through to Colin Robson and thereafter to Stuart, or
19 directly from Colin to myself, I would have expected to
20 have had that sort of information. But again, I didn't.
- 21 Q. Had you known about that, would you have done anything
22 differently?
- 23 A. I mean, I would generally have tried to facilitate as

1 best we can, moving the family to a further location,
2 even if it's a hotel just short term, and the priority
3 obviously being -- and just from what's on the strategy
4 document it looks as if there has been -- I can't recall
5 everything that was discussed but it looks as if there
6 has been some sort of discussion round about almost
7 re-prioritising locus 5 to facilitate that.

8 Q. I think it's --

9 A. I don't know if it's redacted out there.

10 Q. I was going to say, it may assist actually if we can
11 have a look at the unredacted version of that, I have
12 seen it, it won't be on the screen but it may be if
13 I can get a copy I can come back to you in a moment on
14 this --

15 A. I think it's maybe something --

16 Q. -- before I ask you questions about this.

17 That might~...

18 LORD BRACADALE: We will take a 20-minute break.

19 (11.30 am)

20 (A short break)

21 (11.56 am)

22 LORD BRACADALE: Ms Grahame.

23 MS GRAHAME: Thank you.

1 Now, we were talking about the minutes of the
2 forensic strategy meeting and we've now provided you
3 with a hard copy. Just to explain --

4 A. Yeah.

5 Q. -- this document was redacted some time ago, and the
6 information in the last two lines of the paragraph we
7 were looking at was redacted for data protection issues
8 at the time.

9 A. Yes.

10 Q. Since that was done, we have heard evidence from
11 Mrs Rashid and Mr Ahmed about the house. You're
12 probably aware of that?

13 A. Yes.

14 Q. We don't today have a copy of the unredacted version to
15 put on display?

16 A. Yes.

17 Q. But I'll read out the full text of this, so we can go
18 through and discuss.

19 A. Okay.

20 Q. We've already seen the first sentence and it says:

21 "It was also agreed that in relation to locus 5 once
22 the clothing of Zahid and the vehicle had been secured
23 this would be returned to the Saeed family due to the

1 requirement of a relative with a disability requiring to
2 returned to the address."

3 So there's mention there of a relative who had
4 a disability, and you've mentioned before the break that
5 that was something you --

6 A. Yeah.

7 Q. -- subsequently became aware of. Can you remind me,
8 when did you say you became aware of the issue?
9 Obviously prior to this meeting.

10 A. Yeah.

11 Q. Do you remember?

12 A. I can't generally remember discussing that in very much
13 detail, but it does -- it's coming back to me around the
14 fact that we did look at prioritising that scene as well
15 because of the very nature of it. And it was
16 redacted -- I thought that's why it was redacted because
17 there was reference to a disabled family member.

18 Q. So locus 5 initially was low down on the --

19 A. Yeah.

20 Q. -- order of priorities in terms of the actual strategy
21 document?

22 A. Yeah, yeah.

23 Q. We looked at that a moment ago before the break.

1 A. Yeah.

2 Q. But at this meeting it then became -- you had become
3 aware of the disabled family member, and the need to
4 have it returned, the house returned to the family?

5 A. Yeah.

6 Q. So although you don't remember today the extent of the
7 discussion --

8 A. Yeah.

9 Q. -- that was information that you had become aware of?

10 A. It was, and it's been important enough that we've noted
11 it down in the minutes as well.

12 Q. So just going through some of -- some other evidence
13 that we've heard, can I ask you: were you aware -- and
14 this isn't noted in the minutes -- that -- we were
15 talking about Mrs Rashid's evidence, who is -- she is,
16 we heard, Zahid Saeed's sister. Sorry, Zahid Saeed is
17 her brother, she is the sister of Zahid. We've heard
18 that she was breastfeeding. She's also talked about her
19 brother, who was disabled. She gave evidence that he
20 had suffered a brain injury when he was in the armed
21 forces, that he was paraplegic, in a wheelchair, she
22 talked about him having a special bed that had been
23 supplied, and that he needed effectively special aids

1 and equipment. He has carers three times a day coming
2 into the property, and his father helps to care for him.
3 And he didn't really leave the home, his father,
4 Mr Ahmed, had given evidence that he had left the home
5 previously maybe sometimes to go in the garden and
6 sometimes to go to medical appointments. And there was
7 evidence from both of those witnesses about his
8 difficulty coping generally.

9 You've mentioned the note in the minutes of the
10 disability. Do you remember hearing about the -- the
11 evidence that we've heard about the special needs of the
12 brother?

13 A. No. No, it was very succinct, there was no detail at
14 all that I can recall around what you're telling me just
15 now.

16 Q. Would you have expected that type of detail to be
17 provided to you?

18 A. Yes, if they had it at the time. I don't know if they
19 had it at that time or through the subsequent statements
20 from the family members.

21 Q. You mean the officers maybe didn't have all that detail?

22 A. Yeah, yeah.

23 Q. Would you have expected the officers, on being advised

1 that the brother was disabled, to have sought more
2 detail?

3 A. Yeah, but I don't actually know what they did actually
4 obtain. They've obviously obtained enough that it's
5 come through to the strategy meeting for the forensic
6 side, so it's -- obviously they've been aware of the
7 requirement for a bit of urgency around this, to ensure
8 that they can return to some sort of normality as soon
9 as possible. So I don't know exactly what information
10 the officers had at the time but I think what they have
11 done is they've managed to progress it through the line
12 management to this group meeting to highlight the
13 urgency around it as such.

14 Q. You're using the word "urgency"?

15 A. Yeah.

16 Q. What would you have expected in terms of the timeframe
17 for steps to be taken?

18 A. As I say, the five different loci, certainly -- I mean,
19 we still had Hayfield Road, we had the deceased and
20 thereafter it would have been the house of Mr Saeed.

21 Q. Would that then become the third --

22 A. Yeah, yeah, yeah.

23 Q. -- most important priority?

1 And in terms of timescale, what would you have
2 wanted for returning that property to the family?

3 A. It's really difficult, I mean, we would try to get them
4 back within that kind of 24-hour window, I mean, if not
5 before that, to be honest. But it is really around the
6 resources to carry out any examination, to photograph
7 the locus, to seize whatever we're going to seize, and
8 to ensure that we've done it as thorough and
9 professional as possible.

10 So there is a whole process that needs to kick in,
11 in respect of the search of any property which
12 unfortunately does take a bit of time. It's not
13 quite -- I think Stuart Houston mentioned in his
14 statement sometimes we seize house for months on end for
15 some investigations. But again, to return it within
16 that 24-hour window I would say would be reasonable, but
17 it may not look reasonable to the family, I appreciate
18 that.

19 Q. And knowing that the brother was disabled and needed to
20 return to the address, if you'd known more about that,
21 would you have been able to move things more quickly in
22 relation to the house?

23 A. Yeah, I think if I had the information that you're now

1 detailing, I think it's just common sense that we would
2 have moved to a fast-track process for this and tried to
3 move resources around to facilitate it. But, as I say,
4 I wasn't aware of that information at the time.

5 Q. You mentioned in your evidence earlier that you had
6 perhaps considered alternative accommodation for the
7 family.

8 A. Yeah.

9 Q. Can you tell us about that?

10 A. It was, again it was discussed around all the properties
11 that we were more than happy to put people into hotel
12 accommodation, as we generally do for any investigation
13 where we take people out for a period of time, so it was
14 round about the options locally, what hotels were
15 available, and if we had to put people in, so again it
16 was part of that general discussion round about taking
17 people from their home addresses.

18 Q. When was that discussion?

19 A. It was at the forensic strategy meeting.

20 Q. At the 4.45 meeting that we see here?

21 A. Yeah, yeah.

22 Q. Is there something in the minutes that --

23 A. No, I don't think it is, but generally the way we would

1 work is if we were taking people out of their property
2 for a particular period of time at the request of
3 Police Scotland we would first of all ensure that they
4 had somewhere to go. So this is officers actually
5 taking them from the property: one, they had somewhere
6 to go. If they didn't have somewhere to go we would
7 thereafter say to them, "Look, we can put you up in
8 hotel accommodation, how does that suit you just now to
9 basically take that? Of course you can take your
10 property with you and whatever you need".

11 So again, that would be first of all done with the
12 discussion with the officers who are at the loci and
13 thereafter it was discussed more generally at the
14 forensic strategy meeting round about the use of
15 potential hotel accommodation if we were going to
16 basically take the property for a period of time --
17 a significant period of time.

18 Q. We've heard evidence from Mr Ahmed that his son had
19 never stayed in a hotel, he actually needed -- we heard
20 about his special bed and we heard about the equipment.
21 What arrangements would you have expected to be made by
22 the police in relation to handling the situation with
23 the brother?

1 A. Yeah, I mean, it's ... I'm looking at it with hindsight
2 now, because I wasn't aware of that information you're
3 giving me at the time. And again, we would have looked
4 at various options, speaking to even medical
5 practitioners round about what was the best way to
6 facilitate the movement of this individual from the
7 house over a short period of time, is it -- is there
8 a bed elsewhere in that particular area that we can
9 utilise within such as a hotel ward -- a hospital ward
10 or whatever else, or is there a potential we can move
11 the bed from the property short term to a hotel room as
12 such. So again, the options would be open for that.
13 But, as I say, it's based on what information we have at
14 that material time around it.

15 Q. Would you have expected those arrangements to have been
16 made for the brother prior to him being removed from the
17 property?

18 A. It would really be dependent on what information we had
19 at the time. As I say, I'm speaking to you with
20 hindsight just now round about with that information and
21 with the fact that we were taking the property, I would
22 have expected that we would facilitate as best we could
23 his home living conditions with elsewhere in, whether

1 it's a hotel or wherever, that we would try to mirror
2 exactly what he had at home.

3 But, as I say, I'm saying that with best practice,
4 with hindsight, I'm not sure if they had that abundance
5 of information that you have at this particular time
6 through the detailed statements of the family members.

7 Q. What bearing would it have on your decision-making
8 process, the fact that really you were looking for
9 clothing in a laundry basket in a bathroom? Would that
10 have any impact on the arrangements you could have made
11 for the brother?

12 A. Not particularly, no. I mean, we -- there is a process
13 we go through, I know it appears very sterile and very
14 cold, perhaps, to people that are not familiar with it,
15 but it is about maintaining the integrity of any scene
16 that we would basically bring people from it and, as
17 I say, I know it maybe does look unfamiliar and cold to
18 people that are not familiar with the processes that are
19 involved.

20 Q. Can I ask you about -- you spoke before the break about
21 you understood that consent had been sought from the
22 householder.

23 A. Yeah.

1 Q. And that would be the normal approach in a situation
2 like this. We've heard that Zahid Saeed's mother, she's
3 an older lady, and that she lived at the address, she
4 was in the house at the time the police arrived but she
5 didn't speak English, and my understanding of
6 Mrs Rashid's evidence, the sister, was that she was
7 doing the speaking --

8 A. Okay.

9 Q. -- initially.

10 Can you tell us what the normal procedure would be
11 if officers come to a house, the intention is to seek
12 consent to seize and search or to search the property,
13 if the homeowner does not actually speak English, how do
14 they go about ensuring that they can get that consent to
15 search?

16 A. Yeah, so, I mean, there's probably two ways for that.
17 It can be facilitated through a family member, that we
18 would explain what we were trying to do, and thereafter
19 relay via the family member to the householder exactly
20 what we were intending to do at that particular stage.

21 The second option is we have a cadre of on-call
22 interpreters across the country, so through the
23 interpreting services we would ask for an interpreter to

1 attend at the location with the police, and thereafter
2 be involved in the dialogue with the individual
3 concerned.

4 Q. So you would, first of all, facilitate it through
5 a family member?

6 A. As I say, there are options.

7 Q. That's an option?

8 A. One or the other.

9 Q. How would officers satisfy themselves that it could be
10 facilitated effectively through the family member?

11 A. Yeah, that would simply be through dialogue with the
12 family member, saying, "Look, this is why we're here and
13 this is the reason why we have to remove you from the
14 property. We're going to carry out a search, we'll get
15 the property back to you as soon as possible, but this
16 is the reason why".

17 Q. So there'd be an explanation of why they were being
18 removed from the property?

19 A. Yes.

20 Q. And an explanation, I think the words you used, to
21 explain exactly what you intend to do, would that be
22 an explanation of what the police intended to do?

23 A. Yes.

1 Q. So in a situation such as this, can you briefly explain
2 to the Chair what you would have expected officers, what
3 information you would have expected officers to be
4 sharing with the family?

5 A. Yeah, I think really just the rationale, the background
6 to the investigation, the relevance of their family
7 member, Mr Saeed, to the investigation, and the aspect
8 of recent contact with Mr Saeed and the fact that we
9 were looking at various options in the investigation at
10 that particular time. But also to emphasise that
11 Mr Saeed was a witness and that we were basically
12 looking for their consent to search the property and
13 recover in particular the clothing he had on at the
14 material time. So it would be something along the lines
15 of that.

16 Q. We talked yesterday about evidence we've heard about
17 notes being taken in notebooks about consent and
18 signatures?

19 A. Yeah.

20 Q. Would you have expected a record to have been kept
21 somewhere of the involvement of the family member, in
22 this case Mrs Rashid, in obtaining the consent from the
23 homeowner, her mother?

1 A. Yeah, I mean, in general that would be incorporated into
2 the officers' statements at the --

3 Q. Right.

4 A. -- that aspect of the dialogue and the consent being
5 given. In 2015, and I think we've touched on this, this
6 aspect of best practice about notebook notations, about
7 the right to refuse, and by all means that is best
8 practice and that is what takes place nowadays around
9 anything we do around search of properties under
10 consent.

11 It wasn't as familiar with that process back in
12 2015. It was -- a number of officers did do it,
13 a number of officers didn't do it as such. But it is
14 more common practice now that that would simply
15 incorporate part of either the statement taking or
16 also -- and/or something in a notebook which would
17 thereafter be signed as such. So that's the normal
18 process nowadays around it. Eight years ago it probably
19 wasn't as -- a lot of the officers weren't as familiar
20 with that process as they are now.

21 Q. So the procedure itself you would have expected to be
22 followed but not necessarily a note of that within the
23 statements or the notebook; is that what you're saying?

1 A. Sorry, could you repeat that?

2 Q. So you would have expected officers to go through the
3 process of seeking consent --

4 A. Yes.

5 Q. -- and providing the information you've given us, but
6 maybe not necessarily noting that in a notebook --

7 A. Yeah.

8 Q. -- and getting the signature --

9 A. Yes.

10 Q. -- of the homeowner or the family member or both?

11 A. Yeah, yeah.

12 Q. Then you've talked about the possibility of getting
13 an interpreter to attend. Presumably if this is part of
14 the process of seeking consent, would that be done
15 before the family are invited to leave or would it be
16 done after but before the search?

17 A. Ideally with -- whilst the family are still together
18 within the house, we would look to get an interpreter to
19 attend and explain exactly what we were planning to do.
20 So again the issue or potential issue with that would be
21 round about timescales, how quickly we could get
22 an interpreter to the house and ... or was it better to
23 be facilitated such as at one of the local police

1 offices or at a hotel or a separate area that we could
2 explain exactly what the intention was.

3 So my experience of interpreting services are
4 sometimes we get them very, very quickly, sometimes
5 there is a bit of a delay, they're coming from various
6 parts of the country, so I think it would be due to
7 timescale what we would do.

8 Q. We heard evidence from one officer that they can use
9 their radios to have access very quickly to interpreter
10 services, so that they have someone effectively on the
11 radio --

12 A. Yes.

13 Q. -- who can assist?

14 A. That's now.

15 Q. Was that available in 2015?

16 A. Not that I'm aware of at all.

17 Q. No?

18 A. No.

19 Q. So again, in terms of your awareness, I think you said
20 before the break as far as you were concerned there was
21 consent from the homeowner to carry out a search?

22 A. Yes.

23 Q. I wonder if I can ask you about some other evidence we

1 heard about a suggestion that was made by Mrs Rashid --
2 she has given evidence about this -- that she suggested
3 that the family could stay in one room while they
4 searched, while the officers searched the house, carried
5 out the search of the remainder of the house, because
6 she was worried about the safety of her brother and
7 where he would go.

8 Then we also heard from Mr Ahmed, who arrived at
9 a slightly later stage. He suggested that they could,
10 the family could stay in the sitting room and have
11 access to the kitchen and a toilet next to the sitting
12 room, and offered that the police could do anything they
13 want to the rest of the house, and he was told, "No, we
14 have to seal it and you have to go".

15 I wondered if you had any views about that
16 suggestion?

17 A. Yeah.

18 Q. Bearing in mind the situation with the brother?

19 A. Yeah. It's a completely reasonable suggestion. There's
20 absolutely no doubt around that. However, I go back to
21 my SIO role and about scene integrity and about best
22 evidence and about accountability, exactly what you're
23 recovering from that property.

1 So again, the actions of the officers I deem to be
2 appropriate. We were unaware at that stage the
3 relevance of Mr Saeed because of the altercation. As
4 I say, the hypothesis: was the deceased assaulted prior
5 to coming to Hayfield Road and that was a consequence
6 which led to his death? So again, was Mr Saeed involved
7 in that altercation? We knew by his own admission he
8 was, but how significant was that coming together with
9 both of those that may have led to an injury which was
10 thereafter deemed to be fatal.

