

**Transcript for the Inquiry**

Tuesday 14 March 2023

(10.00 am)

(Proceedings delayed)

(10.05 am)

DETECTIVE CHIEF SUPERINTENDENT PATRICK CAMPBELL (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning, Mr Campbell.

THE WITNESS: Good morning, sir.

LORD BRACADALE: Ms Grahame.

MS GRAHAME: Thank you.

Good morning.

A. Good morning.

Q. I'd like to ask you about what your views were on 3 May about separating the officers when they went to the canteen. Now, we've heard some evidence already from Conrad Trickett about what the post-incident procedure SOP says.

A. Yeah.

Q. And we've heard some comments from Colin Robson about his views, and he talked in his Inquiry statement about you pressuring him on that, and then in evidence he said you were pressure testing his views.

I'm interested in what your views were.

1           A. Yeah. So on 3 May when I was instructed to become SIO  
2           round about 08.30 hours, 08.15 hours on 3 May, initial  
3           consultation with Colin Robson at that time via  
4           telephone call prior to leaving Livingston Office was  
5           around a number of different initial priorities. One of  
6           the discussions I had with Colin then, and I believe  
7           when I was driving through to Kirkcaldy, was round about  
8           discussing with him the location of the officers, status  
9           of the officers, and it was -- I had discussion with two  
10          investigators, experienced investigators, and it was  
11          really -- I heard Colin's evidence round about, I think  
12          he indicated he felt under pressure around it. But it  
13          wasn't that. It was a consideration, and although the  
14          SOP quite clearly states -- and the SOP obviously we  
15          were utilising at that time was the PIP for armed  
16          policing under the APP, so it was being flexible with  
17          that SOP through the work of Conrad.

18                 So I didn't really have any great issue, if I had to  
19          separate the officers at that time, so it was  
20          a consideration. But again thereafter what I was trying  
21          to do was balance the status of the officers, the  
22          location of the officers, where they were at that time,  
23          how long they already had been together.

1           So at 08.30 hours they already had been together  
2           one hour on the instruction of Inspector Kay to move  
3           from the locus back to the canteen, which Inspector Kay  
4           did with the best of intentions. So again, there was  
5           a number of points which I was kind of playing out in my  
6           head around the best way forward with this, and  
7           I discussed it with Lesley Boal at that time as well.

8           So it was a serious consideration round about the  
9           necessity to separate them: was it safe to do so, what  
10          was the condition of the officers, was it practical  
11          based on the accommodation within Kirkcaldy Office, and  
12          was it necessary?

13          So again, the necessity aspect of it was really  
14          important round about -- the fact was the officers at  
15          that stage and through the duration of 3 May were  
16          witnesses, so again to separate witnesses, why were we  
17          doing that? So again the other aspect of looking at:  
18          were they involved or suspected of any criminality at  
19          that time? No, they weren't. Were they suspected of  
20          any misconduct at that time? No, they weren't. Would  
21          we have been able -- or would we be able to manage the  
22          officers within the canteen within what became the PIM  
23          suite with putting in suitable control measures around

1           that? And what I mean is putting in individuals who  
2           could ensure that there was non-conferral with the  
3           officers involved in the incident, within the canteen  
4           area.

5           So again that was all playing out, as I say,  
6           discussions with Lesley, with Colin, around my thought  
7           process around that, and the requirement to separate,  
8           which ultimately did not materialise, because I didn't  
9           believe there was a necessity to separate them. Their  
10          status was that of witnesses. What -- the direction and  
11          the decision I made was in line with the standard  
12          operating procedure in place in 2015, and is still in  
13          place today around that.

14          So again, it was that balance where the welfare and  
15          the wellbeing of the officers, but also ensuring that we  
16          could get the benefits for the investigation as well at  
17          that time. So it wasn't just a quick flippant decision  
18          I made not to separate them. There was a lot of thought  
19          went into the reason why I didn't eventually separate  
20          them.

21          And again, if my decision had changed through the  
22          course of my journey to Kirkcaldy Police Office, and  
23          I had decided once I arrived that I would separate them,

1 I simply would have done that, I wouldn't have hesitated  
2 with that, if my thought -- if the rationale behind my  
3 thinking at that time had changed, I simply would have  
4 separated them. But it didn't, and, as I say, I was  
5 more than happy with the decision I made around that.

6 Q. From the perspective purely of SIO --

7 A. Yes.

8 Q. -- and from the investigation, what would the advantages  
9 to you have been of separating the officers?

10 A. The aspect is collaboration of the witnesses or the  
11 potential aspect of collaboration and discussing the  
12 incident prior to you getting that, that initial  
13 perception of the officers in a statement form or  
14 a personal initial account of what actually had  
15 occurred.

16 So again, there is that aspect of the fact, would  
17 there be benefit as an SIO to separate at that time, and  
18 again you're thereafter balancing it with some of the  
19 other aspects I looked at: was it safe to do so, was it  
20 practical, was it necessary, what would be the  
21 perception of the officers if I had to separate them,  
22 put them in individual rooms and put uniformed officers  
23 standing by them almost to manage them; I mean, what

1 perception would that play out round about their welfare  
2 and wellbeing?

3 So it was that balance, could -- as SIO, what I was  
4 looking to achieve through the fact that their evidence  
5 or their statements would be sterile as such, could that  
6 be achieved by putting in place suitable control  
7 measures within the canteen area?

8 Q. When you use the word "sterile", what do you mean?

9 A. I think just the best evidence, you know what I mean,  
10 that their evidence is not contaminated in any way, that  
11 what we have is a true recollection of what actually  
12 occurred and it's not in any way tainted by  
13 collaboration with other officers who were at the scene  
14 as such.

15 Q. (Inaudible) in collaboration, you mean -- we have heard  
16 the word "conferral" used --

17 A. Yes.

18 Q. -- you used the word "tainted", so no influence on their  
19 recollection from the recollection of others.

20 And you talk about their perception; was that  
21 a significant factor in weighing up the different  
22 options open to you?

23 A. No. No, that was solely a decision by myself, looking

1 at that independently, not involved in the actual  
2 incident, coming in from outwith the area to lead on the  
3 investigation. So there was no pressure on me to have  
4 the officers separated or have the officers remain  
5 together within the canteen. That was solely a decision  
6 I made as SIO.