11 So the actions of the officers at the scene, I think
12 they're appropriate, the matter raised by the
13 householders are -- is extremely competent as well,
14 you know what I mean, but I think that -- well, I know
15 from one perspective that it's -- as I say, it does
16 appear very sterile and cold and that we're not taking
17 into consideration the wishes of householders and other
18 individuals, particularly when there is a disability or
19 whether reasonable adjustments have to be made in
20 respect to that, but it is ... it's a difficult decision
21 you have to make, but at the end of the day it comes
22 down to the integrity of the scene, the transparency,
23 the accountability, how you can justify your actions

1 around that.

2 If we put them all into the one room and we go to
3 the basket, for example, and the clothing is not there
4 anymore but they've moved it to the room that they're
5 all in. So again, I know that never happened and they
6 were extremely compliant with us (inaudible) but it's
7 a judgement call, it's a difficult one sometimes to make
8 around that, but it's done with the best of intentions
9 for the integrity of the investigation that you have
10 that accountability and the integrity that you can stand
11 up and say, "Look, we've done everything that was asked
12 of us to do around this".

13 Q. We certainly have -- we have looked at this earlier, we
14 have a statement from Stuart Houston that says you
15 wouldn't need the whole house to be secured, that you
16 can focus on what is relevant.

17 A. Yeah.

18 Q. And at that time, in relation to the house, can you tell
19 us what was relevant at that time?

20 A. Well, from my perspective the whole house was relevant
21 and that's why we'd asked the family to get out, we were
22 unsure exactly how relevant it was, as I've described,
23 round about the coming together of the deceased and

1 Mr Saeed, so with hindsight it's easy enough to say, "We
2 should have done it this way", but at that time, on the
3 basis of the information we had, I believe the correct
4 decision was made. I know it sounds cold and hard and
5 that the police are making this decision without any
6 consideration, but that's not the case. There is
7 a wider aspect to the investigation. Obviously the
8 welfare and the wellbeing of the householders is
9 significant, but so is the integrity of the
10 investigation in finding out exactly what had occurred
11 on that morning and why Mr Bayoh is -- was deceased.

12 Q. Can I ask you, if you had known on 3 May what I've
13 shared with you from evidence we've heard, if you'd
14 known that, would you have taken a different view on
15 3 May as to whether you needed the whole house or part
16 of the house?

17 A. I think with the extensive information you have given me
18 now, I think we probably could have controlled it a bit
19 better with putting the family into one part of the
20 house, maybe under some sort of controlled measure with
21 a police officer maybe present with them, for example,
22 and carried out the search of the remaining part of the
23 house, that may have been an option at that time.

1 But, as I say, there's a significant amount of
2 information you've gave me round about that family unit
3 which I don't think -- I certainly wasn't party to on
4 3 May, and I daresay I don't think my officers involved
5 in it may have been fully aware of the circumstances
6 that the family were facing.

7 Q. Are you satisfied, from what you knew, that the officers
8 who were there on the day were obtaining -- asking
9 enough questions effectively, about the nature of the
10 brother's disability?

11 A. As any senior investigating officer would tell you, you
12 have to trust your officers, you delegate
13 responsibility, they're trained in respect of what
14 they've been asked to do. It's not my role to basically
15 almost chase them up and ask them if they've done it.
16 You know, there is that whole trust aspect that you're
17 dealing with a fast-moving investigation, so my
18 expectation is that they are professionally trained
19 police officers, detective officers, and I would have
20 expected them to look at that as any trained detective
21 would.

22 Q. Can I ask you about some other evidence we heard from
23 Mrs Rashid. She describes a significant number of

1 officers arriving at the house, and again was that part
2 of your responsibility dictating how many officers went
3 to --

4 A. No.

5 Q. -- the ...

6 You're obviously aware of the evidence that we've
7 heard now. Given you were keeping an open mind but in
8 relation to this house there was an issue about the
9 clothing --

10 A. Yeah.

11 Q. -- what would you have expected in terms of the number
12 of officers to be sent to that property?

13 A. So the number of officers -- I'm unaware how many went
14 to that property and I was unaware at the time. The
15 number of officers we'd put to a property is really
16 based on how many officers were required to control the
17 property. That's the kind of basic measures that we
18 would put in place around it, the rationale behind it.
19 I'm unaware what considerations were made by the
20 officers attending, through liaison either with Stuart
21 or Colin Robson and why -- sorry, did you say six
22 officers were deployed?

23 Q. We haven't heard evidence yet from the actual officers.

1 A. Right.

2 Q. We intend to seek further evidence --

3 A. Okay.

4 Q. -- from the officers who were present. So I wouldn't
5 like to say a particular number.

6 A. Yeah, so I don't know how many attended that day, and
7 that's, as I say, it's based on information that the
8 officers may have prior to attending round about how
9 many persons are within the house, how many officers it
10 will take to control the property. So again, that's
11 a normal consideration by officers attending a property.

12 Q. When you were approving the forensic strategy document,
13 did you have any thoughts in your mind about the number
14 of officers that would need to go to the house?

15 A. No.

16 Q. Did you have any concerns at that time about securing
17 the house, or gaining control of the house?

18 A. At that time we had control of the house.

19 Q. When you were preparing the forensic strategy document?

20 A. Yeah, we had control of the house.

21 Q. Did you have any part in the decision about sending the
22 officers to the house?

23 A. No.

1 Q. We've heard evidence from Mrs Rashid about the way the
2 officers came into the house, and she talked about being
3 intimidated, that they were -- presented as quite
4 forceful, and she asked for a warrant and they did not
5 have one, and her evidence was that she did not receive
6 an explanation.

7 Now, I appreciate we've not heard from the
8 individual officers, but is that the sort of approach
9 you would expect in the circumstances of this locus?

10 A. No, but again it's down to personal perception of the
11 individuals. Six police officers coming into your
12 house, there is that subliminal perception of en masse
13 almost, I could see why she's saying aggression almost
14 around that, but -- and I think it would be the same for
15 the majority of people, if six police officers came into
16 your house, you would be a bit worried.

17 But, and again it's down to communication skills of
18 the officers involved to ensure that they put forward
19 the fact that there is no -- there's no suspicion on the
20 family at all around this but this is why we have to do
21 it, and it really comes down to interpersonal skills of
22 the officers dealing with the householders. And again,
23 they're trained, officers are trained in interpersonal

1 skills, how to engage, body language and so on, so as
2 I say it is really up to the individual officers about
3 their interpersonal skills to ensure they put the
4 householder at ease, they explain anything, any
5 questions that's been asked, and that's very, very
6 clear, I mean, to them.

7 As I say, but I can understand the initial
8 perception if a number of police officers come to the
9 house.

10 Q. I think you had answered this question in a sense when
11 we spoke about Martyn Dick's house, but we also heard
12 from Mrs Rashid that she's a Muslim and she was
13 particularly concerned that a male officer stood outside
14 her room while she was changing, and that she had had to
15 make a special request that he stand outside. Does that
16 cause you any concern?

17 A. Yeah, I mean, obviously, I mean, with hindsight, I mean,
18 there could've been further research done on to the
19 family unit itself round about the fact that they were
20 Muslims, could we have taken some advice from our
21 diversity colleagues or a lay adviser as such, could we
22 have ...

23 Again it's really, it's difficult, I can see that

1 point, as I've detailed there. However, we are
2 responding to a live-time real incident which is really
3 moving very, very quickly at pace and the aspect of, as
4 I say, the hypothesis round about the relevance of
5 Mr Saeed, it wasn't clear at that time round about what
6 had actually occurred between him and the deceased. So
7 again, as the SIO I was keeping an open mind, but there
8 was an urgency to secure that property because of what
9 I've already described.

10 So, as I say, if we're playing a tabletop exercise
11 or we're looking at how we would deal with this in the
12 best practice, as such, yeah, by all means, but put
13 yourself there on a Sunday morning at the coalface when
14 you're basically dealing with such a significant
15 incident, it's really, really challenging to do
16 everything that you would want to do as per standard
17 operating procedure and as per guidance. I mean, you
18 are actually dealing with so many different challenging
19 pillars of the investigation, that's only one of them
20 that you're actually taking into account.

21 Q. You're talking about the officers being trained. As far
22 as you were aware at that time, had they all been
23 trained in issues of equality and diversity?

1 A. Yeah. I mean, there's a number of -- a significant
2 number of courses, as you will see in my training
3 record, you go through over a period of time round about
4 diversity and considerations and inclusion. So again,
5 from probationer training all the way through to,
6 I mean, detective training, it will have encompassed
7 some aspect of that.

8 Q. Would your officers be aware, as part of the training
9 they receive, that Muslim women would wish to be
10 separated from male officers in that scenario?

11 A. Yeah, I think they would have a general understanding
12 and appreciation of that.

13 Q. That would be something you would expect officers at the
14 house to know on the Sunday morning?

15 A. Yeah.

16 Q. And not need any special contact with --

17 A. No, and if there was any no doubt, I mean, there was --
18 we had a diversity representative on our Gold Group at
19 that time, so again that was that link into, I think it
20 was Jill Bolton who was the inspector who was involved
21 in all considerations round about equality and
22 diversity, so there was someone there that they could
23 have contacted if there was any issue round about that

1 or any wider concern that they had.

2 Q. So individual officers in a house in the heat of the
3 moment would be able to contact someone that could
4 provide further guidance; is that what you're
5 suggesting?

6 A. Well, there is an aspect they can do that, or prior to
7 going out to the house they can obviously liaise with
8 Jill, who was obviously at Kirkcaldy on that morning as
9 well. But again, I think the general acceptance and
10 understanding that -- I would expect the officers would
11 be fully aware of that, to be honest with you.

12 Q. Right. And we've heard evidence from Mrs Rashid that
13 during the time the police were in the house she was
14 trying to make a phone call on her mobile and she was
15 speaking to another brother who wasn't in the house at
16 that particular moment, and that an officer removed the
17 phone from her hand when she was making that call and
18 didn't wish her to make any phone calls.

19 Now, we've heard that this is being done with, as
20 I understand your position, consent of the householder.
21 You're seizing under common law but you're getting
22 consent of the householder. Would you have expected
23 an officer to be taking a mobile phone from somebody's

1 hand?

2 A. Not particularly, no. I probably would have expected
3 an officer to say. "Could be maybe just come off the
4 phone just now", just to explain further what's going to
5 happen. Different -- where there is aspects of
6 suspicion, for example, whereby we've had the occasions
7 through investigations whereby we would take that
8 activity where there was suspicion, such as disposing of
9 evidential material, whether it's a phone call being
10 made or the potential to delete calls, text messages,
11 and so on and so forth. So there would be aspects where
12 we would take that sort of activity if there was
13 suspicion.

14 But in this case there was not, so probably a more
15 general approach about advice to the individual, about,
16 "Could you come off the phone just now, you'll have time
17 to make a call once we go through this process with
18 you", so we'd probably -- and that's back to the
19 individual officers' interpersonal skills around how
20 they would manage that.

21 Q. So if Mrs Rashid had been under suspicion or had been
22 a suspect, that might be something that would be done,
23 but as a witness --

1 A. No.

2 Q. -- you would not expect that?

3 A. No.

4 Q. Now, we've heard from Mrs Rashid that after the family
5 were moved from the house that she had forgotten to take
6 her breast pump and expressed milk for her baby, and
7 they had forgotten to take medication, and her mum had
8 forgotten to take medication.

9 A. Yeah. Yeah.

10 Q. Again, you've talked about this in relation to
11 Martyn Dick --

12 A. Yeah.

13 Q. -- but can you see any reason why, in this particular
14 house, that they would not be allowed to have those
15 items removed from the house?

16 A. No. And the way it's normally done is that we would
17 normally ask the householder where the property is that
18 they're looking for and we would send police officers
19 into the house to remove it, rather than the householder
20 going back in, to ensure the integrity of it. So that's
21 the way it's normally done.

22 Q. As far as you're aware, was there any contact from the
23 scene with officers saying, "Is it okay if we go and get

1 these items for the family?"

2 A. Not to myself, no.

3 Q. You weren't aware later of any issues over that?

4 A. No, no.

5 Q. We talked before the break about a briefing at the end
6 of the day, and I think you said there wasn't one?

7 A. No, there -- so, normally for any major incident or
8 investigation that I'm running you would normally have
9 a briefing in the morning and then a briefing at close
10 of play in the evening, whenever that was, and you would
11 just get an update from the detectives that were
12 involved in the investigation round about where we are,
13 the number of actions. So again, all this in general,
14 we would go through the various scenes that we'd seized
15 and some other further enquiry we had done round about
16 witness statements.

17 Now, we didn't have a chance to do that on the 3rd,
18 because, as I say, it was so fast-moving and also we had
19 the Gold Group structures coming in, 11.30, 14.40 and
20 20.00 hours, and we also had PIRC taking on the
21 investigation at that stage, so the pressing need to
22 have that briefing at that time, it wasn't there. What
23 we did do, we had the briefing the following morning at

1 10 o'clock at Kirkcaldy which I chaired, a briefing
2 between Police Scotland and PIRC around the activity
3 that we'd actually done previously.

4 Q. Was that the equivalent of the --

5 A. Yes.

6 Q. -- briefing you would have expected the night before?

7 A. It was, it was probably two-fold, so it was an update
8 round about the activity on 3 May but it was also to
9 provide an overview for the new officers who were coming
10 on to the investigation, both from the Major
11 Investigation Teams of Police Scotland as well as PIRC
12 officers that were coming on that day as well.

13 Q. Well, let's have a look at those briefing notes, just
14 since you've mentioned them, I'll turn to this now.
15 We'll probably come back to them later as well. I think
16 it's 784, the document. PIRC 784. We looked at these
17 with a previous witness, a DS Dursley. Do we see these
18 are typed up notes, briefing notes, and they relate to
19 a briefing at 10 o'clock in the morning on 4 May in
20 Kirkcaldy, chaired by you? Is this the meeting?

21 A. Yes, this is the meeting, but I was just going to
22 highlight through the disclosure of this document that
23 was the first time I've actually seen it. I had never

1 seen it before, which is really unusual because
2 I chaired the meeting, the minutes would usually come to
3 myself for sign-off.

4 Q. Yes.

5 A. But I had never seen this document at all.

6 Q. You've had a chance to read it since then --

7 A. I have had a chance to look at it, yes.

8 Q. -- as a result of disclosure --

9 A. Yes.

10 Q. -- from the Inquiry, and were you satisfied that these
11 notes accurately --

12 A. No.

13 Q. -- reflected the meeting? No?

14 A. No.

15 Q. Right. Well, tell us, please, where you have concerns.

16 A. Erm~...

17 Q. Will we go through them briefly --

18 A. Probably (inaudible - overspeaking) there was only one
19 or two issues where I had some concern round about the
20 accuracy of it, to be honest with you.

21 Q. So there's no -- often with minutes, and we've seen that
22 with the forensic strategy document, there's a list of
23 who's present first of all?

1 A. Yeah, yeah.

2 Q. We don't see that here, but it would appear that PIRC
3 have asked for all original manuscript statements to be
4 given to them?

5 A. Yeah.

6 Q. And what were those statements?

7 A. So this is your original operational statement and
8 it's -- I think the whole word "operational statement"
9 appears to cause some confusion. So basically
10 an operational statement is for a particular incident
11 that you came on duty at a particular time, you
12 attended, you managed, you dealt with a particular
13 incident and thereafter you went off duty. Now,
14 an operational statement is usually pretty brief. So
15 I'll give an example, that -- sorry, an example of this
16 is that my operational statement for this incident,
17 which I think is within the pack --

18 Q. We looked at that yesterday.

19 A. So that's three pages long. Now, that is my original
20 handwritten manuscript statement which details high
21 level, that I attended, I dealt with, I was SIO,
22 I completed a policy file, I handed over to PIRC and
23 handed over to the Major Investigation Team and two or

1 three days later I had no involvement with the incident.

2 The more detailed account as such, when you look at
3 the PIRC statement, which is 254 pages --

4 Q. Is this the six separate statements that we looked at
5 yesterday?

6 A. Yes. So that whole manuscript statement is really
7 a short -- a shortened version of what actually
8 occurred, and usually does require further re-interview
9 by either PIRC or by the Major Investigation Teams, if
10 that makes sense. It really is completed usually before
11 they go off duty and handed to the incident room and
12 thereafter that is assessed, looked at by the incident
13 room and usually there's further actions round about
14 clarity, round about certain points come from that
15 original manuscript statement.

16 Q. So when we see the minutes or these briefing notes, PIRC
17 have asked for all original manuscript statements, is
18 that original manuscript statements, ie operational
19 statements from officers?

20 A. Yeah, that's your handwritten statement, yeah.

21 Q. Together with typed copies and then it says this should
22 be done with a five-day turnaround; what does that mean?

23 A. So that looks as if it's a direction that's come from

1 PIRC around that, and again, I know you'll probably come
2 on to that, it probably links into the post-incident
3 procedures around timescales.

4 Q. We will come on to that.

5 A. Yeah.

6 Q. So PIRC are at this meeting, you're at this meeting, and
7 then it says:

8 "The deceased's family have intimated that they do
9 not want contact with any officer from Police Scotland
10 and any contact should be done through the PIRC."

11 A. Yes.

12 Q. Was that your understanding at that time?

13 A. That was my understanding the previous evening.

14 Q. Right.

15 A. Yeah.

16 Q. We'll come on to that as well. Then:

17 "The PIRC lead is Billy Little."

18 Was he the person at the meeting representing PIRC?

19 A. Yeah, so I'm not sure why but I think there was
20 a handover on the 3rd, the evening, very late in the
21 evening on 3 May between Keith Harrower and I think
22 maybe Keith was going on annual leave so there was
23 a handover and I knew that Billy Little was coming in to

1 basically take on Keith's role in respect of that, so as
2 I say Billy came on the following morning and he was at
3 this meeting.

4 Q. Then it says:

5 "As a result there is a problem with the
6 identification of the deceased prior to the
7 post-mortem."

8 A. Yeah.

9 Q. "PIRC are going to make contact with Collette Bell to
10 see if she will attend and identify.

11 "The post-mortem is taking place at 1400 hours today
12 and will go ahead regardless. Identification will be
13 ascertained through fingerprints~..."

14 Can you give me a little bit of information about
15 this? When did you become aware there was -- it's
16 described there as, "A problem with the ID of the
17 deceased prior to the post-mortem"?

18 A. So that was on 3 May, that was the -- as we discussed
19 yesterday, the particular issues we had with the FLO
20 deployment and some of the complications we had around
21 that and the engagement with, with the next of kin, the
22 information we got that they were unwilling to attend to
23 identify Mr Bayoh, and obviously we had Garry McEwan

1 being deployed to the family unit at that time as well.
2 So kind of late into the evening there was a decision
3 after the evening Gold Group round about the aspect that
4 any contact with the family would now revert to PIRC and
5 would not be Police Scotland officers.

6 And that basically thereafter highlights the issue
7 round about identification. So the normal process for
8 identification of a deceased prior to an unexplained
9 death or a two-doctor post-mortem examination which is
10 carried out for unexplained/suspicious homicides, would
11 be for two family members to attend at the City Mortuary
12 and identify prior to the post-mortem --

13 Q. That's the normal procedure?

14 A. That's the normal procedure. I think actually I noted
15 in my daybook, I have noted down about identification
16 at --

17 Q. Let's look at your daybook.

18 A. Yeah.

19 Q. We'll come back to the briefing notes. So the daybook
20 is, I think you've got -- we've looked at pages 5 and 6.

21 A. Yeah. So it's just -- I think it's all -- it's when
22 it's all redacted out, I think it's further down. That
23 one, yeah. If you could go up to the top of that.

1 Q. Let me just -- the one with 1300 at the top?

2 A. Yes, identification 1300 --

3 Q. So that's page --

4 A. -- and then 2pm for PM. So that resulted in a phone

5 call from myself to Dave Green --

6 Q. The Fiscal?

7 A. Yeah, the Fiscal, around what I was aware was the issues

8 that we had round about identification by -- or the

9 normal or traditional method of identification by next

10 of kin or family members of a deceased. So again,

11 myself and Dave had discussed any other options around

12 that. David explained that there was no flexibility

13 with moving the timing of the post-mortem examination

14 due to the availability of pathologists.

15 Q. Was that the explanation that was --

16 A. Yeah, yeah.

17 Q. -- given to you?

18 A. Due to the availability of pathologists and that it

19 would have to take place at that time, so we looked at

20 and discussed other methods of identification which we

21 had used previously, so there are aspects such as

22 fingerprints, there's a method such as what we call "two

23 in life and two in death", so police officers who knew

1 or were aware of the identity of Mr Bayoh prior to his
2 death and thereafter officers that potentially have
3 conveyed the deceased to the mortuary and done the
4 necessary paperwork around that.

5 So again, there was discussion around a suitable
6 method of identification which would allow the
7 post-mortem examination to take place, and again that
8 was directed by Mr Green in his -- in his role as the
9 fatalities --

10 Q. We expect to hear more evidence from Mr Green.

11 A. Yeah. So, as I say, that aspect of the briefing note
12 which you referred to coincides with my call to
13 Dave Green and the aspect at the top there round about
14 the identification at 1300 hours.

15 Q. I'm interested in the entry that says:

16 "PIRC are going to make contact with Collette Bell
17 to see if she will attend and identify."

18 A. Is that back on the briefing note?

19 Q. Sorry that is back on the briefing note, yes. If we can
20 go back to 784, page 1. We heard evidence from
21 Collette Bell that she was expecting to be asked to
22 identify.

23 A. Okay.

1 Q. She wanted to see Mr Bayoh before the post-mortem. Can
2 you tell me if you recollect at that briefing any
3 discussions with PIRC about what they were going to do
4 in relation to Collette Bell or how they were --

5 A. No.

6 Q. -- going to make contact?

7 A. So that whole aspect of family liaison and the
8 post-mortem examination moved completely over to PIRC at
9 that time.

10 Q. Right. We'll maybe hear --

11 A. Yeah.

12 Q. -- more evidence about that.

13 Then moving on, there's a part of the briefing note
14 that says:

15 "Mr Campbell provided a brief summary of the known
16 circumstances."

17 A. Yeah.

18 Q. Is it this area where you feel --

19 A. That bit's a bit inaccurate.

20 Q. Can you point to the areas --

21 A. I think it's -- so:

22 "The deceased had a family party with Zahid, they
23 have had some form of verbal argument~..."

1 Which isn't the case, that's inaccurate.

2 I don't know if it's just been picked up wrong.

3 As I say, sometimes because of the briefing and someone

4 unfamiliar with the incident notes down as best they can

5 the details of the briefing but sometimes there are

6 natural inaccuracies with it, but that's usually

7 resolved with the briefing note or the minutes being

8 sent to the chair for checking, and, as I said, this

9 wasn't sent to me and that's why I've identified one or

10 two inaccuracies around it.

11 Q. Do you remember who prepared the notes?

12 A. I don't and there's no name on it at all.

13 Q. No.

14 A. No.

15 Q. Then were there any other concerns that you had about

16 the accuracy of this description?

17 A. (Pause). I think it was just -- it's further down,

18 I think there was one further one. (Pause). No,

19 I think it's just over the page. Yeah, I think it was

20 that top line, there is that --

21 Q. The UKBA --

22 A. Yeah, it's completely inaccurate. I wouldn't have

23 actually -- I don't know why I would have said that when

1 we were quite clear we knew who he was as such, who the
2 deceased was. So there was, I recall, a general
3 discussion round about notification to the consulate in
4 respect of Sierra Leone nationals, and a discussion even
5 around potential repatriation if that was going to be
6 required by the family, because we were unaware at that
7 time regarding what their intentions were. So that was
8 mainly the discussion around that, but contacting UKBA
9 and the Passport Office is completely inaccurate, there
10 is no relevance to that at all.

11 Q. So you think the minutes of this briefing where they
12 mention the UK Border Agency and the Passport Office,
13 you think that's completely inaccurate?

14 A. Yeah. There was a discussion for -- as we've done on
15 a number of occasions, I think it's actually in one of
16 the SOPs, that any foreign national who passes away on
17 Scottish soil, there is a general expectation we will
18 contact the consulate or the Foreign and Commonwealth
19 Office in respect of notification into that foreign
20 state. So again that's just a normal process for it.
21 We've got an international unit based at Gartcosh that
22 we would normally go through to facilitate that, and
23 again we have links into Europol and Interpol that would

1 facilitate that as well, it is pretty normal, that
2 course of events. But I wouldn't direct -- why would we
3 contact the Passport Office? It's totally foreign to
4 anything we would do.

5 Q. I think you do mention the repatriation issue --

6 A. Yeah, yeah.

7 Q. -- in your own Inquiry statement. Maybe we could have
8 a look at that briefly, paragraph 403. So this is
9 SBPI 256 and if we're looking at paragraph 403 you say
10 here:

11 "The whole aspect of repatriation and the religious
12 aspects were discussed at the forensic strategy
13 meeting."

14 A. Yeah.

15 Q. "We also discussed consultation with the Foreign and
16 Commonwealth Office and the embassy or consulate
17 representing the interests of Sierra Leone nationals.
18 At this initial stage we were unsure if the body would
19 need to be repatriated. It was general conversation
20 around that, and the religious aspect as well - that
21 wider awareness of the diversity side of things. We
22 knew from speaking to Collette that Mr Bayoh was
23 a Muslim so we also had to consider the requirements in

1 consideration of his religion. Further consideration
2 was given about the family unit as such, and how to
3 engage with them."

4 I'm interested in -- you've mentioned this was part
5 of a discussion at the forensic strategy meeting.

6 A. Yes.

7 Q. If we -- you have the minutes of that meeting. Is there
8 anything in the minutes that would help remind you what
9 the extent of that discussion was? I mean, you've
10 obviously got some detail in relation to the recovery of
11 Mr Bayoh's body.

12 A. Yeah, I think it was actually in the ...

13 Q. There's mention on page 7 of 7 that:

14 "Due to the religion of the deceased being
15 established as Muslim this was to be considered in the
16 recovery phase and highlighted to [the Crown]."

17 That would be the removal of his body from
18 Victoria Hospital to the mortuary, for the post-mortem.
19 Was there anything in the minutes that helps you
20 remember this?

21 A. No, but it was discussed at that forum, obviously we've
22 highlighted it there.

23 Q. Highlighted it where, sorry?

1 A. Just on the page you have up there, so is that the --
2 I am just trying to get my bearings on that.

3 Q. This is the minutes of the forensic strategy meeting.

4 A. Strategy meeting.

5 Q. And those minutes, which are page 7 of 7, note that he
6 was a Muslim.

7 A. Sorry, are you referring to consultation with the FCO or
8 the consulate.

9 Q. Yes, I think the paragraph of your Inquiry statement
10 that was read out talked about repatriation, discussing
11 consultation with the Foreign and Commonwealth Office?

12 A. Yeah.

13 Q. And the embassy or consulate representing the interests
14 of Sierra Leone nationals, and you say:

15 "At this initial stage we were unsure if the body
16 would need to be repatriated."

17 A. Yes.

18 Q. Tell us about that discussion you had?

19 A. So, yeah, the discussion around that was, as I say, it's
20 pretty normal for any death of any foreign national
21 within Scotland that we would, as per -- I can't --
22 I think it's an investigation of death SOP, but I might
23 be wrong with that, but there is a reference to the fact

1 that the consulate or FCO, Foreign and Commonwealth
2 Office, should be informed of the death of one of their
3 nationals, and again that would -- that was one of the
4 actions that came from that meeting on the 4th around
5 that. As I say, that's a pretty normal activity in
6 respect of the death of a foreign national within
7 Scotland.

8 Q. I'm interested in what prompted this discussion
9 initially, because --

10 A. Yeah.

11 Q. -- you had information from Collette Bell that they had
12 been living together for a number of years in
13 Kirkcaldy --

14 A. Yes.

15 Q. -- that he worked in Kirkcaldy, well, he worked in
16 Scotland, and that they had a child together in
17 Kirkcaldy. What prompted you as an officer to consider
18 whether he was a national of another country? What was
19 the starting point of even thinking about this?

20 A. I was aware he was a national of another country.

21 Q. You were aware of that?

22 A. Yes.

23 Q. Where had that information --

1 A. That came from Collette.

2 Q. That was --

3 A. Yeah.

4 Q. -- from Collette Bell, so it was Collette Bell that
5 shared that information?

6 A. Yeah.

7 Q. Was that with Mitchell and Parker, the officers who --

8 A. Mm-hm. And we also had other information held on police
9 systems in respect of his nationality.

10 Q. All right. So that is what prompted the contact with
11 the Foreign and Commonwealth Office?

12 A. Yeah, so basically the aspect of repatriation, it was
13 only a consideration because of the significant issues
14 that were -- that emerged through our engagement with
15 the family, that we could not have any dialogue with
16 them around that, and that is basically why there was
17 a wider consideration about anything that may emerge
18 eventually that the family may want to consider or ask
19 us to take on as such. So again, it was simply
20 a consideration, it was nothing more than that.

21 Q. Was there any consideration given to discussing this
22 with the family?

23 A. Yes. So again, that aspect of family liaison moved

1 completely over to PIRC on the evening of 3 May, as well
2 as the post-mortem. So that aspect completely went to
3 the FLOs that the PIRC had identified that were --
4 I think the FLOs were actually at that briefing that
5 morning, I recall.

6 Q. They were also --

7 A. I think they were at that briefing, yeah.

8 Q. So you say on the evening of the 3rd --

9 A. Yes.

10 Q. -- PIRC took over issues --

11 A. Yes.

12 Q. -- regarding the issue regarding repatriation and the
13 body and matters with the family?

14 A. Yeah, all liaison with the family was done, as you will
15 hear from Keith Harrower, he contacted the family on the
16 evening of 3 May by telephone and thereafter visited
17 them. And it was clear, even prior to his contact with
18 them, that the PIRC were going to be the link into the
19 family and to provide us with any additional information
20 we may require round about, such as repatriation or
21 notification into consulates.

22 Q. So you had discussed the issue at the forensic strategy
23 meeting --

1 A. Yeah.

2 Q. -- on the evening of 3 May?

3 A. Yeah.

4 Q. All of those issues were effectively handed over to
5 PIRC?

6 A. So they were discussed also at the Gold Group meeting at
7 8 o'clock --

8 Q. Right.

9 A. -- chaired by Mr Nicholson, the ACC, and, as I say, as
10 we began to move through to the kind of late hours of
11 the 3rd, it was a competent decision that we would move
12 everything family related to PIRC. And also for the
13 management of the deceased and the post-mortem
14 arrangements we'd simply move away from ourselves to
15 PIRC.

16 Q. We'll come on to the Gold Group meetings later today.

17 A. Okay.

18 Q. So those issues, was this because of the issues the
19 family had with police officers from Police Scotland?

20 A. It was a lack of communication and lack of engagement
21 that we were trying to cover every angle as such to
22 ensure that we were in a good place if we had to
23 basically take any action around the activity.

1 Q. I'd like to ask you about Zahid Saeed, we've mentioned
2 him quite a bit today, and we were talking about the
3 search of his family home. But, as I understand the
4 position on 3 May, we've heard evidence from DS Dursley
5 that he'd made contact with Zahid Saeed by telephone and
6 he'd sent officers out to pick up Zahid Saeed. And they
7 were DC Telford and DC McGregor. They had taken him via
8 the Victoria Hospital, to be checked over.

9 A. Yeah.

10 Q. And then they'd brought him back to Kirkcaldy. What
11 involvement did you have in bringing Zahid Saeed back to
12 Kirkcaldy?

13 A. None whatsoever. However, if you can recall back when
14 I mentioned yesterday the engagement and statement from
15 Collette Bell was significant, providing us with mobile
16 phones for both Martyn Dick and Mr Saeed as well, so
17 again I knew and actioned -- obviously these two people
18 were, two males were a priority to trace and note
19 a statement from in respect of that, so that's how that
20 action came about.

21 Q. We noticed in your daybook yesterday that you had
22 mentioned Zahid Saeed as part of --

23 A. Yeah.

1 Q. -- the events on 3 May?

2 A. Absolutely.

3 Q. Then we have some evidence before the Chair that he was
4 brought back to Kirkcaldy Police Office at roughly
5 around 2 o'clock in the afternoon, having gone via the
6 hospital?

7 A. That's right.

8 Q. Were you aware that he was in Kirkcaldy Police Office?

9 A. I was, after he had been there for a period of time, and
10 I was made aware by Stuart Houston.

11 Q. Did you know how long he was kept there?

12 A. No.

13 Q. Do you know on what basis he was brought back to
14 Kirkcaldy Police Office?

15 A. Significant witness.

16 Q. And did he do that voluntarily, was that with his
17 consent?

18 A. Yeah.

19 Q. Or was it on some other basis?

20 A. No grounds, he was a witness and he was brought back
21 with his consent.

22 Q. Would it have been open to Mr Saeed at any point to then
23 walk away or to leave or to say, "I don't want to

1 continue"?

2 A. Yeah.

3 Q. As far as you knew, was that an option open to him but
4 he was electing not to walk away?

5 A. It's an option open to any witness, we don't have the
6 power to compel people to remain to note a statement or
7 for interview if they're simply a witness, you know what
8 I mean, they're free to go about their business if they
9 deem it appropriate.

10 Q. So there's no power or authority that the police have to
11 compel witnesses to remain in a police station --

12 A. No.

13 Q. -- and give a statement?

14 We have some evidence available to the Chair by way
15 of a written statement, we don't have -- we haven't
16 heard the evidence of Mr --

17 A. Yeah.

18 Q. But we may have information that suggests he wasn't
19 aware when he was in the police station that Mr Bayoh
20 had passed away, he wasn't initially aware.

21 A. Okay.

22 Q. Were you part of any discussion or decision not to share
23 that with Mr Saeed at an earlier stage?

- 1 A. No, nothing to do with me at all, no.
- 2 Q. Had you indicated that you didn't want people to know
3 that Mr Bayoh was --
- 4 A. No, absolutely no way, and particularly at that time of
5 the day, I mean, the information was within the
6 community.
- 7 Q. Can you explain, and it may be you have already answered
8 this in relation to Martyn Dick and Kirsty MacLeod, why
9 his DNA was taken?
- 10 A. Mainly for elimination purposes, we knew that he had
11 that close contact with the deceased, we knew there was
12 the physical altercation between both of them, so again
13 it would -- again just to look for elimination purposes
14 more than anything at all.
- 15 Q. We may have some evidence available to the Chair to
16 suggest that when the information about Mr Bayoh passing
17 away had been shared with Zahid, that he was very upset
18 about that.
- 19 A. Yeah.
- 20 Q. We've heard they were good friends, and that
21 Stuart Houston had actually spoken to him --
- 22 A. Yeah.
- 23 Q. -- and persuaded him to remain --

1 A. Yes.

2 Q. -- were you aware of that?

3 A. I'm aware of that because Stuart spoke to me about that
4 after it.

5 Q. When did he speak to you?

6 A. It was some time -- I think it was round about
7 6 o'clock, 7 o'clock in the evening, he made me aware of
8 erm ... his engagement with Mr Saeed.

9 Q. Do you have any concerns about Stuart Houston persuading
10 Mr Saeed to remain and to continue assisting the
11 officers with his statement?