7 Q. And you twice used the word "safe"; what did you mean by  
8 that?

9 A. So what I mean by that is that -- and it was clear when  
10 I addressed them that they were extremely traumatised by  
11 what had occurred, more so when they obviously were  
12 aware that Mr Bayoh had passed away, was deceased. And  
13 what I was aware of the time, after I addressed  
14 officers, is there was officers from 6-7 months' police  
15 service that were actually probationers that were there  
16 as well as officers of maybe 27-28 years' service. So  
17 there was that whole dynamic spread of experience of  
18 officers and what they were going through at that time.

19 So that aspect of welfare and wellbeing was  
20 paramount as well, round about the fact to put  
21 an individual in a separate part of the building almost  
22 with some sort of control measure in place such as  
23 an officer sitting with that individual, what would

1           that -- how would that impact on their welfare,  
2           wellbeing, their mental health at that particular time,  
3           whereby it's quite clear that the standard operating  
4           procedure is not to separate and still is today.

5           Q. In the initial stages you've talked about the journey to  
6           Kirkcaldy and keeping an open mind about the different  
7           hypotheses.

8           A. Yeah.

9           Q. Did you initially want to separate the officers?

10          A. No. As I say, it was a consideration, but, as I say,  
11          the number of different -- that was only one pillar of  
12          the investigation that I was considering during that  
13          45-minute journey to Kirkcaldy.

14          Q. So if Colin Robson formed that impression --

15          A. Yeah.

16          Q. -- what would you say about that?

17          A. So to me it was simply a discussion with myself as SIO  
18          leading the investigation but Colin as that on-call  
19          detective inspector who had a better grip at that time,  
20          a better understanding of the environment, the landscape  
21          that the officers were in at that stage and where they  
22          were in the journey and what had happened at that point.  
23          So although I was getting briefed by Colin I just wanted

1 to get a more in-depth understanding of exactly what we  
2 had prior to my arrival at Kirkcaldy Office.

3 Q. Can I move on and ask you, you told us last week about  
4 going into the canteen and talking to the officers --

5 A. Yeah.

6 Q. -- and you also told us that you wanted the equipment,  
7 the police officers' clothing and equipment, to be  
8 recovered.

9 A. Yeah.

10 Q. I think you had mentioned that to the officers.

11 A. Yeah.

12 Q. I think you gave evidence about that last week.

13 Could you tell us about your discussion with  
14 Conrad Trickett in relation to recovery of the clothing?

15 A. It was very quick. As I say, I was going to brief the  
16 officers at the time and I was just explaining to Colin  
17 that we would be looking to, with their consent, seize  
18 their external clothing, footwear and their officer  
19 safety equipment. However, that would be done under  
20 sterile conditions. I'd already arranged for  
21 DCI Stuart Houston to come over and manage the various  
22 scenes at that time, and also him being the officer  
23 involved in the recovery of their equipment. So, as

1 I say, it was a very quick discussion with Colin what  
2 I was expecting and what I was going to speak to the  
3 officers around.

4 Q. Sorry, was that a conversation with Colin Robson?

5 A. No, Conrad, sorry.

6 Q. Conrad?

7 A. Yes.

8 Q. Then you looked at the 11.30 Gold Group minutes last  
9 week and noted that -- forensic recovery of equipment  
10 was noted at that meeting.

11 A. Yes.

12 Q. Then we've heard evidence from Conrad Trickett that he'd  
13 noted in his PIM log that around 3.30 in the afternoon  
14 he'd discussed the length of time the recovery of  
15 clothing was taking --

16 A. Yeah.

17 Q. -- and he'd discussed that with you. Do you remember  
18 him raising that with you?

19 A. Yeah, it was a very brief discussion again, I think it  
20 was in a corridor outside one of the rooms, and there  
21 were a number of reasons around why that was taking  
22 quite an extended period of time.

23 Q. Can you tell us about those?

1           A. Yeah. So basically Stuart Houston arrived round about  
2           midday or thereabouts and was given the task by myself  
3           delegated to him to take control of all the scenes, as  
4           people have discussed, with one of the scenes being the  
5           canteen and the officers within there and round about  
6           how we could ensure that was done under sterile  
7           conditions.

8           So the -- that thereafter moved on to Stuart  
9           developing the forensic strategy document which we've  
10          already discussed, and thereafter the arrival of PIRC  
11          round about half past 1 that day. Myself, Stuart, Colin  
12          and one or two others went to a briefing round about  
13          quarter to 2 with them before the Gold Group, the second  
14          Gold Group, whereby again the investigative priorities  
15          were discussed with DSI Keith Harrower from PIRC and his  
16          team. We went into the Gold Group after that and the  
17          forensic strategy document was finalised just after the  
18          second Gold Group, and we went into the forensic  
19          strategy briefing with PIRC around about 16.45 hours,  
20          and at that stage that was signed off by PIRC and by  
21          myself and we agreed the priorities around that.

22          So it did take a bit of time that afternoon, mainly  
23          because we were dealing with multiple scenes, we were

1           also awaiting the arrival of PIRC and to discuss with  
2           them if they agreed with the priorities and how we were  
3           actually going to decant the equipment from the officers  
4           under sterile conditions using independent police  
5           officers not from the division but from the Major  
6           Investigation Team, and also ensuring that we had  
7           a force medical examiner there as well to check on their  
8           welfare and wellbeing prior to basically being released  
9           at that stage or prior to going off duty. So that was  
10          all -- it just took a bit of time to basically manage  
11          that.

12         Q. Why was it not possible to recover the equipment at  
13          an earlier stage?

14         A. It was mainly a systemic structured approach. I agreed  
15          with Stuart Houston that we would do it under sterile  
16          conditions, we would do it to ensure their privacy as  
17          well, we would do it independently from the group, so  
18          we'd bring one in at a time to do that and manage it,  
19          explain to them in detail why we were doing it so they  
20          had no doubts around about the reasons for it and that  
21          it wasn't officers that had already been involved in the  
22          investigation, so we brought Major Investigation Team  
23          officers in to manage the recovery of some of the

1 individuals' property at that time.