12 A. Yeah, I don't, to be honest, no. I mean, he did, he did
13 speak to him about remaining and about how essential it
14 was we got his version of events and exactly what had
15 occurred because it was an integral part of it.

16 MS GRAHAME: I'm being reminded it's 1 o'clock. I'm sorry.

17 LORD BRACADALE: We'll stop for lunch there, then it's
18 2 o'clock.

19 (1.02 pm)

20 (The short adjournment)

21 (2.04 pm)

22 LORD BRACADALE: Ms Grahame.

23 MS GRAHAME: Thank you.

1 I was about to move on to the events at
2 Victoria Hospital.

3 A. Yes.

4 Q. And I was going to ask you about your strategy in
5 relation to the recovery of the body.

6 A. Yeah.

7 Q. Will we begin by looking at the forensic strategy
8 document?

9 A. Yeah.

10 Q. I think there's some detail --

11 A. Yeah.

12 Q. -- within that. So it's page 6, I think, of 7. Maybe
13 we should look at page 3 first of all, actually, because
14 this was the -- page 3 is the body of the actual
15 strategy document itself.

16 A. Yes.

17 Q. We will see that the priority listed as locus 1 relates
18 to the deceased, and the intention to forensically
19 recover the body from the hospital, to recover clothing,
20 to maximise forensic opportunities, prioritise
21 submissions to the forensic lab and SEB. Could you
22 explain what that means?

23 A. Scene Examination Branch.

1 Q. When you say submissions, is that samples and the like?

2 A. Yeah, so the forensic lab would be the samples coming
3 from the mortuary or from the hospital itself, and the
4 Scene Examination Branch would be anything we need to do
5 such as fingerprints, photographs, video around the
6 deceased at that time.

7 Q. Then:

8 "To work in conjunction and direction of the
9 appointed PIRC investigating officer allocated to the
10 scene."

11 I'm interested at the time that you are preparing
12 this -- well, Houston prepared the strategy document,
13 but at the time you're discussing it and approving it,
14 what was the nature of the connection with PIRC at that
15 stage?

16 A. During the preparation?

17 Q. Yes, when you were discussing the -- by the time you've
18 discussed the forensic strategy document with Houston
19 and you've approved it, it says here you're working in
20 conjunction and direction of PIRC?

21 A. Yeah.

22 Q. I'm just interested in how things were evolving between
23 you and PIRC at that time?

1 A. Yeah, and probably what's not documented is there was --
2 after the 14.40 Gold Group there was a scene
3 prioritisation meeting between ourselves and PIRC which
4 was a pretty -- it's quite an informal meeting but it
5 was just round about as we moved towards the forensic
6 strategy meeting we were looking at the priorities,
7 basically were we on the same page round about the
8 priority scenes and where they sat.

9 So I had a meeting with Keith and some of his team
10 prior to going into the forensic strategy meeting. That
11 group was mainly Stuart Houston-led with a number of
12 reps from Police Scotland as well as the PIRC, and what
13 I mean by the members, it was crime scene managers from
14 both agencies as well as production officers and as well
15 as Scene Examination Branch. And it was really a prep
16 meeting prior to going into the main forensic strategy
17 meeting, so we could basically identify where the
18 priorities were and (inaudible) the strategy group
19 meeting.

20 Q. So at this stage you and -- you mentioned Keith, is that
21 Keith Harrower from PIRC?

22 A. Yes.

23 Q. You would be working in conjunction with each other --

1 A. Yeah.

2 Q. -- in relation to the body of Mr Bayoh?

3 A. Yeah, in relation to all the scenes.

4 Q. And then if we turn to the actual minutes, page 6 of 7,
5 so this is the minutes from the forensic strategy
6 meeting at 4.45, and do we see beneath the redacted
7 passage you have there:

8 "With agreement of PIRC investigation team the
9 following strategy was established for the recovery of
10 the deceased."

11 And there's a number of bullet points, I don't need
12 to take you through --

13 A. Yeah.

14 Q. -- each of those, but are those matters that you had
15 discussed with PIRC at that meeting?

16 A. Yeah.

17 Q. And the final bullet point is:

18 "Body to be removed from locus to Edinburgh City
19 Mortuary."

20 A. Yeah.

21 Q. So it would appear from these bullet points that there
22 was some detailed discussion about the deceased and
23 recovery of his body to the mortuary?

- 1 A. Correct, yeah.
- 2 Q. And then it says beneath that:
- 3 "Any item that the body is recovered within is to be
- 4 secured and forensically recovered."
- 5 Could you explain what that sentence means?
- 6 A. Yeah, so when the body would be removed to the City
- 7 Mortuary it's usually placed within some sort of, call
- 8 it a body bag as such whereby the remains of the
- 9 individual is placed within it, and it's just to ensure
- 10 when the remains are placed within this, within this
- 11 bag, this article, that nothing falls from the body that
- 12 may be of forensic value. So it's just once we arrive
- 13 at the City Mortuary the body's removed from that and
- 14 thereafter placed within a freezer. So it's just
- 15 indicating that need, to ensure that we do seize the
- 16 article that the body's been removed in to ensure
- 17 forensic integrity at all times.
- 18 Q. So forensic integrity was recognised as an important
- 19 element of the body being removed to the mortuary?
- 20 A. Correct.
- 21 Q. And that was with the agreement of PIRC?
- 22 A. Yes.
- 23 Q. And then on the next page you say:

1 "It was agreed that PIRC investigator John Ferguson
2 would be present during the recovery of the deceased at
3 locus 1."

4 A. Yes.

5 Q. Then there's a note -- an asterisk and the word "note",
6 and then an entry there:

7 "At 1940 hours a discussion was held due to the
8 blood~..."

9 And a discussion about that.

10 Can I ask: when did that note become part of the
11 minutes of the meeting?

12 A. It's obviously been added after the meeting itself by
13 Stuart, I think he's probably better placed to detail
14 when it was noted but obviously just with the timing
15 there, it's quite normal for us to seize any medical
16 interventions such as an intubation tube and anything at
17 all that medical staff have attempted to intervene prior
18 to death. So anything at all attached to the remains of
19 the deceased at that time would normally be seized or
20 left in situ on the remains and removed at the PM by the
21 pathologist, so again it's pretty normal procedure.

22 Q. Then in terms of the procedure in Victoria Hospital,
23 what was your understanding of how forensic integrity

1 was being maintained at the hospital?

2 A. Yeah, so after he was -- Mr Bayoh was pronounced life
3 extinct or was deceased, we had detectives outside the
4 resuscitation room at that time, and this was through
5 early discussion with Colin when I became aware of the
6 incident, so again we were -- I was aware that
7 detectives had been within the ambulance with him as
8 well en route to the hospital.

9 Q. We've heard evidence that PC Alan Smith drove the
10 ambulance?

11 A. Yeah, that's correct.

12 Q. And that DC Connell was in the ambulance with Mr Bayoh?

13 A. Yeah, and again, that's probably normal practice around
14 that, so --

15 Q. Can I stop you there for a moment? We'd discussed -- we
16 heard evidence from DI Robson about DC Connell
17 recovering a knife from the scene, I think you're aware
18 of that --

19 A. Yeah.

20 Q. -- and we may have mentioned that earlier. And I asked
21 him about whether he had concerns that DC Connell was
22 then asked to go in the ambulance with Mr Bayoh, having
23 recovered that. Do you have any concerns about the

1 forensic integrity there?

2 A. No, I mean, the knife was recovered with gloves, I mean,
3 at that time, after being photographed by, I think,
4 a mobile phone if I recall. So, not in particular, you
5 know what I mean, it was really for continuity of the
6 evidential chain that we had an officer, a detective
7 within it, within the rear of the ambulance. There are
8 various reasons for that. I mean, sometimes it's due to
9 a remark made by an injured party within the ambulance
10 or something that's said which may again prove to be of
11 evidential value, so again that's best practice to have
12 someone there and it's not unusual for a police officer
13 to drive an ambulance either.

14 Q. Sorry, I interrupted, we were talking about the events
15 in the hospital.

16 A. Yeah.

17 Q. And you are under -- when did you become aware -- you
18 obviously became aware, you said previously DI Robson
19 contacted you to say that Mr Bayoh -- that life had been
20 pronounced extinct at 09.04 and he contacted you
21 thereafter to tell you?

22 A. Yeah, so there was an earlier call round about, I think
23 it was about 8.45 or thereabouts by Colin and it was

1 just really a quick call round about the update that
2 Mr Bayoh was poorly and at that time I'd just indicated
3 did we have sufficient resources at the hospital and
4 Colin would have known that would have meant did we have
5 detectives with -- outside the resuscitation room in the
6 event that he did succumb at that stage. So I knew that
7 the detectives were at the Victoria, and on Mr Bayoh
8 passing away we simply moved his remains to a side room
9 which was secured and we had a uniform officer outside
10 it at all times to prevent any access.

11 Q. So your understanding is they were initially outside the
12 resuscitation room?

13 A. Yeah.

14 Q. And then outside the side room?

15 A. Yes.

16 Q. What was the purpose of that?

17 A. It's really just to ensure integrity of the remains of
18 the deceased.

19 Q. To make sure no one interfered with --

20 A. Yeah, absolutely.

21 Q. When you became aware at 8.45, with your conversation
22 with DI Robson and then subsequently became aware that
23 Mr Bayoh had died, before you became aware that he had

1 died were you concerned about forensic integrity; did
2 you have a discussion with Robson about ensuring that?

3 A. To be honest with you, not at that time, at 8.45, it was
4 really just a quick call that Mr Bayoh's poorly and
5 unlikely to improve at that time so it was about: do we
6 have sufficient resources at Hayfield Road and at
7 hospital to manage the deceased, if this does occur. So
8 again, I mean, Colin -- the expectation from myself to
9 Colin is that he's fully aware of integrity of any
10 scene, so, I mean, I wouldn't at that time basically try
11 to speak to him about scene integrity, I've worked with
12 Colin before and I know how competent he is around such
13 matters.

14 Q. When you're trying to maintain forensic integrity, apart
15 from having officers standing outside a room, are there
16 any normal procedures with regard to how they're dressed
17 or forensic clothing or anything along those lines?

18 A. Not particularly at the hospital, no, they would
19 probably just be probably in suits as they did turn up
20 for duty that particular day, but it was more about
21 making sure that once life is pronounced extinct there's
22 no further interference, for want of a better word, with
23 the remains by medical practitioners, once they've PLE'd

1 or pronounced life extinct, that thereafter they
2 basically -- we would seize the remains at that
3 particular time. And, as I say, there would be aspects
4 of medical intervention, drips, intubation tubes and so
5 on and so forth probably still with the body at that
6 time, but we would seize it as it is at that time rather
7 than the medical practitioners attempting to remove
8 them. So again it's just with -- and again, just with
9 the training and the detectives, they're aware of these
10 aspects of it, and through experience as well. So no,
11 they would just be in suits, I think the answer to your
12 question is.

13 Q. And you wouldn't expect the officers to interfere in any
14 way with the body?

15 A. No, absolutely not.

16 Q. Or to be involved in removing clothing or anything?

17 A. No.

18 Q. What about if there's samples to be collected from the
19 medical practitioners?

20 A. That's quite common. So usually with incidents, usually
21 homicides in particular, there is usually an aspect of
22 pre-transfusion blood -- there is usually
23 a pre-transfusion blood sample to be obtained, so again

1 part of the responsibilities of the detectives deployed
2 to the hospital would to be obtain that pre-transfusion
3 blood sample, to ensure that all the clothing has been
4 seized, a lot of the time it is cut off and maybe left
5 on the floor or under the bed or whatever else, it's to
6 ensure that they don't lose anything at all at that
7 time. But again the samples, the main sample is usually
8 a pre-transfusion blood sample.

9 Q. And is the recovery of, say the clothing that's been cut
10 off, would that be the responsibility of the officers?

11 A. Yeah.

12 Q. Would they be expected to wear gloves while they did
13 that?

14 A. Yeah, so what usually happens is the clothing which is
15 removed is usually placed within a bag by the medical
16 staff or whoever is assisting with the work within the
17 resuscitation room, so it's usually within a bag as such
18 and it's usually we would seize the bag and thereafter
19 take it to a police office as such and bag it
20 appropriately through gloves, masks on, and put it in
21 production bags as such. That's the way it normally
22 does happen. It's not a case, we would get in there and
23 the trousers would be lying on the floor or the shirt

1 would be lying there, you know what I mean; they would
2 normally all be bagged within one hospital-type
3 polythene bag and we would thereafter take that and
4 thereafter, with the relevant precautions in place round
5 about integrity, ensure that all the clothing was
6 thereafter put into the relevant bags.

7 Q. And the person putting items of clothing or suchlike
8 into the bags, would that be the officers or the medical
9 staff normally?

10 A. That would be the officers, yeah.

11 Q. So they would be within the room at some point to maybe
12 collect items of clothing?

13 A. Yeah, so, as I say, a lot of the time the bag is usually
14 handed to the detectives by the medical staff, the body
15 is thereafter removed on to a bed or trolley and removed
16 into a side room. We would secure the side room,
17 usually a uniformed officer stands outside that the
18 detective would thereafter deal with the pre-transfusion
19 blood sample, noting very brief statements from medical
20 practitioners at that time, who are they, when is the
21 best time to get a full statement from them, and there
22 would be a bag usually of clothing that has been either
23 taken from the deceased or cut from the deceased and

1 that would be thereafter, usually within one single bag
2 and we would just seize that. But that would not be
3 interfered with at the hospital we would take that to
4 a sterile to location to basically divide and bag up as
5 such.

6 Q. There's some evidence available to the Chair that
7 a DC Brown and Balsillie attended at Victoria Hospital
8 prior to the death of Mr Bayoh, and they essentially
9 relieved DC Connell from his attendance at the hospital.
10 Have you heard of them?

11 A. Vaguely. I've not met -- I don't think I've met them
12 but I recognise the names.

13 Q. Could you explain what the sort of thinking behind the
14 attendance of Balsillie and Brown was at the hospital?
15 This is before Mr Bayoh passed away.

16 A. I genuinely don't know but I can only imagine that there
17 was further actions for DC Connell to take on at that
18 time and to put two detectives for that corroboration of
19 the seizure of any clothing and noting those statements
20 would -- again, that's probably -- they would need
21 obviously the corroboration aspect of it so rather than
22 just DC Connell there himself the two officers were
23 obviously going up there to take that role from him, to

1 enable him to come back for further actions I would
2 imagine. I wasn't involved in that aspect of the
3 decision-making but I can just imagine why it was done.

4 Q. And we have an Inquiry statement from DC Balsillie
5 indicating that when he attended the hospital he was
6 there hopefully to ultimately speak with Mr Bayoh, it
7 was before he was pronounced life extinct, and he
8 considered that his role changed after life was
9 pronounced extinct, and he was there then to protect the
10 deceased's body.

11 When Balsillie and Brown were sent to the hospital,
12 clearly DC Balsillie was under the impression they were
13 to go in and talk to Mr Bayoh, was there any view taken
14 by you at that stage about maintaining forensic
15 integrity; if Mr Bayoh had survived were you still going
16 to try and maintain forensic integrity at that time?

17 A. Yeah, you do your best at all occasions to ensure that
18 integrity, the timing and the sequence of that is that
19 I'm obviously notified at 8 -- round about 7.45 by Colin
20 about the deterioration, 8.15 I'm informed by
21 Leslie Boal about -- she further updates that this
22 incident is ongoing, which obviously I say I'm aware of
23 and I should phone Colin back at about 8.30, saying I'm

1 heading through.

2 So, yeah, it would be quite normal to deploy two
3 officers either to deal with Mr Bayoh at the hospital,
4 obviously, if he did survive, and if not, to deal with
5 the remains of the body at that particular time. So ...
6 I wasn't aware, this was obviously all going under the
7 direction of Colin at that time.

8 Q. Colin Robson?

9 A. Colin Robson, although I obviously had spoke to Colin
10 round about quarter to 8 just about ensuring we had
11 sufficient resources to ensure the integrity remained
12 there with it. But, as I say, I don't think -- I think
13 the DC Connell aspect, I think Colin's obviously --
14 I don't know if he did say in his evidence round about
15 why he removed DC Connell but I would imagine there
16 would be some justification around that.

17 Q. So at that time in the morning when Balsillie and Brown
18 are sent to the hospital, it was essentially Robson who
19 was --

20 A. Yes.

21 Q. -- dealing with that matter?

22 A. Yeah.

23 Q. The evidence you've just given, was that the extent of

1 your involvement in relation to the attendance of
2 officers at Victoria Hospital?

3 A. Yes.

4 Q. And at that time had you had any contact with PIRC by
5 then?

6 A. No, the first contact with PIRC was through --

7 Q. 10.20 --

8 A. -- Craig Blackhall at 9.35, it was Dave Green who
9 contacted PIRC, DSI Keith Harrower thereafter contacts
10 me at 10.22 and that's the first contact I have with
11 PIRC.

12 Q. And that was something we looked at yesterday in your
13 daybook?

14 A. It was, yeah.

15 Q. That you had a call with Keith Harrower?

16 A. Yeah.

17 Q. So in terms of maintaining forensic integrity at least
18 up to this first call with Keith Harrower, PIRC had no
19 involvement whatsoever?

20 A. Absolutely no involvement.

21 Q. And it wasn't until we see the strategy document and the
22 subsequent minutes that we see that you were conjoining
23 with PIRC --

1 A. Yes.

2 Q. -- in relation to the arrangements for Mr Bayoh?

3 A. Yeah. To be honest it was a lot earlier than that, they
4 came on, they came to the location at 1.30, sorry, came
5 to the office at 1.30, so this -- it was really
6 fast-moving after that because there was a number of
7 meetings, either -- as well as the Gold meetings there
8 were a number of meetings in side channels with myself
9 and Keith and some of the teams, just around about some
10 of the priority actions we've done which are not
11 detailed in minutes as such, but there was that
12 continuing engagement all the way through from the
13 arrival of PIRC between myself and Keith in particular.