2 Q. And that all took time?

3 A. It did take time, yes.

4 Q. And were you able to secure the services of independent  
5 police officers?

6 A. We had -- Major Investigation Team officers came in for  
7 it, but we still had to use one or two officers from the  
8 neighbouring divisions that had come in to assist the  
9 investigation at an early stage.

10 Q. What were the neighbouring divisions?

11 A. So we were -- it would be C division, which is Central  
12 Scotland; it would be E division, which would be  
13 Edinburgh; it would be J division, which is Lothian and  
14 the Borders.

15 Q. Looking back, you've spoken about being in the canteen  
16 with the officers, we've heard a number of witnesses  
17 give evidence that equipment was lying around, some of  
18 it was leaning against walls or on the floor, and we've  
19 heard about a table in the canteen which had equipment  
20 on it from different officers.

21 Looking back now, do you have any concerns about the  
22 forensic integrity, and you've mentioned the word  
23 "sterile", and I'm wondering if you had any concerns?

1           A. No. So at the time I arrived at 9 o'clock the equipment  
2           had already been taken, they'd taken off their body  
3           armour and their equipment. My recollection of it  
4           within the canteen, it was -- the majority was kind of  
5           placed against a wall within the canteen area, I can't  
6           recall any being on the table you're describing.

7           I think Conrad indicated I sat down, but I didn't,  
8           I actually just stood up and briefed the officers  
9           because it was very, very quick, I was going into  
10          Gold Group at that time, so did we lose anything  
11          regarding evidential capture? I'm not sure we did.  
12          They were all aware we were going to basically seize the  
13          property, the aspect of any cross-contamination had  
14          already happened at that particular stage, they had been  
15          together for a particular length of time, they had been  
16          together at the locus at Hayfield Road, they had all  
17          obviously, on the instructions of Inspector Kay,  
18          decanted back into the canteen area where they had been  
19          together again, and it was more important from my  
20          perspective as well as through the work that  
21          Stuart Houston done at that time that what we did do  
22          thereafter was to ensure the integrity once we took  
23          involvement in it, to basically ensure that that, the

1 crime scene or the scene examination of the individual  
2 officers was done as best as possible.

3 Q. At any time during that day, did anyone draw to your  
4 attention a matter regarding Nicole Short's vest?

5 A. No.

6 Q. Can I ask you about the CS and PAVA sprays which we've  
7 heard had been discharged at the scene?

8 A. Yes.

9 Q. What involvement, if any, did you have in determining  
10 the strategy for recovery of those?

11 A. It was again just with the discussion with  
12 Stuart Houston prior to discussing it with the PIRC  
13 round about how we would manage that, and again Stuart  
14 had done some research and had discussed it with various  
15 individuals, I'm not sure who, but round about how we  
16 would seize it, about how he -- we would wait to detail  
17 exactly what had been -- if it had been discharged or if  
18 there had been any loss from the PAVA or CS, and  
19 thereafter we would appropriately package that to ensure  
20 that there would be no aspect of any evidential loss at  
21 that time. But again, that whole aspect was delegated  
22 through to Stuart Houston around the whole management of  
23 that.

1 Q. Did you have any involvement in discussing the packaging  
2 or the weighing of the sprays?

3 A. No.

4 Q. Were you advised whether the sprays had been properly  
5 recovered, packaged?

6 A. No.

7 Q. Have you anything written in your daybook or your policy  
8 file that would help us understand what was happening  
9 regarding recovery of equipment, or is it simply the  
10 forensic recovery strategy?

11 A. Forensic strategy document, yes, and the minutes.

12 Q. And the minutes. And anything else in your daybook that  
13 you want to draw to our attention? You remember we  
14 looked at this last week.

15 A. Yeah.

16 Q. It's PS18269. We looked primarily at pages 4 and 5 last  
17 week.

18 (Pause)

19 We can see page 4 on the screen.

20 (Pause)

21 A. I think, I don't know if you go to the next page, which  
22 starts at the top "Birnie", in the right-hand one.

23 Q. Page 5, right-hand side, that one?

1 A. Again -- I think it's the one on from that.

2 Q. Oh, right, sorry, that will be page 6, I think.

3 A. Yes, so if you do down to number 4:

4 "Officers' clothing -

5 "Sterile environment.

6 "Crime scene management~..."

7 Q. And what does it say under that?

8 A. "Injuries noted."

9 So that was the FME aspect of it we were discussing,

10 that we were noting the injury.

11 Q. When was this written?

12 A. So I think this was written either prior to the

13 Gold Group number 2 or during the Gold Group number 2,

14 I think it was prior to, I think it was maybe at the

15 meeting with the PIRC.

16 Q. So we've heard that was a Gold Group meeting at 14.40?

17 A. Yeah.

18 Q. And that was the first one that PIRC attended?

19 A. It was but there was -- we had a meeting before that and

20 I think it's documented in Colin Robson's book at 14.05

21 and PIRC investigator McGuire's book at 14.10, there was

22 a meeting prior to the Gold Group with myself and

23 Keith Harrower and our teams.

1 Q. You spoke about that last week.

2 A. Yeah, which thereafter led me into that Gold Group,  
3 because I think this is potentially -- I think this is  
4 what I noted at that time around immediate priorities.

5 Q. We were looking at the Gold Group minutes last week for  
6 the first Gold Group meeting, 11.30, PS06491. Remember  
7 we'd discussed this?

8 A. Yes, I do.

9 Q. Can I ask you about agenda item 9, please, and it says:

10 "Resources -- (DCS Boal/CI Shepherd)."

11 I'm interested in this agenda item.

12 Tell us about the connection between DCS Boal and  
13 resources, please.

14 A. So it looks as if that's been the more wider aspect of  
15 divisional resources within that particular division at  
16 the time, because of the impact of the number of loci  
17 that we had at that stage, and we were standing officers  
18 by that, so uniformed officers that were usually  
19 involved in the patrols within that area were tied up  
20 basically standing by various locations.

21 So it looks as if that's the kind of local staffing  
22 issues that's been discussed and I know that was looked  
23 at wider, with Garry McEwan around looking at mutual aid

1 coming in from various divisions surrounding Fife to  
2 assist over not just that day but it was going to take  
3 a number of days to run through this, and the high-vis  
4 reassurance patrols that is your normal community impact  
5 after a critical incident, just that high-visibility,  
6 officers on the street.