14 Q. So from around 1.30 PIRC arrive at Kirkcaldy Police
15 Office?

16 A. Yeah.

17 Q. And from that moment in time there's a lot more liaison
18 and communication with PIRC in relation to the body of
19 Mr Bayoh?

20 A. Yeah, yeah. So obviously I had made Keith aware that he
21 was deceased, obviously at 10.22 the first call, and
22 I gave him the circumstances of the background to that,
23 so -- and Keith obviously highlighted and indicated was

1 the body secure, was the remains secure and everything,
2 as naturally he would do, and I just obviously reassured
3 him that that was all in hand around that.

4 So, as I say, once they arrived at 1.30 they begin
5 to really drill down into some of the actions around
6 Mr Bayoh and about how we would thereafter remove the
7 remains to Edinburgh City Mortuary for the pending
8 post-mortem.

9 Q. I understand your evidence today is it was your
10 understanding the officers were standing outside the
11 door to protect the body. We have other information
12 available, again from DC Balsillie, that the officers
13 were actually remaining within the side room with the
14 body, and they remained with the body until they were
15 relieved by PIRC investigators Ferguson and Taylor, and
16 that was not done until 19.30 hours. So by my
17 calculations, I think, they were within the room with
18 the body for around ten hours, from relieving
19 DC Connell. Does that give you any cause for concern?

20 A. I mean, I wasn't at the hospital and I don't know the
21 size of the side room but, I mean, they're trained
22 detectives, I'm sure that they would have maintained
23 integrity, there wouldn't be any interference at all

1 with the remains. My understanding was from speaking to
2 Colin, as I recall there was a uniformed officer outside
3 that room, so I can remember -- I can recall Colin
4 informing me around that.

5 But again, the aspect around integrity is paramount,
6 now whether the officers or the detectives are outside
7 the room or within a room, the main aspect is that
8 there's no interference at all with the remains of
9 Mr Bayoh.

10 Q. And information available to the Chair would suggest
11 that they weren't wearing any forensic clothing at that
12 time. Does that cause you any concern at all?

13 A. That would -- nine times out of ten that's the way it
14 usually happens, is that you're not attending at the
15 Accident & Emergency with your white forensic suit. On
16 a number of occasions you're basically there when the
17 individual unfortunately passes away and you have to
18 thereafter take the action and the activity around that.
19 The main aspect is that there is no interference at all
20 with the remains of the deceased and, as I say, the
21 detectives are trained around that, about that integrity
22 aspect of it.

23 Q. We have, as I said, an Inquiry statement from

1 DC Balsillie, I can put it on screen, it's SBPI 262, and
2 it's paragraphs 24 and 25. This is an Inquiry
3 statement, the same sort of procedure as you've through
4 yourself. He says:

5 "I am asked if there are standard forensic protocols
6 in place that need to be followed when you're conducting
7 this kind of locus protection and seizing these kinds of
8 productions. I wasn't aware at the time that all deaths
9 and/or deaths that are regarded as in police custody
10 have to be treated in such a manner that you had to be
11 forensically aware. I wasn't aware of that, and at no
12 time was I instructed to wear any of that equipment
13 whilst in the room adjacent to where the deceased was."

14 Can I just ask you: does this give you any cause for
15 concern as SIO, that officers didn't appear to be aware
16 about any need to observe forensic integrity?

17 A. I mean, I see from what they have, I mean, they're
18 simply wearing gloves, there is no --

19 Q. Just, that's in paragraph 25.

20 A. So is it 24?

21 Q. Just so people can see it. We also see in paragraph 25
22 that he says there was a very limited police supply at
23 the hospital?

1 A. Yeah.

2 Q. "... so, other than wearing a pair of rubber gloves,
3 which is what we did, other than wearing those gloves,
4 we had no facility to wear a white suit or the boots,
5 hairnet et cetera and that, other than wearing the
6 gloves, which we did."

7 So he definitely was wearing gloves?

8 A. Yes, yeah.

9 Q. From his statement.

10 A. I mean ultimately if they can have a white forensic suit
11 there, I mean, that's obviously best practice, but the
12 main aspect is that there is no interference with the
13 body, they're there mainly for security and integrity
14 more than to basically forensically interfere with the
15 bodies. So we're not asking them to take samples, we're
16 simply asking them almost just to secure the remains at
17 that particular time and not obviously to go near the
18 body or interfere with the remains in any way. So ...

19 Q. Can I ask you about 25 -- and I appreciate you weren't
20 at the hospital --

21 A. Yeah.

22 Q. -- that day, I'm interested to see this reference to,
23 "Very limited police supplies at the hospital". Is it

1 normal practice for there to be police supplies at
2 a hospital?

3 A. Yeah, I can only speak from my own experience, and
4 working within the kind of Glasgow area, we regularly
5 would dispatch police supplies to the main hospitals
6 within Glasgow, so there were that ready supply of
7 gloves, boots, suits, masks, hairnets and so on and so
8 forth, we would take them down to the hospital and give
9 them a supply as such.

10 Q. Why is that done?

11 A. It's mainly just, it's ... it's to ensure that -- it's
12 mainly for a policing purpose, the fact is that if we do
13 spontaneously turn up at an incident which thereafter
14 involves the requirement for integrity of the deceased
15 or the -- it ends up a homicide or there's a -- if
16 there's a sexual offence that's been occurred, that they
17 can basically, rather than having tae go to the car or
18 try to dig out or call for someone to come from a nearby
19 office, that there is a supply of potential kit that's
20 available there that we don't -- we can put hands on
21 almost right away.

22 Q. Who in the police is responsible for making sure there
23 are police supplies at a hospital?

- 1 A. So it was mainly the CID within the offices that
2 I worked at, would basically be that liaison into the
3 A&Es mainly of the hospitals.
- 4 Q. I won't ask you about the resources in the hospital,
5 I know you weren't there.
- 6 A. Yeah.
- 7 Q. Can I ask you who then had overall responsibility for
8 Mr Bayoh's body at the point the remains were taken from
9 the hospital to the mortuary? At that point, had
10 responsibility handed over to PIRC?
- 11 A. Yeah. Well, yes, it did, because it was at 10.22 that
12 PIRC -- well, 9.35 hours that PIRC basically get
13 directed by Crown, as they are the lead agency for it,
14 so by the time the body was removed to the City Mortuary
15 they had -- obviously there was a number of hours that
16 had passed since they had been given the direction to
17 lead on it, so ultimately it would be PIRC. However,
18 the remains and the ownership sits with Crown, with PIRC
19 just being the agents obviously around that.
- 20 Q. Can I just be clear about one thing you say in your
21 statement, and I don't need to put this on the screen,
22 you say:
23 "The seizure and transfer of the deceased to the

1 City Mortuary is under my remit."

2 I would just like to be clear, when you say "remit"
3 but it's the responsibility of PIRC, can you explain --

4 A. Yeah, I think I was just trying to say it's the
5 responsibility of an SIO ultimately for the safe
6 transfer ensuring integrity of the remains moving
7 between the hospital and the City Mortuary. So,
8 for example, to ensure integrity and continuity we would
9 put two detectives in a car behind the vehicle with the
10 remains of the deceased in it. So they would be at all
11 times present with the deceased en route to the City
12 Mortuary so we would not lose sight of that.

13 And again, once we're at the mortuary detectives
14 would be there whilst the body's removed and thereafter
15 the forms and the various -- the correspondence is
16 basically completed for the entry of the body into the
17 mortuary, so again that's all taken care of by the same
18 detectives who would be within the hospital, conveying
19 the remains and thereafter entry into the City Mortuary
20 as such.

21 Q. So all of that remains the responsibility of the SIO?

22 A. Yes.

23 Q. Even where PIRC have effectively taken over the lead

1 investigation?

2 A. Yeah, sorry, I maybe confused things there. I think
3 I was trying to say that either the SIO from PIRC or
4 myself, so on this occasion it would be the SIO from
5 PIRC who would have the responsibility because it had
6 passed to Keith at 9.35.

7 Q. So when you've said in your statement:

8 "The seizure and transfer of the deceased to the
9 mortuary is under my remit."

10 Do you wish to sort of clarify that slightly?

11 A. Yeah, I think it's the remit of the SIO for the
12 investigation. So, although I was the Police Scotland
13 SIO at the time, ultimately the lead SIO who had the
14 strategic oversight for the whole investigation was
15 Keith Harrower, as actioned by Crown.

16 Q. Can we look at the terms of the minutes of the first
17 Gold Group meeting. We've mentioned this a few times
18 today.

19 A. Yeah.

20 Q. I'd like to look at PS06491. I'm not sure if you have
21 a hard copy of this in your folder but it's certainly on
22 the screen. So this is the minutes from the 11.30, this
23 is the first meeting of the Gold Group?

1 A. Yes.

2 Q. And we see there:

3 "Present - ACC Nicholson~..."

4 He was chairing it, we've heard from you yesterday
5 he was the gold commander?

6 A. Correct.

7 Q. Chief Superintendent McEwan is present, he is the silver
8 command?

9 A. Yeah.

10 Q. Then we also have present yourself and Leslie Boal,
11 Chief Inspector Shepherd and DI Robson, and then if we
12 look at the terms of reference, I'd just like briefly to
13 ask you about these. So this is listed as:

14 "Gold Strategy (CS Garry McEwan)."

15 And the final paragraph in black ink says:

16 "Ensure the integrity, interest and reputation of
17 the Police Service of Scotland and its staff is
18 maintained and safeguarded."

19 Then underneath that it says in red:

20 "Agreed that wording of terms of reference would be
21 considered and amended for future meetings to provide
22 terminology specific to circumstances of incident."

23 Are you able to explain to us a little bit about

1 this?

2 A. Yeah. So basically the terms of reference for the
3 majority of Gold Groups are almost a standard pro forma
4 as such, and it's mainly a lift from a previous
5 Gold Group that you would simply superimpose on to the
6 agenda for the incident you're dealing with, because
7 they mainly all impact on the integrity of the
8 investigation, support and reassurance to the family,
9 community impact, media, and ultimately to bring the
10 community back to some sort of normality at that time.

11 So again, I was slightly late into this meeting and
12 the discussion was ongoing, I can recall, when I came
13 in, round about the fact it was not specific to it and
14 I recall there was some discussion round about that last
15 point about the integrity, interest and reputation of
16 Police Scotland is maintained and whether or not that
17 had to be basically -- that there had to be some -- it
18 had to be elaborated slightly.

19 Q. Why were you late?

20 A. So I was -- I had a discussion at that time, just before
21 going into the Gold Group, with Amanda Givan.

22 Q. We've heard she was the Federation representative?

23 A. Yeah, and that was round about the status of the

1 officers and the request for operational statements.

2 Q. We'll come on to that later.

3 So can I ask, the paragraph about ensuring the
4 integrity, interests and reputation of the police, did
5 that paragraph have any impact on the way you conducted
6 the investigation that day?

7 A. Absolutely not.

8 Q. It was part of the discussion on the day that that
9 would -- at that meeting, that the wording would be
10 considered --

11 A. Yes.

12 Q. -- further?

13 A. Yeah.

14 Q. Then can we look at 2, you will see that says:

15 "Factual update - (Detective Inspector Robson)."

16 We've heard evidence from Robson that -- I think
17 I spoke to you yesterday about this -- he saw this
18 meeting as a handover to you and he gave the update --

19 A. Yes.

20 Q. -- based on his awareness to that point, and if we can
21 come down slightly, it says:

22 "The events relating to the deceased being conveyed
23 to the hospital, his treatment and subsequent PLE were

1 outlined and thereafter the process in an effort to
2 identify him."

3 And then:

4 "The circumstances of the subsequent call from
5 Collette Bell ... also summarised to provide details of
6 an incident that occurred prior to police and
7 involvement and which led to identification of male."

8 At this meeting were you clear about the
9 identification of the male at Hayfield Road as Mr Bayoh?

10 A. Yes.

11 Q. And as I understand it by that stage the death message
12 had been given to Collette Bell?

13 A. Yeah.

14 Q. Then it comes on to item 3, "Investigative process", and
15 your name and DCS Boal's name are next to this, can you
16 tell us about this item on the agenda?

17 A. Yeah, it's basically the SIO will provide that
18 investigative update, it's quite normal, particularly at
19 the first Gold Group or even subsequent Gold Groups,
20 that the initial aspect of how the incident developed is
21 usually by the on-call detective inspector, such as
22 Colin who gives the kind of preamble into it, but
23 thereafter when it comes to the investigative strategy

1 it's usually handed over to the SIO at that particular
2 time.

3 So again, I provided the full update, as you can
4 see, around that. I think Leslie interjected with one
5 or two different points but in the main that was the --
6 the bullet points there are all the aspects that I'd
7 provided updates on in that respect.

8 Q. We've heard some evidence about one of the bullet points
9 which says:

10 "CT considerations raised by ACC and to be reviewed
11 by NIB."

12 Can you tell us about the discussion surrounding
13 that?

14 A. Yeah, I think I raised that yesterday as one of the
15 hypotheses around it which was quickly eliminated, but
16 with Mr Nicholson's background, he was a -- I think he
17 was a CT commander, he kind of raised the issue again,
18 were we quite happy that there was no inference into --
19 inference to any CT-related motivation or
20 counterterrorism-related motivation, which at that time
21 I was pretty happy there wasn't but he just asked for
22 a further review by NIB, which is the National
23 Intelligence Bureau and that links thereafter into some

1 of the more sensitive intelligence areas that we can
2 basically have access to around that CT arena.

3 Q. So although you gave evidence yesterday about your own
4 thoughts about CT, and I don't need to go back to that,
5 was it again raised by ACC Nicholson at this meeting?

6 A. Yes.

7 Q. Rather than raised by you --

8 A. Yes.

9 Q. -- as part of a discussion?

10 A. Yeah.

11 Q. By this stage had you in your own mind eliminated the
12 hypothesis?

13 A. Yeah.

14 Q. And did you have a discussion about why you'd
15 eliminated --

16 A. Yeah.

17 Q. -- with Nicholson?

18 A. Yes, at that forum.

19 Q. At the meeting?

20 A. Yeah.

21 Q. Then I would like to ask you about, first of all:
22 "FLO - Establish a working strategy."
23 A. Yeah.

1 Q. What was the discussion about in connection with that?

2 A. So again it was just such a high priority for the

3 investigation and obviously just the issues we

4 discovered yesterday around that, but it was just about

5 how we were going to take that on with liaison with PIRC

6 and about some sort of kind of deployment model and the

7 timescales for that, so it was about taking it off table

8 and looking at the development of that working strategy

9 for the deployment into the family.

10 Q. And by this time the death message has been delivered to

11 Collette Bell?

12 A. Yes.

13 Q. And she had advised you about the next of kin as

14 Kadi Johnson?

15 A. Yes.

16 Q. And we discussed this yesterday but since we're talking

17 about it now can I ask you to look at PS10991 which is

18 a family liaison SOP, and just do you see that on the

19 screen, it's the family liaison, and it's just to avoid

20 any confusion arising about the evidence yesterday about

21 this.

22 A. Okay.

23 Q. Could we look at section 6.2, please, and this relates

1 to delivery of death messages. So this is an SOP,
2 I appreciate you said yesterday you're not a trained
3 FLO, but do we see here 6.2.1:

4 "Families of bereaved persons should be informed of
5 the fact of death as soon as is practical by
6 an appropriately briefed police officer."

7 A. Yeah.

8 Q. And then 6.2.2:

9 "As a general rule, a FLO should not be deployed to
10 deliver a death message as this may delay the process of
11 informing the family."

12 Then 6.2.3 talks about a risk assessment being
13 carried out.

14 A. Yes.

15 Q. And 6.2.4 says:

16 "The deployment of a FLO to pass a death message
17 would conflict with this requirement ... compromising
18 the risk assessment process."

19 And it goes on to make a number of points but:

20 "Where a decision is taken to deploy a FLO to carry
21 out this task, careful consideration as to the
22 circumstances and reason for doing so must be made by
23 the SIO and such decisions should be recorded in the SIO

1 policy file and FLO logbook."

2 So I think yesterday I asked you questions about why
3 there wasn't a wait for an FLO to deliver a death
4 message. According to this SOP that wouldn't be the
5 appropriate procedure.

6 A. Yes, unless the circumstances dictate otherwise.

7 Q. And did you have consideration whether circumstances
8 dictated otherwise?

9 A. Yes, and that came from the discussion with
10 Keith Harrower, where Keith suggested it would be
11 beneficial to deploy two FLOs from Police Scotland at
12 this early stage.

13 Q. Right?

14 A. So again, as lead for the investigation I agreed with
15 that.

16 Q. So can you simply explain how the process panned out
17 with your discussions with Keith Harrower? Because on
18 the face of this SOP the recommendation seems to be, or
19 the guidance seems be the families "should be informed
20 as soon as is practical by an appropriately briefed
21 police officer", rather than a FLO?

22 A. Yes.

23 Q. And in fact the general rule is the FLO should not be

1 deployed?

2 A. Yeah.

3 Q. So that's the general rule, but obviously there's
4 a process envisaged where that could be changed. Can
5 you explain to us the discussion with Keith?