7 Q. What was DCS Boal's role in relation to resources?

8 A. I'm not sure exactly why she -- it would really be  
9 Chief Inspector Shepherd and Garry McEwan would have  
10 that, I don't know if Lesley's maybe just updated round  
11 about some aspect to that, but it wouldn't really sit  
12 with Lesley, to be honest with you.

13 Q. Agenda item 11:

14 "Media strategy/communications plan~..."

15 A. Yeah.

16 Q. This was a matter for Kate Finlay?

17 A. Yeah.

18 Q. Can you tell us: did you have any knowledge about how  
19 an allegation about an officer being stabbed had got  
20 into the public domain?

21 A. So my recollection, my knowledge of that is that on  
22 driving through to Kirkcaldy it was on, I think it was  
23 Radio Forth, I'm not sure, one of the radio channels,

1 and the information came that -- it was broadcast that  
2 an incident had occurred in Kirkcaldy and an officer had  
3 been stabbed, and I knew at that time from my  
4 discussions with Colin that that was wholly inaccurate.  
5 So I contacted the on-call comms support, which was  
6 Kate Finlay, and asked her to ensure that that was  
7 withdrawn immediately because of the inaccuracy of it.  
8 So Kate had informed me that it hadn't come internally  
9 from police, that that had come from an external source.

10 Q. What does that mean?

11 A. So it hadn't come -- we hadn't self-generated that media  
12 release it came internally -- sorry, it had come  
13 externally from elsewhere. But it certainly had been  
14 broadcast that an officer had been stabbed and, as  
15 I say, I can actually recall I was driving over the  
16 Forth Road Bridge at that time when I actually heard it.  
17 But, as I say, I asked her to withdraw it immediately  
18 because it was inaccurate.

19 Q. And how did you know it was inaccurate?

20 A. Because I had discussed through the course of the last  
21 40 minutes with Colin Robson round about what had  
22 occurred.

23 Q. And when you say internally and externally, when you

1 refer to internally, what do you mean?

2 A. So police generally, particularly for serious incidents  
3 or major incidents we would proactively move towards  
4 a media release of some sort, at the early stages of any  
5 investigation they would produce what's called an  
6 "if asked" normally, which is an if asked statement, if  
7 the media asked us for comment. It would be usually run  
8 by myself as SIO saying was I happy with this going out  
9 to media. Or, if we wanted to be more proactive with  
10 anything at all at that stage, again through discussion  
11 with the SIO and the comms lead, we would pull together  
12 thereafter a statement to be released to the media  
13 proactively, either through a witness appeal or through  
14 a community reassurance as such or both.

15 Q. So internal would be an official media statement?

16 A. Yes.

17 Q. Or an if asked media statement being prepared by  
18 Police Scotland rather than an individual officer?

19 A. Yeah.

20 Q. Can I ask you to look on the some other minutes, please  
21 PS06492 and these are the 14.40 Gold Group meeting  
22 minutes, which was the second Gold Group meeting on  
23 3 May. Again, we see that you were present at this, and

1 as we've said before, Keith Harrower from PIRC and  
2 Keith Hardie from MIT were present for the first time.

3 Tell us what difference it made that PIRC were  
4 present at this meeting.

5 A. I mean, it was critical, I mean, they were the lead  
6 investigating authority, so they had to be there,  
7 you know what I mean, it would have been extremely  
8 beneficial for them to be at the first Gold Group at  
9 11.30, but it was -- it was critical that we had them at  
10 that table for that Gold Group, as I say, as being the  
11 lead investigating authority.

12 Q. Why would it have been beneficial for them to have been  
13 at the first meeting?

14 A. Mainly due to the fact that they were the lead  
15 authority, you know what I mean, they were the lead  
16 authority from -- on my understanding, from -- I'd been  
17 informed at 09.35 hours by PSD, by Craig Blackhall, that  
18 they had been allocated ownership of the investigation,  
19 so -- and due to the fact, as I've indicated before, the  
20 investigation was moving at such fast pace and I was  
21 keeping Keith Harrower updated via telephone round about  
22 some of the actions that were being progressed and what  
23 we had established. However, that is just simply the

1 investigation side, I'm speaking to Keith around the  
2 whole holistic aspect of the management of a critical  
3 incident and a significant investigation, until you  
4 basically sit at a Gold Group and you get that kind of  
5 wider spectrum of exactly what has occurred and what  
6 maybe some of the challenges may be. You don't really  
7 get that just through the kind of single lens of looking  
8 through the investigation, if that makes sense.

9 Q. Right. And then if we look at item 3, which is on  
10 page 2, do we see at this stage that DCI Houston is  
11 identified at this point as crime scene co-ordinator?  
12 You talked about that last week.

13 A. Yeah.

14 Q. He was actually at this meeting as well?

15 A. Yes.

16 Q. So he had arrived at Kirkcaldy by this time, and then it  
17 says:

18 "Witness strategy~..."

19 Just three bullet points down from that:

20 "... MIT to be deployed to note statements from  
21 significant witnesses. (Update MIT to progress with  
22 investigation, ongoing discussions re witness strategy,  
23 to be discussed with PIRC, discussion re seizure of

1 production from Police witnesses."

2 Can you tell us about this element of the  
3 discussion?

4 A. Yeah, so in the main that was round about any of the  
5 significant identified witnesses that became apparent.  
6 And a lot of this was down to some of the house-to-house  
7 and door-to-door parameters that we'd set at that time,  
8 I think I discussed it last week round about if we did  
9 come across, through general house-to-house, that the  
10 PIRC wanted the option to basically deploy their own  
11 resources to some of the more significant eyewitnesses  
12 if they became apparent.

13 The MIT coming on board, again we had a number of  
14 MIT officers arriving through the course of -- from 10,  
15 11 o'clock right through to the Gold Group here, so  
16 again having experienced investigators from the Major  
17 Investigation Team who were used to the protocols for  
18 a major investigation of a major crime or incident as  
19 such, was really beneficial. So it was about how we  
20 best utilised MIT resources in a line with the PIRC and  
21 looking at that response.

22 Q. And further down you see just at what was the bottom of  
23 the page:

1           "Seizure of production from officers being carried  
2 out today ... staff have been advised by Federation  
3 staff not to provide any statements."

4           Now, you gave evidence last week about your  
5 understanding of the position regarding Amanda Givan's  
6 evidence and the Federation advice. At the time of this  
7 Gold Group meeting, did that remain your understanding  
8 of the position regarding the officers and the provision  
9 of statements?

10       A. Yes. That really didn't change at all through the  
11 course of 3 May, that was the advice coming from  
12 Amanda Givan.

13       Q. We'll come back to that in a moment. Further down we  
14 can start to see:

15           "[Next of kin] strategy - Partner of deceased made  
16 aware and statement noted, no formal ID has taken place  
17 but ID has been done via a Facebook image initially."

18           Can I ask you about that, please, the use of  
19 a Facebook image and whether you have any concerns about  
20 that at that stage in the day?

21       A. So that was carried out without my knowledge, and it was  
22 under the direction of Colin Robson, this was the  
23 initial discussion with Collette Bell who'd provided

1 a number of images of the deceased. We also had  
2 a further image through the interrogation of police  
3 systems that we could utilise as well. So again, it was  
4 having, as best as possible, the confidence that the  
5 individual at the Victoria Hospital was Mr Bayoh. So  
6 again it's -- it's a more informal identification, but  
7 to have that confidence prior to visiting the next of  
8 kin that you're almost nearly 100% confident without  
9 formal identification that this is the individual you're  
10 basically explaining to a family that has sadly passed  
11 away.

12 Q. There may be concerns that using a Facebook image is  
13 a particularly informal method, and there are better  
14 methods available to officers. If you had been involved  
15 in this aspect, what would you have preferred to do?

16 A. I mean, historically it's best done, if we can, by  
17 images that we hold on our police systems and such if we  
18 can, if the individual has been involved with the police  
19 previously. Again, with the significant use of  
20 social media these days, you know what I mean, a lot of  
21 the times the best imagery is within some social media  
22 sites around the individuals concerned.

23 So, although I wasn't involved, hadn't authorised

1           this aspect of it, I can see why it was done; it was  
2           done with the best of intentions to identify as quickly  
3           as possible who the individual there was at the  
4           hospital, that was Mr Bayoh.

5           So again, that doesn't -- I mean, there's not hard  
6           and fast rules around that, as an SIO I would look at  
7           all options round about identification. I mean, the  
8           priority is to try to identify as soon as possible, and  
9           again there are a number of options. There are probably  
10          more options open now than there were 20 years ago, just  
11          because of the abundance of individuals now on  
12          social media sites. But again, it really is just that  
13          informal aspect to have and to provide the police with  
14          some sort of confidence that the information we are  
15          given is accurate.

16        Q. Looking back now, do you have any concerns about the  
17          death message being relayed to Collette Bell prior to  
18          any form of identification having been carried out?

19        A. I don't, and I say that having considered the reasons  
20          why we did do that. It became clear from -- after  
21          speaking -- the death message had already been delivered  
22          to Collette before I was made aware of it, but from  
23          discussion with Colin Robson, who had obviously -- who

1 was liaising with the two officers who were dealing with  
2 Collette -- was that it was very clear to Collette at  
3 that time through the discussion that she highly  
4 suspected that the person within the hospital who was  
5 deceased was her partner, and just with the information  
6 passed, Colin's decision at that time was ... he thought  
7 it was a competent decision to deliver that message to  
8 Collette as the partner of the deceased with the  
9 information she had passed and the fact that she was  
10 highly aware that it was her partner that was deceased.

11 So, it's not something we normally do, it's  
12 something that we would probably more likely go to the  
13 confirmed next of kin initially around that. However,  
14 I can see why Colin made the decision to deliver the  
15 message to Collette at the time. It was basically done  
16 transparently, honestly, it was done because the fact is  
17 that she had a great understanding that, from -- not  
18 just from what we told her but from the information she  
19 had from Mr Saeed and she was putting two and two  
20 together at that particular stage. I think it would  
21 have been silly not to basically make her aware of it,  
22 to be honest, and, as I say, it was done with the best  
23 of intentions and to be honest and transparent with

1 Collette round about that.

2 Q. This bullet point in the minutes goes on to say:

3 "[Next of kin] identified as sister and a FLO being  
4 identified. (2 x Police Scotland FLOs have been  
5 identified 1 x DI as FLO to brief and co-ordinate."

6 Can you tell us what this part of the discussion was  
7 about?

8 A. Yeah, so this was the issues we had, as I said  
9 previously, round about identification of the two family  
10 liaison officers, the issues with the STORM/SCOPE  
11 system, that we believed these people were on duty. We  
12 contacted one of the DIs, I think it was within the MIT,  
13 who was tasked thereafter to try to bring family liaison  
14 officers out as soon as possible and that's -- the role  
15 that individual did was identify Kevin Houliston and one  
16 other who attended thereafter within a relatively short  
17 period of time. But again, I've already highlighted  
18 some of the challenges we had round about the family  
19 liaison sort of thing.

20 Q. The final page, I don't need to take you to it, refers  
21 to the PIRC looking for a definitive point of contact.  
22 That's agenda item 12, which is on the final page.  
23 We've heard evidence from you that you were a point of

1 contact effectively for Keith Harrower on 3 May.

2 A. Yeah.

3 Q. What does it mean:

4 "PIRC looking for definitive point of contact with  
5 knowledge of all circumstances"?

6 If we come up to item --

7 A. Yeah, I can see that.

8 Q. -- agenda item 12.

9 You see the second line under, "Any other business".

10 "PIRC looking for definitive point of contact with  
11 knowledge of all circumstances."

12 A. So the initial -- the point of contact for the  
13 investigation was myself. I think what that potentially  
14 is looking at is PIRC were looking for a single point of  
15 contact, it looks as if it is potentially sitting under  
16 Garry McEwan, in respect of the wider aspect of the  
17 community impact involvement around that. That's the  
18 only thing I can think of. It's quite clear, you know  
19 what I mean, that myself and Keith were aware that I was  
20 the single point of contact for the investigation,  
21 I think it's a wider aspect of the critical incident he  
22 was looking for a point of contact and I don't know if  
23 that was maybe given to Chief Inspector Nicky Shepherd

1 at that time.