6 A. The discussion was around the fact that we -- I think
7 because of the circumstances of the incident and the
8 fact that Police Scotland officers were involved in it,
9 to send two untrained officers to the family, as we did
10 do, we anticipated and Keith anticipated may cause, may
11 cause some sort of conflict, who would not be trained in
12 a manner to or have the experience to handle difficult
13 questions or difficult scenarios being asked of them as
14 such.

15 So again, through the discussion with Keith, Keith
16 made the decision at that time that we would look at
17 deploying initially Police Scotland FLOs and thereafter
18 there would be a handover later on either that day, or
19 I think it was the following day on the 4th, to PIRC
20 FLOs once they actually came on board with the
21 investigation.

22 So I think it was the circumstances of the
23 challenging incident that we were dealing with that was

1 the trigger for deploying Police Scotland FLOs.

2 Now, if we had the Police Scotland FLOs and we
3 deployed them within the hour, I don't anticipate --
4 I anticipate there would still have been significant
5 issues around that, to be honest, as I said, yesterday.
6 So I take what the SOP states there, it's always
7 extremely beneficial to get the message to the family,
8 as I indicated yesterday, out as soon as possible.

9 The decision with Keith, through consultation with
10 myself round about the Police Scotland FLOs being
11 deployed, I could see the benefit of that, because it
12 wasn't a normal situation, so I could see why we were
13 basically going down that route in respect of it, but
14 I do take the point that that's what's stated in the
15 SOP.

16 But again, standard operating procedure's there as
17 the way it should be done, but again there are some
18 circumstances, as section 6.2.4 indicates, that not all
19 circumstances fit as they should on every occasion, so
20 sometimes you have to have that flexibility around it.

21 Q. We've heard that it was PIRC FLOs who ultimately made
22 contact with the family --

23 A. Yes.

1 Q. -- late on 3 May.

2 A. Yes.

3 Q. But yesterday you did talk about Police Scotland FLOs
4 being recalled to duty --

5 A. Yes.

6 Q. -- and arriving at Kirkcaldy Police Office?

7 A. Correct.

8 Q. Were they ultimately briefed by police -- Mitchell and
9 Parker, we have heard, may have been involved with
10 briefing --

11 A. Yeah, so they were briefed -- what I did say yesterday,
12 in respect of that matter is that the discussion after
13 the second visit to the family and the conflict that
14 that was causing with the family refusing to engage and
15 not wanting to speak to Police Scotland officers at that
16 time, or any local officers, I think it was as well, was
17 the fact that the discussion with Ruairaidh Nicholson and
18 myself, Leslie Boal, Garry McEwan, was around -- and
19 Keith Harrower obviously involved in that as well, was
20 that -- are we going to gain anything further here or is
21 it just simply going to aggravate an already really
22 sensitive matter by deploying now Police Scotland FLOs
23 to the family.

1 So we were all in agreement with that. The fact is
2 we didn't think there was any benefit at that stage of
3 deploying Police Scotland FLOs because of the situation
4 we found ourselves in at that stage and to move towards,
5 at that stage it was Garry McEwan being deployed to the
6 family to try to basically explain a bit more about the
7 incident, and that thereafter progressed through the
8 evening, after the Gold Group, to Keith Harrower and the
9 direction at the time from the ACC around the fact that
10 the PIRC would deploy FLOs and Keith Harrower would make
11 contact with the family and, as I say, Keith made
12 contact with the family I think about 10 o'clock that
13 evening. I think that's a kind of timeline in the
14 sequence of events, I don't know if that answers your
15 question.

16 Q. Thank you.

17 So the Police Scotland FLOs were never deployed to
18 the family because of the tensions which you were aware
19 of?

20 A. Yes.

21 Q. Is there any note that we can look at in your daybook or
22 your policy file that would help us identify your
23 reasoning in relation to the FLOs, or ...?

1 A. I don't think there is, but that was the -- that was the
2 feeling at the time, that because, as you've put quite
3 rightly, the tension between Police Scotland and the
4 family unit at that time was so significant, the
5 decision was made not to deploy the Police Scotland
6 FLOs, although they were present at that time and they
7 were deployable, they had been briefed, however that was
8 not going to basically enhance the relationship with the
9 family and at that time it was obviously the decision
10 for Garry McEwan at that time to deploy due to his
11 relationship with a member of the family.

12 Q. And the decision not to deploy the Police Scotland FLOs,
13 was that done in liaison with PIRC?

14 A. Yes.

15 Q. And then we were going through the minutes of the
16 11.30 --

17 A. Yeah.

18 Q. -- Gold Group meeting, if we could maybe return to those
19 briefly, PS06491, and we were looking at item 3, and it
20 says there -- I've lost it:

21 "Police officer statements - Federation reps
22 providing advice to officers concerned regarding this
23 matter."

1 Clearly this was part of item 3, and I'd be really
2 interested in your recollection of that discussion at
3 this meeting?

4 A. Yeah. So prior to coming to this meeting -- and, as
5 I said, I was slightly late into it -- I had
6 a discussion with Amanda Givan, and Conrad Trickett was
7 there as well at the time, my intention was to address
8 the officers within the canteen area, and I explained
9 to --

10 Q. You were aware in the morning the officers had returned
11 to the canteen?

12 A. Yeah, yeah they --

13 Q. That had been allocated the (inaudible - overspeaking)
14 suite?

15 A. They were there when I had arrived, they were already
16 present when I arrived. So because of the nature of the
17 incident as SIO, and I know it's not detailed in any
18 strategy, I wanted to inform them regarding the
19 investigation where we were, the information that came
20 to me at that time was they weren't even aware that
21 Mr Bayoh had actually passed away and was deceased at
22 around about 11.25, so I thought it would be beneficial
23 for myself to brief them in respect of a number of areas

1 but the main one obviously the fact that Mr Bayoh was
2 now deceased and that the PIRC were now leading the
3 investigation as such, that was the main areas.

4 So I'd spoke to Amanda Givan and said to her, "Look,
5 this is where we are with the enquiry just now, PIRC are
6 coming on board, they're en route to the office just
7 now, they will lead on the investigation", and that from
8 speaking to Keith Harrower the status of the individual
9 officers just now is that of witnesses, and that I will
10 be requesting operational statements from them in that
11 respect.

12 So Amanda basically stated that her advice to them
13 at that time was not to provide any operational
14 statements prior to seeking legal advice, and I said to
15 Amanda, "I appreciate your position around that but I am
16 still going to request operational statements", because
17 they were witnesses.

18 Q. Where did this discussion with Amanda Givan take place?

19 A. Just inside the canteen or just outside the door of the
20 canteen, I think it was just inside the door of the
21 canteen.

22 Q. Was that the first time you had been down to the
23 canteen?

- 1 A. It was, yeah.
- 2 Q. Did you speak to the officers at that time?
- 3 A. I did, yes.
- 4 Q. And can we see any reference in your daybook?
- 5 A. I don't think there is, because it was a very, very
6 brief update that I gave them because I was running into
7 the Gold Group at that particular time, and, as I say,
8 that's why I was late into the Gold Group. But the
9 circumstances of it were such that I -- the notation
10 within the minutes for the 11.30 Gold Group about the
11 Federation rep providing advice was given to me
12 five minutes before I actually went into the Gold Group
13 by Amanda, that that was the position at that particular
14 time.
- 15 Q. Right.
- 16 A. I do however -- with the disclosure it is detailed
17 within Nicky Shepherd's daybook that I've provided that
18 update around the fact that the status of them was that
19 they were witnesses and that statements were going to be
20 provided but the Federation had advised until legal
21 advice is sought not to provide statements.
- 22 Q. Right. It's five to 3, we will be shortly inviting the
23 Chair to have a short break for the benefit of the

1 transcriber. I will see if we can get a copy of that
2 daybook, but I do not have it at the moment.

3 A. Yeah.

4 Q. But in the next five minutes I would like to look at
5 your daybook --

6 A. Yes.

7 Q. -- and maybe see if there is anything that we can gather
8 from this.

9 Now, we've looked at page 5 previously. Your
10 daybook is at 18269, and page 5. At the top of page 5
11 on the right-hand side we can see the reference to the
12 Gold Group is that 11.40? The minutes say 11.30 but
13 roughly that's the time, is it?

14 A. I think that's the time I came into it.

15 Q. Right.

16 A. I think that's why I was late into the Gold Group.

17 Q. And it says next to that, "Chair ACC", and we know the
18 chair was ACC Nicholson?

19 A. Yeah.

20 Q. So just immediately above the reference to the
21 Gold Group meeting, you've got things written there; is
22 there anything written there that helps you or refers to
23 this discussion with Amanda Givan at all?

1 A. No. Because it was simply a very quick five-minute
2 discussion. I didn't actually expect to meet Amanda in
3 there at that time. However, I had met -- Amanda had
4 come into a room I was sharing with Colin Robson round
5 about 10.05 that morning to introduce herself to me,
6 that she was there obviously to provide support to the
7 officers and she gave me her business card as such and
8 at that time I said I'd catch up with her through the
9 course of the morning and such.

10 Q. So you were sharing a room with Colin Robson?

11 A. So, on arrival at 9.15 I initially went to speak to
12 Garry McEwan and then, after speaking to Garry McEwan,
13 Colin took me to a room within the CID area where
14 basically at that time, as I said yesterday, within the
15 details on my daybook round about the call cards, we sat
16 and went through the call cards and the priority actions
17 at that time. And, whilst doing that, Amanda Givan came
18 into the room at that time and introduced herself and
19 left a calling card as such around -- left a business
20 card saying that she was there, and I said I'd catch up
21 with her later on through the course of the morning.

22 Q. We've heard evidence that DS Dursley shared a room with
23 Colin Robson, and Colin Robson gave evidence to that

1 effect, that he'd moved in and out. So were you sharing
2 a room with Robson or --

3 A. No, I don't know whose room it was, I've been in
4 Kirkcaldy three times, and it was just a room I was
5 using with --

6 Q. Was DS Dursley there?

7 A. No. No, I think I only spoke to DS Dursley once during
8 the course of the day and that was the death message.
9 But it was a room I was utilising as an SIO,
10 Colin Robson came in, Stuart Houston was in and out as
11 well, but I don't know whose room it was to be honest.

12 Q. So the room you were using, was Robson coming in and out
13 of that --

14 A. Yes.

15 Q. -- rather than sitting with you?

16 A. Yes, he wasn't working out of it.

17 Q. Right, thank you.

18 Just going back briefly to the -- well, actually,
19 it's --

20 LORD BRACADALE: Stop there then. 15 minutes.

21 (3.00 pm)

22 (A short break)

23 (3.24 pm)

1 LORD BRACADALE: Ms Grahame.

2 MS GRAHAME: Thank you very much.

3 So just prior to the break we were talking about
4 this meeting with Amanda Givan just prior to the first
5 Gold Group meeting.

6 A. Yes.

7 Q. Which caused you to be slightly late and arrive at
8 11.30. How long did that discussion with
9 Amanda Givan --

10 A. Minutes.

11 Q. Minutes?

12 And you've said that Conrad Trickett was present?

13 A. Yes.

14 Q. And it was, you said inside and outside the canteen; it
15 was somewhere near the canteen?

16 A. I'm sure it was -- I think it was just inside or just
17 outside I'm unsure. But I know I spoke to both of them,
18 both of them were present when I was speaking.

19 Q. Anyone else present?

20 A. No.

21 Q. You also mentioned before the break that you had at some
22 point talked to the police officers, was that during
23 that --

1 A. Yeah.

2 Q. -- short period or was that later?

3 A. No, that was directly after speaking to Amanda Givan.

4 Q. And how long did you spend with the police officers?

5 A. No more than five minutes.

6 Q. Could you be mistaken about the time that this took
7 place?

8 A. I have thought about this thing really for a number of
9 years now and genuinely I'm pretty confident that it was
10 in the morning. There's a couple of reasons behind
11 that, it is that on taking the investigation on as SIO,
12 I would not have waited four or five hours before
13 I spoke to the officers concerned around this, and also
14 I wanted to be in a position at the Gold Group to
15 provide an update around status of officers or if there
16 was any issues that had been identified at that
17 particular stage. And there was an issue that had been
18 identified, the fact that the guidance or the direction
19 from the Federation rep, Amanda Givan, was that officers
20 should not submit operational statements until they have
21 legal advice.

22 So from my recollection of events, Conrad was there
23 at that time as well, and Conrad introduced me to the

1 officers and I gave a very, very quick briefing to them
2 around the fact that Mr Bayoh had sadly passed away and
3 it was now -- on the instruction of Crown Office, it was
4 a PIRC-led investigation supported by Police Scotland,
5 and thereafter very, very points round about their
6 welfare, round about the fact they shouldn't discuss the
7 incident together, and the fact that we would be
8 requesting operational statements prior to the
9 conclusion of their duty, and it was as simple as that.

10 There was no questions from any of the officers
11 involved in it. Amanda was present, Conrad was present,
12 and I thereafter left at that stage and went to the
13 Gold Group and updated the Gold Group round about the
14 fact that there was likely to be an issue round about
15 the submission of statements from the officers involved
16 in the incident.

17 Q. We'll come on to this in a moment, but you'll be aware
18 that Conrad Trickett does talk about having a discussion
19 with you and you speaking to the officers --

20 A. Yeah.

21 Q. -- but he doesn't say that was at 11.30 but at a later
22 time, at 13.40, 13.41. So in relation to that, despite
23 knowing that, do you still feel confident about your

1 assessment of the time?

2 A. Yeah, so again just to provide my position on that, it
3 is that at 13.35 we have the PIRC arriving at Kirkcaldy
4 office, the priority for me at that time was to brief
5 Keith Harrower and the team immediately on their
6 arrival. I met Keith round about that time and we went
7 into a discussion in the conference room upstairs, and
8 at that time we were waiting the arrival of various
9 other PIRC resources as well as some of my team to
10 attend within the conference room.

11 Now, this was between 13.45 hours and 14.00 hours
12 whilst we were waiting the arrival of the other members
13 of both Police Scotland and PIRC, and the intention was
14 to provide an overview to PIRC prior to the second
15 Gold Group.

16 Now, I think when I've looked at some of the Inquiry
17 statements, Colin Robson details this as 14.05 hours, he
18 thinks it's a Gold Group but it's not a Gold Group, it's
19 an investigative briefing to PIRC on their arrival, at
20 that particular time. And, as I say, that is my
21 recollection of it.

22 The fact is that it actually runs into the
23 Gold Group because Ruairaidh Nicholson, the ACC, actually

1 comes in whilst we're actually speaking, because the
2 room we were utilising was the room that the Gold Group
3 was actually held in. So the ACC came into the briefing
4 with PIRC and sat down and we began just explaining one
5 or two things to him at that time prior to the
6 Gold Group, which I believe is minuted as starting at
7 14.40 hours.

8 Q. Yes, we've heard evidence that the second Gold Group
9 meeting started at 14.40.

10 A. Yeah. So my understanding at 13.35 hours and the
11 arrival of PIRC, my priority at that time wasn't
12 speaking to Conrad Trickett and wasn't speaking to the
13 officers, it was about speaking to Keith Harrower as the
14 lead for the investigation and doing a more thorough
15 investigative briefing to him round about where we were,
16 where the priorities were, before we went into the
17 Gold Group.

18 And the only other thing, I think when you look at
19 Amanda Givan's evidence as well, she believes that the
20 briefing to the officers was in the morning as well, and
21 even -- I've thought about this continually around the
22 fact that even for an introduction to the PIM, I mean,
23 for an SIO or an IIO to basically wait for the best part

1 of five hours before there's any introduction just
2 doesn't seem to be ... and again, I've looked at, as --
3 are those -- am I getting my timings wrong or~...?

4 And I appreciate Conrad's policy log and his PIM log
5 details it as 13.40 and 13.41 but I don't think it was
6 at that particular stage because I was with the PIRC at
7 that particular time because of their arrival which we
8 were waiting on for a considerable period of time, there
9 was an urgency around their arrival there and basically
10 briefing them as soon as possible round about the
11 deployment, the joint deployment, and some of the
12 locations we had identified which we'd spoke about, so
13 again that was my priority at that particular time.

14 Q. Well, I think before the break I asked you if there was
15 anything in your daybook saying you'd had that
16 discussion with Amanda Givan, or the post-incident
17 manager, and you couldn't find anything at all.

18 A. No.

19 Q. You've obviously given this a lot of thought in advance.

20 A. Yeah.

21 Q. Is there anything in your policy file that you think
22 would assist us with this?

23 A. No, I don't think there is.

1 Q. No. So it's not noted in any of your --

2 A. No.

3 Q. -- documents we've looked at?

4 A. Yeah.

5 Q. Before the break you mentioned you thought it was in
6 Nicola Shepherd's daybook or there was something in her
7 daybook.

8 A. Yeah, and I think that's in relation to the request for
9 operational statements runs from the initial Gold Group
10 at 11.30 to the one at 19.50 where there is still that
11 significant direction around the status of officers as
12 witnesses and the submission of operational statements.

13 Q. Right. Well, we've obtained a copy of --

14 A. Yeah.

15 Q. -- Nicola Shepherd's daybook, and we would like you to
16 look at that and tell us what assistance the Chair may
17 be able to glean from this. So this is PS09164, and we
18 understand this is Nicola Shepherd's daybook, and
19 I don't know if you have been given a hard copy --

20 A. No, I've not.

21 Q. -- we can certainly ... it may be easier for you
22 actually to have a hard copy, because you'll know what
23 you're looking for.

1 A. Yeah.

2 Q. Now, on the first page there is reference at the bottom
3 for the 11.40 Gold Group meeting. So it says:

4 "1140 -- Gold meeting -- death of unidentified
5 male."