2 Q. Right, there are prior entries in relation to the  
3 community impact. Maybe we should look at those as  
4 well. If we go back a page, we have items 6 and 7 which  
5 talk about community issues and community impact  
6 assessment review.

7 A. Yeah.

8 Q. Does that assist you?

9 A. Yeah, I think that's the only thing I can think of  
10 around that, because it was clear, you know what I mean,  
11 from early decision with Keith at 10.20 that I was the  
12 investigative lead for Police Scotland for this, so that  
13 was clear and Keith said as well that -- I think it was  
14 the wider aspect of the various other pillars of the  
15 investigation -- the incident, that Keith was maybe  
16 looking for a point of contact with other than speaking  
17 to someone who's dealing with community impact, speaking  
18 to someone who's dealing with the equality and diversity  
19 side, speaking to someone who is dealing with the media,  
20 I think he was maybe looking for a point of contact who  
21 could almost generalise and provide that kind of update.

22 Q. Last week, I think on your first day, you talked about  
23 the investigation and you being bronze command of

1           that --

2           A. Yeah.

3           Q. -- but there being other bronze commanders --

4           A. Yes.

5           Q. -- within that structure which dealt with different  
6           issues, community, media and that type of thing.

7           A. Yeah.

8           Q. Did you think the point of contact related to the other  
9           columns --

10          A. Yes, yeah.

11          Q. -- within that structure?

12          A. I think that's what it does.

13          Q. Can I ask you about delivery of the death message or  
14          death messages to the Johnsons, who were -- Kadi Johnson  
15          was Mr Bayoh's next of kin. What was your involvement  
16          in the delivery of those messages? We have heard that  
17          this was roughly around 3.10 in the afternoon, when  
18          Mitchell and Parker attended to deliver the first death  
19          message.

20          A. Yeah, so I think I detailed last week around the  
21          challenges with the family liaison officers being  
22          identified that were suitably trained, and thereafter  
23          about the discussion with myself and Lesley Boal that we

1           would -- we couldn't delay it any further at that stage  
2           and we deployed two family liaison -- sorry, two police  
3           officers or detectives that were involved in the  
4           investigation.

5           So that information, I think it was about half past  
6           2 or thereabouts, we asked the -- Parker, through  
7           Colin Robson, to basically attend and deliver the death  
8           message to the family, and provide the information that  
9           family liaison officers would be deployed as soon as  
10          possible to provide further information at that time  
11          around that. And thereafter we had the aspect of the  
12          death message being delivered to the family round about,  
13          I think it was about 3 o'clock, in my understanding.  
14          But thereafter the information coming back via  
15          Graeme Dursley, and thereafter Colin Robson, that there  
16          had been a number of significant questions asked by the  
17          family -- quite rightly so -- around it, and they had  
18          asked if there was any further information that we could  
19          provide at that stage.

20         Q.    Could I ask you about the first death message?

21         A.    Yes.

22         Q.    We have heard evidence from Mitchell and Parker and  
23         Dursley and Robson about this. What involvement did you

1 have in deciding what to tell the Johnsons?

2 A. So the information we asked to tell, inform them was the  
3 information that we'd given to Collette Bell at the  
4 time, so there was that consistent message with it.  
5 That was the reason we identified Parker and his  
6 colleague at that time as well, Mitchell, to deliver  
7 that, so it was a consistent message that was being  
8 delivered.

9 Q. By this time you were aware that the Facebook  
10 identification had been carried out?

11 A. Yes.

12 Q. In relation to the information which was being given to  
13 Kadi Johnson at that first occasion by Mitchell and  
14 Parker, we heard that there wasn't really much change  
15 between the message that had been given to  
16 Collette Bell?

17 A. Yeah.

18 Q. Did you reflect on whether more information should be  
19 given to Kadi Johnson?

20 A. Yeah. So it was really -- it's really challenging  
21 because it does look extremely cold and the fact that  
22 we're holding information back, and I've experienced  
23 this over a number of years in a number of

1 investigations. Ultimately we can only deliver  
2 information that we have at that particular time, that  
3 we're confident that we have, so again what we do  
4 deliver and what information we do give is what there  
5 is -- there is no doubt that that is accurate and 100%,  
6 we're confident that the rationale behind it and the  
7 information we have can be verified as such.

8 So again, it's -- it does look extremely cold, it  
9 does look very, very narrow, the information we give.  
10 However, it is what information we know at that  
11 particular time, and at that stage we obviously still  
12 have a number of different hypotheses we're running  
13 through regarding the investigation at that time as  
14 well. So again, there are reasons why maybe we wouldn't  
15 elaborate on particular strands or particular areas at  
16 that point.

17 So again -- and I mean, the priority is just to  
18 deliver the message, you know what I mean, to make them  
19 aware at that stage, and thereafter what we're looking  
20 at is putting the family liaison officers, trained  
21 family liaison officers in directly after that to --  
22 again, to engage and thereafter start to feed in some of  
23 the other information that we had through the course of

1           that later afternoon and early evening.

2           Q. Were you part of a discussion in relation to that first  
3           death message that went to Kadi Johnson?

4           A. So I was, I think, I believe, yeah.

5           Q. Were you -- tell us about that discussion that you had,  
6           and who was it with?

7           A. Yeah, so that discussion was through myself and  
8           Lesley Boal deciding that we couldn't wait any longer.  
9           Keith Harrower was made aware as well and he agreed that  
10          we'd just deploy as soon as reasonably practical to the  
11          family, and again I relayed that through to Colin Robson  
12          and I think Colin spoke to Dursley around it at that  
13          time.

14          We had agreed, myself and Lesley, that the two  
15          officers who delivered the original message to Collette  
16          would be utilised and the information was we would pass  
17          the same message at that time, however with the  
18          additional information that family liaison officers  
19          would be deployed very shortly to provide you with some  
20          further information.

21          Q. We've heard that the first death message that was  
22          delivered by Mitchell and Parker contained no  
23          information that Mr Bayoh had died after police contact,

1 after coming into contact with officers at  
2 Hayfield Road.

3 Why was that information withheld from Kadi Johnson?

4 A. So I'm not sure 100% of the wording of that first  
5 message, all we did ask was the same message that was  
6 delivered to Collette at that time went out to the  
7 family. So again, I had left that with Colin Robson to  
8 manage that aspect of it, that there was that consistent  
9 message across both what was delivered to Collette and  
10 what was delivered to the next of kin and the family.