6 Do you see that?

7 A. Yeah.

8 Q. And immediately above that, it doesn't appear to have
9 any entries regarding a discussion.

10 A. No, I think -- I don't know if I can maybe direct you to
11 it. I think what I'm trying to say is that I only had
12 one meeting with Amanda around operational statements,
13 and that came prior to me briefing the officers within
14 the canteen. I thereafter went directly from the
15 briefing of the officers and the engagement with
16 Amanda Givan into the first Gold Group.

17 So the notation on Nicola Shepherd's daybook whereby
18 it states, "Police officers, co-ordinator, Federation
19 have advised there is no obligation to provide
20 statements", that's the 11.30 Gold Group.

21 Q. Right, and can you -- is that on the second page --

22 A. Yeah.

23 Q. -- that you're looking at?

1 A. I think it's the third page actually -- ah, stop, stop,
2 just there, "Police officers".

3 Q. All right. Top of the third page, and it starts:

4 "Police officers -- co-ordinator. Federation have
5 advised them there is no obligation to provide
6 statements."

7 A. Yeah.

8 Q. Is this part of her -- we've not heard evidence from
9 Nicola Shepherd yet --

10 A. Yeah, so --

11 Q. -- but does this appear to be part of the notes --

12 A. For the 11.30 Gold Group.

13 Q. -- for the Gold Group meeting?

14 A. Yeah. Well, she's put it down as 11.40 Gold Group on
15 page 1.

16 Q. Sorry, could you repeat that?

17 A. She's put it down as 11.40 Gold Group on page 1.

18 Q. Yes, on page 1, yes, we've said that.

19 A. I think -- sorry, I think what I'm trying to say is that
20 the choreography and the sequence of events leads me to
21 the Gold Group to explain only due to the fact that
22 Amanda Givan has given me that advice and that direction
23 and I was only in the canteen on one occasion and that

1 was when I spoke to Amanda Givan and also the officers
2 at that time in the morning.

3 Q. So you talked before the break about having a -- did you
4 have a meeting with Amanda Givan --

5 A. No.

6 Q. -- or was that the only meeting with Amanda Givan?

7 A. I think I met her in the corridor later in the afternoon
8 or something like that, but certainly that was the only
9 time that -- that was the first time she explained to me
10 that -- basically the advice that she was giving
11 officers was that there was no -- that she advised them
12 to obtain legal advice prior to providing statements.

13 Q. So you met her once and had this discussion?

14 A. Yes.

15 Q. It was in the morning, and it -- as I understand your
16 evidence, it must have been before the 11.40 Gold Group
17 meeting?

18 A. Yes.

19 Q. Or the entry on page 3 of Nicola Shepherd's daybook,
20 which notes things that were discussed --

21 A. Yeah.

22 Q. -- at that first Gold Group meeting could not have
23 contained the information:

1 "The Federation have advised them there is no
2 obligation to provide statements."
3 A. And also in the minutes of the 11.40 Gold Group
4 I provide an update very, very similar to that.
5 Q. Let's just briefly go back to those minutes, then, and
6 also see ... and I think we were looking at this as one
7 of the bullet points in item 3.
8 A. Yeah, yeah.
9 Q. So if we could go back to PS04691, page 2, item 3, and
10 we had looked before the break at the bullet point,
11 "Police officer statements"?
12 A. Yes.
13 Q. Towards the end:
14 "Federation reps providing advice to officers
15 concerned regarding this matter."
16 Although we've not heard from Nicola Shepherd, your
17 view is that the comment that she's handwritten in her
18 daybook tallies with --
19 A. Corroborates what I've said.
20 Q. -- the minutes that we see here, that the Federation
21 reps are providing advice. And that was in that first
22 Gold Group meeting and discussed at that meeting --
23 A. Yes.

1 Q. -- because you'd had this discussion with Amanda Givan?
2 A. Correct.
3 Q. Now, in the break we checked Amanda Givan's Inquiry
4 statement, and this is SBPI 00072. Now, it may not be
5 on the -- we might not be able to put that on the
6 screen.
7 A. Yeah.
8 Q. But my understanding is that she makes no mention of
9 a discussion just shortly prior to --
10 A. Yeah.
11 Q. -- 11.30, prior to the Gold Group meeting in or outside
12 the canteen. But she does talk about coming up to
13 a room where --
14 A. Yeah.
15 Q. -- she met with you, so nowhere near the -- I don't know
16 geographically but not in the canteen or outside the
17 canteen, but in a room, to come up and speak to you, and
18 I think it was DI Robson?
19 A. Yeah, and that's what I explained before the break, that
20 myself and Colin had been through the call cards within
21 that room, and we had the discussion whose room was it
22 and I said at that time Amanda Givan comes in,
23 introduces herself and gives me her business card, and

1 that was round about 10.15/10.30.

2 Q. So was that the first time you had met Amanda Givan that
3 day?

4 A. Yes.

5 Q. And the second time was --

6 A. Was down in the canteen round about 11.30.

7 Q. And then you mentioned a moment ago that you maybe saw
8 her somewhere in the afternoon, in the corridor?

9 A. Yes, yes.

10 Q. So three occasions where your paths crossed. Do you
11 remember that first meeting with Amanda Givan?

12 A. Yeah.

13 Q. Tell us about that?

14 A. The one in the room?

15 Q. In the room.

16 A. So that -- Amanda came in, we were in the room -- myself
17 and Colin were sitting going through the call cards,
18 I was identifying the priorities, so as we've already
19 seen in the daybook round about what's the priorities,
20 the call cards which we discussed yesterday, the three
21 locations, Arran Crescent and so on and so forth.

22 So Amanda comes in at that particular time and
23 introduces herself and she basically says that she's

1 there to support the officers, that she's been called
2 out and she's a Federation rep, she gives me her
3 business card and at that time I basically -- well, it's
4 really, really busy at that particular stage and I said
5 to her I'd catch up with her later in the morning around
6 it.

7 So again, with that it was my intention to speak to
8 the officers prior to going into the Gold Group, the
9 first initial Gold Group, around that, and that's the
10 occasion I spoke to Amanda within -- within the canteen
11 area. And again, there is -- when you look at Conrad's,
12 I think Conrad details also in one of his statements the
13 fact is he was there when Amanda had mentioned to me
14 about the operational statements not being -- her advice
15 was not to provide -- the officers not to provide
16 operational statements at that time. But Conrad
17 indicates at about 13.40 that occurred, rather than my
18 suggestion it's at 11.35 or thereabouts. But, as I say,
19 I wouldn't have had that information prior to going into
20 the first Gold Group unless I had that engagement with
21 Amanda Givan.

22 Q. And you've said a couple of times that her advice to the
23 officers was not to provide operational statements prior

1 to getting legal advice?

2 A. Yes.

3 Q. Now, we've heard evidence from Amanda Givan and when we
4 discussed this with her, she indicated that it was the
5 officers should check what their status was, that if
6 they were suspects they shouldn't be getting --

7 A. Yeah.

8 Q. -- giving statements subject to obtaining legal advice,
9 and that effectively she hadn't got to the stage of, "If
10 you're only witnesses", but her focus was very much on
11 the situation where they may be suspects, and she talked
12 about being aware of a couple of memos that had been
13 released relatively recently to May 2015, where officers
14 whose status was a suspect shouldn't be asked for
15 statements.

16 A. Yeah.

17 Q. So bearing that in mind, I think Amanda Givan's position
18 in evidence, as I understand it, was not that she was
19 advising officers not to give statements or operational
20 statements prior to legal advice but she was actually
21 talking to them about checking their status.

22 A. Yeah, I mean, I spoke to them around the status and
23 I mentioned to Amanda round about the status, it was

1 very clear from what we had at that particular time they
2 were witnesses, they would not have been involved in the
3 PIP process if they were anything other than witnesses.
4 There was no reasonable cause to suspect that they were
5 involved in anything criminal or anything misconduct at
6 that time, so at that time in the morning when I'm
7 briefing them, their status is very clear and Conrad's
8 very clear round about their status as well, invoking
9 them within the PIP process.

10 And Amanda was aware of that as well, the fact that
11 there wasn't -- their status didn't change across the
12 whole period of 3 May, they were always witnesses, it
13 was all documented within the Gold Group at 11.30, at
14 14.40, at 19.50, it's still that drive and demand round
15 about confirmation of status, operational statements
16 still required, so at 8 o'clock at night -- and again,
17 it's detailed in Nicky Shepherd's daybook that we're
18 still discussing the fact that we require operational
19 statements.

20 So, as I say, that continued through the course of
21 the day, their status was that of witnesses, and I was
22 still looking for operational statements in that
23 respect.

1 Q. Did you have concerns, when you spoke to Amanda Givan at
2 the canteen, about the advice that she said she was
3 giving to the officers?

4 A. So, I don't think Amanda gave legal advice, I think
5 Amanda's advice was simply to seek legal advice before
6 you provide any statements. So I don't think she gave
7 legal advice. I think she gave that direction to the
8 officers concerned. I don't think she gave -- actually
9 gave legal advice as in the whole aspect of~...

10 Q. But did you have concerns that she was advising officers
11 not to provide operational statements prior to seeking
12 legal advice? That's what I have you noted as saying.

13 A. Sorry, when did I say that?

14 Q. Before the break, I wrote it down. I can check the
15 transcript if you want to see exactly what you said.

16 A. Yeah, so they've every right to seek legal advice before
17 giving a statement under PIP. So no, I don't think
18 I would have said that. My concern was the fact that
19 this seemed to be a hold on their -- the direction
20 the Federation were giving at that time was to await
21 legal advice prior to submitting -- or submitting
22 an operational statement. The aspect of status was very
23 clear from myself, from Keith Harrower and the

1 discussions we had through the course of that morning
2 and through the Gold Groups, from the chair through all
3 membership, that at that stage there was nothing other
4 than they were -- their status was that of witnesses.

5 Q. If we've heard from Amanda Givan that there was
6 uncertainty, confusion, about status, you would disagree
7 with that then?

8 A. So I think there was confusion with the officers in
9 general. They were confused. I think -- I mean, even
10 the discussion I had with them very, very briefly,
11 I don't think very many of them can actually recall it,
12 as far as I recall. They were traumatised. There was
13 so much information getting put to them at that
14 particular time, they were getting involved in a whole
15 new process under post-incident procedure, which they
16 had no training in and no awareness in, and in the back
17 of their minds they had obviously just come through such
18 a traumatic incident that resulted in the death of
19 an individual.

20 So again, there was general confusion with the
21 officers concerned, and that was clear when I was
22 speaking to them, you know what I mean, there was no
23 acknowledgement, there was no questions, it was just

1 basically, I was just giving them information and
2 whether or not they were taking that in, again it's
3 debatable.

4 Q. We've talked about Conrad Trickett, you've clearly
5 listened to his evidence?

6 A. Yes, I have.

7 Q. But just for completeness can I ask you to look at the
8 PIM log --

9 A. Yes.

10 Q. -- which is PS00387. If we could look at page 13,
11 please. And if we look towards the bottom of that page,
12 there's an entry 13.40 and I spoke to Conrad Trickett
13 about this in evidence, and then on the next page, at
14 page 14, you will see an entry 13.41, and we'll go over
15 the detail of this in a moment, but as I understand his
16 evidence he was saying this was his PIM log that he
17 noted at the table as you were sitting talking to the
18 officers. So it was a contemporaneous account.

19 A. Yeah.

20 Q. I think with the 13.40 entry on the previous page, he
21 explained it hadn't lasted a minute but it had been
22 about five minutes and it had been prior to you actually
23 talking to the officers in the canteen, and that had

1 been prepared, if you like, retrospectively.

2 A. Yeah.

3 Q. So at 13.40 his notes in the PIM log are:

4 "Initial discussion with SIO -

5 Superintendent Pat Campbell~..."

6 As I understand his evidence he said that was the

7 first time you'd spoken to him.

8 "... PIRC enquiry.

9 "Take external clothing."

10 Then the entry on the last line:

11 "No need to take statements~..."

12 You see that?

13 A. Yeah.

14 Q. Then on the next page, which follows on, so:

15 "No need to take statements at this time."

16 His evidence was that:

17 "It was clear to me that he didn't want any accounts

18 to be provided by the officers at that time and that is

19 obviously what I've noted within the log".

20 And I asked him about that again, and he reinforced

21 that "no operational statements at this time".

22 So we then also heard evidence from him about the

23 post-incident procedure SOP, and the four stages.

1 A. Yeah.

2 Q. That 2 is basic facts.

3 A. Facts.

4 Q. Stage 3 is initial personal accounts.

5 A. Yeah.

6 Q. And stage 4 is more detailed accounts. And he explained

7 that, in terms of PIP procedure, that the word

8 "statements" isn't actually referred to, that it's

9 "initial personal accounts"; they would be up to or less

10 than a page of A4; they're reasonably brief, briefer

11 than the normal operational statements; and that is

12 a stage 3 that can be done before officers leave their

13 duty that day.

14 He explained that stage 4 was a more detailed

15 account.

16 A. Yeah.

17 Q. And that that would not be required that day under PIP,

18 it would be required 48 hours --

19 A. Yeah.

20 Q. -- or two sleep -- two periods of rest --

21 A. Yeah.

22 Q. -- up to seven days, and that was the language he was

23 speaking, and then he talked about you speaking

1 a different language from him, that you were talking
2 about statements, which is the normal --

3 A. Yeah.

4 Q. -- language that officers would ...

5 A. (Witness nods).

6 Q. So here he's noted -- and again if we can just move back
7 to page 13 -- the "No need to take statements at this
8 time", he understood that you were not looking for
9 statements at that time --

10 A. Yeah.

11 Q. -- and he didn't seek either initial or personal
12 accounts or more detailed statements, and he wouldn't
13 have expected to be seeking detailed statements that
14 day.

15 A. Anyway, yeah.

16 Q. So that's a summary of his evidence, as I understand it.

17 A. Yeah. No, I mean it does conflict with my way of -- me
18 saying what actually I believe happened around it,
19 unfortunately.

20 So, 27 years of being in the police, this is the
21 first time that a police officer has refused to provide
22 an operational statement to me, up until 2015 and from
23 2015 onwards, the only occasion.

1 The normal activity or course of events for any SIO
2 is that you look for operational statements prior to the
3 officers going off duty. Now, from Conrad's -- my
4 discussion with Conrad, the whole aspect of personal
5 initial accounts, I think he reduced that down almost to
6 "operational statements" as well or "initial
7 statements", other than utilising the phrase "personal
8 initial accounts".

9 However, the drive that day, which is documented in
10 all the Gold Groups, was the requirement for operational
11 statements. That didn't -- we did not stop that. There
12 was still a requirement for operational
13 statements/personal initial accounts. So that never
14 stopped. I mean, there was still that drive to
15 basically obtain some sort of direction from the
16 officers round about the use of force, who did what, who
17 utilised PAVA, CS, who was involved in baton strikes,
18 who was involved in the restraint.

19 So, again, that just doesn't sit well with me, the
20 fact that I have stated that 13.40 -- now, 13.40 is
21 before the PIRC have actually arrived and been briefed
22 by me. I just wouldn't have that -- I mean, that
23 decision is not my decision to make round about no

1 operational statements. That decision would rest with
2 Keith Harrower to bascially make that decision, as SIO
3 for the investigation at that particular time.

4 So again --

5 Q. At 13.40?

6 A. 13.40. So Keith has only arrived at that particular
7 time and I thereafter get into a briefing at(?) him. At
8 the 14.40 group we're still talking about their status
9 and operational statements, directly after this.

10 Q. Do you think the question of status had not been
11 resolved by PIRC until after they arrived at Kirkcaldy?

12 A. No, no. No, the question of status was very clear from
13 my discussion with Keith Harrower at 10.20 and
14 thereafter through the course of the morning. There was
15 nothing to indicate any criminality or misconduct on the
16 part of the officers at that time, there was no
17 reasonable cause to suspect, so myself and Keith were
18 very clear around that at that point.

19 So, as I say, the aspect of the 13.40, the quite
20 detailed, on a number of occasions, "no need to take
21 statements, no need for operational statements".
22 Ultimately I was not the SIO at 13.40 and I wouldn't be
23 able to give that direction. That would have to come

1 from Keith Harrower and from PIRC.

2 I don't know if I'm explaining this very well.

3 Q. Do you feel that by 13.40 you were no longer the SIO?

4 A. At 13.40 I'm meeting with Keith Harrower.

5 Keith Harrower's just arrived at 13.35, and I'm going to
6 a briefing with Keith and with PIRC and with my own
7 team, which is detailed -- I think Colin Robson says
8 it's at 1400 hours, we get into the briefing before the
9 Gold Group, which is an investigative handover
10 briefing -- not handover, but an investigative briefing
11 around it.

12 So, again, that matter round about "no need to take
13 statements, no request for operational statements",
14 I cannot recall, and as an SIO I would -- it's something
15 I wouldn't actually say, because it was paramount that
16 we had -- and I think I've said it in my statement: the
17 critical aspect of what we were missing through the
18 investigation was who done what during the restraint on
19 Hayfield Road; the timeline, sequence of events from
20 Arran Crescent, from the previous night, to
21 Martyn Dick's house, all the way through to the members
22 of the public in the cars seeing Mr Bayoh with a knife;
23 and thereafter the restraint. It became very clear as

1 we move through that day round about what had occurred,
2 obviously keeping an open mind to the hypotheses that
3 we've already discussed. But the critical aspect, as
4 an SIO, out of an IIO, what I was missing was what
5 actually occurred during the restraint, the use of force
6 and who did what.

7 So, to say that there is no need for statements is
8 totally against everything that I'm trying to drive
9 round about: this is a gap, this is an investigative gap
10 that exists, as an SIO, which -- as I say, this was the
11 first time that I'd ever come across police officers
12 involved in an incident, when you ask them for
13 operational statements it's refused.