11 Q. Is it of concern to you that that information was  
12 withheld from Kadi Johnson?

13 A. So the more extended second message detailed in far more  
14 detail round about that contact and that aspect of --

15 Q. I'll come on to that in a moment.

16 A. Yeah.

17 Q. But looking back now, is it of concern to you that  
18 information was withheld from Kadi Johnson about  
19 Mr Bayoh having died after police contact?

20 A. So if we had more -- if we had that -- the intention was  
21 to deploy family liaison officers at that time with  
22 a more extensive update that we could provide to them.  
23 However, because of the delay with that we had to

1 deliver -- because of the passage of time, the  
2 understanding, intention from myself and Lesley was  
3 simply to deliver the death message and thereafter we  
4 would basically provide further information a short time  
5 later by the deployment of family liaison officers.

6 So we were aware of the fact that the officers  
7 involved in delivering the message weren't family  
8 liaison trained and there was going to be potential ...  
9 conflict or -- with the family with Police Scotland at  
10 that time. So again, could we have provided further  
11 information at that stage? Possibly. As I say, what we  
12 did do was look at what else -- what further information  
13 within the space of within 15, 20 minutes, what else we  
14 could provide to them, and that was thereafter the  
15 statement which I thereafter drafted and gave to Dursley  
16 to deliver.

17 Q. I'll come on to that. Why was Kadi Johnson not told  
18 when the first death message was relayed that Mr Bayoh  
19 had died after contact with the police?

20 A. So genuinely I'm not sure, I wasn't involved in the  
21 exact wording of that, it was simply we were, there was  
22 an urgency to deliver a death message to the family and  
23 that was what was delivered by Parker and Mitchell at

1           that time.

2           Q. If you had been aware that the intention was not to  
3           mention that he'd died after coming into contact with  
4           the police, what would your view have been about that?

5           A. Sorry, could you repeat?

6           Q. Would you have been concerned in any way if you had been  
7           aware that when they were delivering the first death  
8           message to the Johnsons, they intended not to share with  
9           Kadi Johnson that Mr Bayoh had died after coming into  
10          contact with the police?

11          A. I think the -- they had limited information at that  
12          particular stage as well, so they were simply being  
13          asked to deliver what had been delivered to  
14          Collette Bell, so I wouldn't put the blame on the  
15          particular officers. I think with hindsight could we  
16          have delivered a more extended form of words to the  
17          family such as the second death message at that initial  
18          stage? Yeah, we probably could have.

19                 As I say, it was mainly due to the fact we were  
20          looking to inform the family as soon as possible,  
21          because of the delay which -- there is absolutely no  
22          doubt that that could have been quicker than it was at  
23          that particular stage and, as I say, there was issues

1 with the deployment of FLOs on 3 May. But, yeah,  
2 you know what I mean, it could have been.

3 Q. From an SIO perspective, from the perspective of the  
4 senior investigating officer, was there any reason at  
5 the time the first death message was delivered to  
6 Kadi Johnson -- so roughly about 3.10 in the  
7 afternoon -- so from your perspective at that time was  
8 there any reason not to share with Kadi Johnson that  
9 Mr Bayoh had died after coming into contact with police?

10 A. No, and as you'll be aware we did -- the second death  
11 message was delivered very, very quickly after that, so  
12 we could easily have -- I think what we had at the time  
13 was we'd identified an urgency to deliver a death  
14 message to the family, the next of kin, with the  
15 understanding that we were going to deploy family  
16 liaison within that 30 minutes, half an hour or so, who  
17 would provide a more extended version of exactly what  
18 had occurred.

19 So yeah, with hindsight could we have delivered that  
20 second death message, a more thorough death message,  
21 which again, it's still -- there was still significant  
22 questions being asked of the officers when they  
23 delivered that message -- quite rightly so as well --

1 but that did probably provide a more thorough update  
2 regarding the status of the investigation and where we  
3 were with it at that time.

4 Q. At that time no reason from the point of view of the  
5 investigation --

6 A. No.

7 Q. -- or protecting the investigation that would result in  
8 withholding --

9 A. No.

10 Q. -- that information?

11 From your perspective as SIO, was there any other  
12 reason why that information would be withheld --

13 A. No.

14 Q. -- from Kadi Johnson?

15 A. The information we had at the time, a great deal of that  
16 was in the public domain, I would imagine, at that time  
17 anyway, it was within the community that there had been  
18 an incident involving the police and the deceased. So  
19 the information we provided could have been provided at  
20 the first instance. There was no reason as SIO, from  
21 an investigative perspective, why I would have held back  
22 on that.

23 Q. Now, we discussed last week that the initial terms of

1 reference in the Gold Group included a reference to the  
2 reputation of the police, and I asked you questions  
3 about that last week.

4 A. Yeah.

5 Q. You may appreciate that there was concern that this was  
6 perhaps withheld, this information, with some intention  
7 to protect the reputation of Police Scotland. Do you  
8 have any comment about that?

9 A. I think sharing the information with the family probably  
10 enhances the reputation of Police Scotland, that we're  
11 being open and transparent. So there are two sides to  
12 that whole reputation side of things as well as we maybe  
13 don't want that in the public domain just now but there  
14 was no reason why we couldn't put that to the family in  
15 particular, so again I think it would enhance the aspect  
16 of the reputation at that particular time.

17 Q. Why would you not want that information being in the  
18 public domain, if it enhances the transparency --

19 A. Yeah.

20 Q. -- and perhaps trust of the family to know that; why  
21 would it not equally enhance transparency and trust in  
22 the public for them to know that?

23 A. Yeah, it would, and that's why the second death message

1           was delivered within 20 minutes detailing exactly what's  
2           in that death message, which was what we knew at that  
3           time.

4       Q.   And can you -- well, let's move on to that second death  
5           message. Can you explain why it was delivered in two  
6           visits by Mitchell and Parker rather than simply one?

7       A.   So the issue with the first death message is on  
8           hindsight we should have elaborated more on what we knew  
9           at that particular time to the next of kin.

10           The feedback we got from -- through Dursley into  
11           Colin Robson into myself was that, was there additional  
12           information that we could provide the family at that  
13           time in respect of answering some of the questions that  
14           we'd been asked.