14 Q. I'm going to come on to your own Inquiry statement,
15 because there's a couple of paragraphs that are quite
16 helpful, I think, in exploring this. But before we
17 leave the PIM log, if I may, can I just go through the
18 entries? When it says "take external clothing", do you
19 agree that that was something --

20 A. Yes.

21 Q. -- that was part of the discussion?

22 A. Yes.

23 Q. So that part is correct?

1 A. Mm.

2 Q. And it was a PIRC enquiry?

3 A. Yes.

4 Q. And that's correct.

5 Can we move on to page 14, please. So this is
6 13.41, and we heard evidence from Conrad Trickett that
7 this is the part where you go into the canteen and speak
8 to the officers, and he says:

9 "Detective Superintendent Pat Campbell speaks to
10 officers.

11 "Provides initial circumstances of enquiry to date."

12 Do you remember if that is indeed what you did?

13 A. It did, yes, it was a general overview, yeah.

14 Q. Then it says:

15 "No suspicion on part of any officer."

16 Do you remember telling the officers --

17 A. No, I think it was more about their status I detailed at
18 this -- I said to them that the information and the
19 evidence we have at this point that your status is that
20 of witnesses.

21 Q. And while they were witnesses, was that because there
22 was no suspicion on the part of any of the officers?

23 A. Yeah, there was no reasonable cause to suspect, with any

1 of the evidence that we had obtained at that time, that
2 suspicion fell on them in respect of criminal conduct or
3 even misconduct at that stage.

4 Q. So could you have conveyed to the officers that there
5 was no suspicion on any --

6 A. Yeah, it could have been taken like that, yeah.

7 Q. Then you say, sorry, in the PIM log it says:

8 "No injuries (visual) on deceased."

9 Does that say "occurred at the hospital"? Sorry.

10 "Examined".

11 A. Examined.

12 Q. Thank you very much.

13 A. Yeah.

14 Q. My ability to read handwriting isn't the best. So:

15 "No injuries ... on deceased.

16 "Examined at hospital."

17 Do you remember if that was information that you
18 shared with the officers?

19 A. I can't recall saying that, but I may have said that
20 just through the -- I didn't have anything written down,
21 it was just a ...

22 Q. So you don't have --

23 A. Just a --

1 Q. -- any notes --

2 A. No.

3 Q. -- prepared --

4 A. No.

5 Q. -- as part of the discussion?

6 A. No.

7 Q. And then it says:

8 "5 loci of deceased movements during night."

9 A. Yeah.

10 Q. Do you recall whether that was part of your discussion
11 with the officers?

12 A. Yeah, yeah, I basically explained that we had timelined
13 the movements of the deceased through the night and
14 there was a number of locations which were now being
15 examined.

16 Q. And we've looked at your daybook and we've looked at the
17 other things that show the five loci --

18 A. Yeah.

19 Q. -- the forensic strategy meeting.

20 Then there's a line saying.

21 "Clothing in bags."

22 Now, from my recollection of Conrad Trickett's
23 evidence, he wasn't exactly sure in his recollection

1 about what that went, but do you remember talking to the
2 officers --

3 A. Yeah.

4 Q. -- about their clothing?

5 A. Yeah, it was about the fact we were looking to seize
6 their clothing and their officer safety equipment.

7 Q. And if that clothing had been received and recovered,
8 would that have been placed in bags?

9 A. That was part of the forensic strategy which thereafter
10 happened later on when we brought them out individually
11 into the room and forensically recovered their clothing
12 and property.

13 Q. So, do you remember talking to the officers and
14 preparing them --

15 A. Yeah.

16 Q. -- for that possibility?

17 Then it says:

18 "No operational statements at this time."

19 A. Yeah, and the only thing I can think of in respect to
20 that is that: has Conrad simply meant at this time, as
21 in just now, whilst I'm speaking to them about actually
22 detailing their operational statement there and then?

23 Q. Because we see that phrase "at this time".

1 A. Yeah.

2 Q. Not only on page 14 in that section but also it's the
3 first line, "at this time".

4 A. Yeah.

5 Q. Which relates to the conversation prior to this.

6 A. Yeah.

7 Q. Do you remember if you could have said or did say "No
8 operational statements at this time"?

9 A. No, I can't recall saying that, because I did emphasise
10 the fact we would be looking for statements from them
11 prior to them going off duty.

12 Q. So you did make a request --

13 A. Yeah, yeah.

14 Q. -- at the canteen that day?

15 A. Absolutely, yeah.

16 Q. And after that, then I think there's an entry:
17 "DCI Stuart Houston."
18 Do you remember discussing Stuart Houston with the
19 officers in the canteen?

20 A. No, I don't know if that's maybe Conrad detailing
21 Stuart Houston would be involved in the forensic
22 recovery of their clothing as crime scene co-ordinator.

23 Q. Now, we heard evidence from Conrad Trickett and we've

1 heard evidence from you yesterday that you're -- and you
2 were on that day extremely busy, and you had a lot of
3 things happening in a short period of time --

4 A. Yes.

5 Q. -- if I can summarise it that way. He did in evidence
6 talk about you having other pressures of time and he
7 thought you were going to meet with PIRC who were due to
8 attend at Kirkcaldy. Is it possible, because you were
9 busy that day, that perhaps you did say "No operational
10 statements at this time" and you've simply forgotten
11 that you said that, or ...?

12 A. I just -- it's something I would -- would not say. As
13 an SIO, as identifying the gap in the investigation that
14 I was still overseeing was the fact that we had no
15 indication of what the officers involved in the
16 altercation at Hayfield Road did.

17 So, again, that discussion thereafter progresses
18 into the Gold Groups, it progresses into -- I think,
19 Keith Harrower indicates I speak to him about 3.30 about
20 the fact that officers are still not willing to provide
21 operational statements.

22 So it just doesn't sit -- it doesn't sit right with
23 me, to be honest with you. It's something that I would

1 not and I have never done through my full service when
2 we're looking for statements. I mean, that's your bread
3 and butter, I mean, that's exactly what you're looking
4 for.

5 LORD BRACADALE: Just on that point, can I ask you this: you
6 said a little ago that for the first time in 27 years
7 officers had refused to provide statements; at what
8 point in the day did you understand that the officers
9 were refusing to provide statements?

10 A. So I think as the day progressed, sir, that the initial
11 notification I believe was from Amanda Givan that the
12 direction that she was giving was until legal advice is
13 sought not to provide it.

14 LORD BRACADALE: That's not a refusal in itself.

15 A. No, no. No, no. But through the course of that
16 afternoon, as I say, it became clear that the officers'
17 position was consistent with that advice from Amanda,
18 that they would not be providing operational statements.

19 LORD BRACADALE: And how did that become clear?

20 A. It came clear through discussions at the Gold Group
21 meeting, it came from some of the stuff that --
22 Nicky Shepherd spoke to them as well, and also that --
23 some of the information that I was getting from kind of

1 third parties back, saying that they would not be
2 willing to provide statements at this particular time.

3 LORD BRACADALE: I'm sorry, when you say "from kind of
4 third parties", you mean --

5 A. Yeah, so basically I was getting information coming from
6 the canteen, via Colin Robson and one or two others,
7 that their position was that they would not be providing
8 statements at that particular day.

9 LORD BRACADALE: Thank you.

10 MS GRAHAME: Just to be clear on that, in terms of providing
11 statements, was it your understanding that what was
12 being discussed was the equivalent of initial personal
13 accounts?

14 A. Yes.

15 Q. In terms of the PIP procedure?

16 A. Yes.

17 Q. Rather than any other type of --

18 A. Yes.

19 Q. -- statement, operational or witness or otherwise?

20 A. Yeah, yeah.

21 Q. And was it your understanding that statements of that
22 more detailed nature would not --

23 A. No.

1 Q. -- have been provided --

2 A. No.

3 Q. -- by the officers on that day?

4 A. No.

5 Q. And you weren't expecting those more detailed statements
6 then, were you?

7 A. No, no, it was just that initial account or that initial
8 statement round about what occurred in that focused
9 aspect of Hayfield Road, what basically happened there.
10 I think it'd detail it in the SOP as this honestly held
11 belief around it. But, again, it was just about who was
12 there, who done what, what force was used, and justify
13 exactly what actually happened at that particular time.

14 Q. So when that language is used of "statements" or
15 "operational statements", looking back now, do you feel
16 there was any confusion in your mind between the nature
17 of initial personal accounts and what was described as
18 operational statements or statements?

19 A. Yeah, I mean, I think there was a bit of confusion
20 around the whole aspect of that. When I spoke to Conrad
21 round about operational statements, Conrad came back to
22 me with "operational statements" and not "personal
23 initial accounts", so I think both of us knew what we

1 wanted -- I mean, what I was saying I was looking for,
2 the information regarding the restraint and the incident
3 at Hayfield Road, and I think from Conrad's evidence,
4 I think he even actually speaks to the officers as being
5 initial statements and not personal initial accounts,
6 because that wasn't actually -- I mean, the whole PIP
7 process was so new at that particular stage to
8 Police Scotland, I think this was the first time we'd
9 ever actually utilised it for a non-firearm related
10 discharge as such. So, again, there were real
11 challenges round about the understanding and the
12 expectation of what we were looking for. But, as I say,
13 it was clear in my mind what the gap in my investigation
14 was round about initial statements or personal initial
15 accounts was where the gap basically lay.

16 Q. We'll come to that in a moment.

17 A. Yeah.

18 Q. As I understood your statement, you hadn't actually had
19 training in PIP --

20 A. No.

21 Q. -- at that stage --

22 A. No.

23 Q. -- on 3 May?

1 So you weren't trained in post-incident
2 procedures --

3 A. No.

4 Q. -- and the stages --

5 A. Yeah.

6 Q. -- that are set out within that SOP?

7 A. That's correct.

8 Q. Have you subsequently had that training?

9 A. I have, yeah.

10 Q. So does that mean that you're now, having had that
11 training, available to be appointed as a post-incident
12 manager?

13 A. No. So I'm trained due to the fact I'm a trained
14 strategic firearms commander. So as a firearms
15 commander, part of the inputs and the training you get
16 is around the process of PIP and the role of the PIM.
17 So I've not trained in PIP or as a PIM, but I've got
18 that awareness training because I'm a strategic firearms
19 commander.

20 Q. Right, so you have an awareness now of PIP --

21 A. Yeah.

22 Q. -- the post-incident procedure, that maybe wasn't
23 available to you in 2015?

1 A. Yes.

2 Q. And do you think that lack of training and awareness
3 maybe has caused further confusion in relation to the
4 procedures in your own mind in May 2015?

5 A. So there was -- there was a distinct lack of awareness
6 in 2015 across Police Scotland around what PIP involved
7 and the various stages of it. I was aware of the SOP.
8 I came across it, I think it was about a year before, in
9 respect of -- I think I was on a mailing list for one of
10 the agencies down south where the extension had been
11 utilised for non-firearm related discharge, and I was
12 just kind of nosying, I was looking at the intranet
13 round about what the standard operating procedure up
14 here did say. But, again, looking at -- I looked at the
15 stages, but I did not go into any detail with them. So
16 with limited knowledge I had at that particular stage,
17 and again the understanding I had was that there had to
18 be a balance between the investigation and the welfare
19 and wellbeing of the staff around that, but again I was
20 relying -- I think the majority of the Gold Group were
21 perhaps relying on Conrad with -- as being the trained
22 PIM to come in and provide us with that direction,
23 oversight, governance, staged approach to it and

1 basically how we could thereafter go through that.

2 Q. We heard that Conrad Trickett wasn't part of the
3 Gold Group meetings --

4 A. Yeah.

5 Q. -- and would have had, as I understood his evidence,
6 difficulty in educating everyone in relation to
7 post-incident procedures on the day in a real live
8 situation.

9 Looking back now, do you think having -- for
10 yourself and for others -- having more information and
11 education about PIP in those days might have been
12 beneficial?

13 A. Without a doubt. No, I mean, it's -- with hindsight,
14 I mean, Conrad should have been part of that Gold Group
15 with the crucial role that he was playing on that
16 particular day, to allow him to provide that more kind
17 of thorough overview of what his role involved as well
18 as enhance his engagement with PIRC, who were leading on
19 the investigation as such. So I think with hindsight it
20 would have been more beneficial at that time for
21 a trained specialist, who has went through the PIP
22 process and has experience, to brief less experienced
23 members of the team at that time.

1 Q. And we also heard that not just the individual officers
2 may have lacked training in relation to PIP, but
3 I wonder if you were aware to what extent the PIRC at
4 that time -- they later joined the Gold Group meetings,
5 not the first one but later -- to what extent were they
6 aware of post-incident procedures and this distinction
7 between stage 3 initial personal accounts and the more
8 detailed stage 4 accounts?

9 A. I think they were similar to ourselves, it was pretty
10 limited knowledge that they had, if any at all. There
11 hadn't been any awareness training across
12 Police Scotland other than if they were an A4 firearms
13 officer or they were a PIM or they were a strategic
14 firearms commander or a tactical firearms commander.

15 So, again, that wider awareness -- and again, when
16 you look at the officers involved in this, they had no
17 awareness at all around this whole PIP process and what
18 that entailed. So, again, it was education to not just
19 them but to the Gold Group as well round about some of
20 the intricacies of PIP and what it did involve.

21 So, again, at that time we had -- we had not
22 deployed -- I couldn't recall any other deployments of
23 PIM -- sorry, PIP within Police Scotland over the first

1 two years frae 2013. This was certainly the first
2 deployment of PIP for a non-firearm related discharge
3 which we did not even have the standard operating
4 procedure for. We had -- Conrad on that day had to
5 adapt the firearms SOP to basically incorporate his
6 approach to it as such.

7 So I think, in answer to your question, there was
8 distinct lack of awareness across both Police Scotland
9 and PIRC.

10 Q. Thank you.

11 You've mentioned a couple of times about you as SIO
12 identifying a gap in your knowledge.

13 A. Yeah.

14 Q. Just for completeness today, can we look at your Inquiry
15 statement?

16 A. Yeah.

17 Q. And paragraphs 95 and 97 are -- we won't get both of
18 them on the same page. If we start with 95, not quite
19 halfway down, but the sentence begins:

20 "The gap in my knowledge was that I was not aware of
21 exactly what had occurred with the key police witnesses
22 when they came into contact with Mr Bayoh on
23 Hayfield Road. In the absence of eyewitness testimony

1 at this stage, what were the actions and the use of
2 force of the individual officers involved while
3 retraining and arresting Mr Bayoh? That was the gap
4 that I had identified and I believe that it was
5 operationally critical to the investigation. This was
6 why I was keen to seek the submission of their personal
7 initial account and/or operational statements. This is
8 the aspect that crosses over with my role and that of
9 the PIM more than any other."

10 Looking at that paragraph, is there anything else
11 you want to add about the process of identifying that
12 gap in your knowledge?

13 A. No, that was a significant gap in the investigation.

14 Q. And how did you believe at that time, as SIO, that you
15 would be able to plug that gap?

16 A. Operational statements or personal initial accounts.

17 Q. And when you say "operational statements", we've heard
18 the personal initial accounts were less than an A4 --

19 A. Yeah.

20 Q. -- and just the sort of much less detailed --

21 A. Yeah.

22 Q. -- than a stage 4.

23 A. Yeah.

- 1 Q. Is that the type of thing you were looking for?
- 2 A. Yeah. I mean, we didn't have, with hindsight now, the
3 basic facts as part of the process. So there was no
4 basic facts, there was no personal initial accounts
5 submitted. So, again, we had officers involved in the
6 restraint of Mr Bayoh at that time but the gap was, as
7 I said there, what did they do, what activity did they
8 take, what was the force that was used? And again,
9 other than -- on that first day, you're talking -- as
10 you run through the investigation, you'll get CCTV,
11 you'll get eyewitnesses, you'll get stuff from
12 house-to-house or door-to-door, you'll get other
13 witnesses coming forward through media appeals. But to
14 get some sort of account of what the officers actually
15 did at that location, it was going to come from their
16 testimonies at that stage.
- 17 Q. How would that have helped you, as SIO, with the
18 investigation?
- 19 A. Because it would have filled that gap round about who
20 did what. What we had was a group of police officers
21 involved in some sort of restraint, but we did not know
22 which either or each of the officers actually did whilst
23 basically involved in the confrontation with Mr Bayoh.

1 Q. Then very briefly looking at a short paragraph,
2 paragraph 97, where you talk about the PIP process
3 sitting with Conrad:

4 "I explained in the briefing that there was
5 requirement for operational statements/personal initial
6 accounts (stage 3 of PIP). I told Conrad Trickett the
7 requirement and the need for them to account for their
8 actions and in particular their use of force. It sits
9 with Conrad however it's important for me in my
10 investigation. With PIP activated, it is the remit of
11 the PIM to obtain this, not the IIO."

12 A. Yeah.

13 Q. And we understand that as SIO you were also the IIO.

14 A. Yeah.

15 Q. And so was it your understanding that, as post-incident
16 manager, Conrad Trickett would facilitate obtaining
17 those personal initial accounts?

18 A. Yes.

19 Q. And if that was your expectation, when would you have
20 expected that to be made available to you?

21 A. So before the close of play, before they went off duty
22 that day.

23 MS GRAHAME: Now, I'm conscious of the time.

1 LORD BRACADALE: Yes, we will adjourn there, then, until
2 Tuesday at 10 o'clock.
3 (4.16 pm)
4 (The hearing adjourned until 10 am
5 on Tuesday, 14 March 2023)
6
7
8
9

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