15           So again, at that time the discussion with myself,  
16           Lesley Boal, Keith Harrower, was round about: well, what  
17           exactly do we know just now and what can we provide?  
18           And again, the three of us sat at a table and I drafted  
19           out formal words around that with inputs from Keith and  
20           from Lesley Boal in respect of that.

21       Q.   So that was -- the second death message was drafted with  
22           Keith Harrower from PIRC?

23       A.   Yes.

1 Q. DC Superintendent Lesley Boal?

2 A. Yes.

3 Q. And yourself?

4 A. Yes.

5 Q. We heard evidence from DS Dursley that he'd come up and  
6 spoken to, I think, you about --

7 A. Yeah.

8 Q. Do you remember that?

9 A. No, I don't. What I do recall, I think the Gold Group  
10 was ongoing at the time, the second Gold Group, and  
11 I think Dursley had come to the door, I think  
12 Colin Robson was in the Gold Group and had went outside  
13 and came back in and made me aware that there was  
14 an issue, and I either went outside or went to a corner  
15 of the room and discussed with Colin around it. I think  
16 that's how it materialised, and thereafter I discussed  
17 it, I don't know if it was at the end of the meeting or  
18 if we went outside or went to a different part of that  
19 room and just identified that there was an issue with  
20 the information that had been provided to the family at  
21 that time. I've a feeling we stepped outside, myself  
22 and Lesley and Keith, and managed that, managed it in  
23 another part of that area, because it was during that

1 period of the Gold Group that started at 14.40, so that  
2 was running at the time that this occurred, but I can  
3 recall Dursley coming to the door and indicating to  
4 Colin Robson to come outside at the time around that.

5 Q. Right. Can we have a look at PS05793, which should be  
6 a handwritten note. We've heard from DS Dursley that  
7 this effectively is the second death message. Do you  
8 recognise that handwritten --

9 A. I do, yes.

10 Q. Whose writing's that?

11 A. So the writing, with the exception of the words, "Shek"  
12 and "Islam", is my writing.

13 Q. Right, and this is the second death message that was  
14 delivered to the Johnsons that day?

15 A. Yes.

16 Q. Who wrote "Shek (Islam)"?

17 A. I'm not sure, I've never actually seen that, to be  
18 honest with you.

19 Q. We can -- do you want to read out your --

20 A. Yeah, so:

21 "Following an incident this morning, in the  
22 Hayfield Road area of Kirkcaldy, officers from  
23 Police Scotland have been attempting to arrest

1 Sheku Bayoh, during which time he has become  
2 unconscious, conveyed to hospital by [Scottish Ambulance  
3 Service] and despite best efforts by medical staff, died  
4 shortly after 9 am this morning."

5 Q. And that was the combined efforts of the three of you?

6 A. Yeah. I think that's maybe Lesley's notation at the  
7 top, I'm just looking, she's changed the word, I think  
8 I've handed it to her and maybe if you go just back up  
9 to the top of that again.

10 Q. Yes.

11 A. You see where, I don't think she'd been able to read my  
12 writing and she put "this" morning, as in I put:

13 "... incident this morning~..."

14 And I think she's added that because she wasn't sure  
15 what that said.

16 Q. So you'd written "this morning" and then she's written  
17 it herself?

18 A. Yeah, I think what I've done is I've written it and then  
19 handed it to herself and Keith to examine to see if they  
20 were happy with it, and I think that's potentially  
21 Lesley's writing.

22 Q. So it was approved by PIRC?

23 A. Yes.

1 Q. And that was then delivered to, was it DS Dursley, as he  
2 indicated?

3 A. Or Colin Robson. I think Dursley, I think Dursley came  
4 in at that time and he was given it, I think, either by  
5 myself or via Colin. I think it was potentially handed  
6 by myself to him.

7 Q. So this was the first occasion that a death message  
8 mentioned that officers had been attempting to arrest  
9 Sheku Bayoh?

10 A. Yes.

11 Q. Now, we've been -- we've heard evidence that there is no  
12 copy of the first death message, no written record of  
13 that. Would you agree with that or do you --

14 A. Yeah, I don't think there is.

15 Q. In relation to this message, correct me if I'm wrong,  
16 but there's a reference to it in your daybook?

17 A. Yes, there is.

18 Q. On page 6 at the bottom.

19 A. Yeah.

20 Q. So that's PS18269, page 6.

21 A. Yeah.

22 Q. And it's just beneath a redacted passage.

23 A. Yeah.

1 Q. And it says:

2 "Disclosure to next of kin."

3 And then there's an entry there.

4 A. Yeah.

5 Q. Do you want to read that out, please?

6 A. Yeah, so:

7 "During the arrest of the male at Hayfield Road  
8 around 07.15 hours this morning, the subject has become  
9 unconscious and on arrival at hospital despite the best  
10 efforts of medical staff has died."

11 Q. We'll just get that on the screen. Now, that wording  
12 is --

13 A. Different, yeah.

14 Q. -- it's different. So explain to us how this came  
15 about?

16 A. So that was really just my initial draft of what I was  
17 suggesting that would be put out, which thereafter led  
18 to the wider discussion with Lesley -- DCS Boal and  
19 DCI Keith Harrower, which thereafter led to an extension  
20 of that to what was on the screen shortly, which was the  
21 message that was delivered.

22 Q. So this was your initial draft and then it became --

23 A. Yeah.

1 Q. -- the handwritten version?

2 A. I think it's in my policy file.

3 Q. Let's look at your policy file as well. So that's

4 PS17854.

5 A. I think it's one of the actions.

6 (Pause)

7 Yeah. So I think it's decision number 23.

8 Q. Right. Can I ask you about 14 first of all?

9 A. Oh, sorry it's not. That's the one for the officers.

10 Q. Can I ask you about 14, because it does talk about

11 wording --

12 A. Yeah.

13 Q. -- changed, involving DCS Boal seems to be mentioned as

14 well.

15 A. Yeah.

16 Q. Could you read out your --

17 A. Yeah, so that is the one. This is after the first

18 message had been delivered, so it's:

19 "Due to request for further information from next of

20 kin decision made to provide form of words indicating

21 incident involving Police Scotland officers. Wording

22 developed with DCS Boal and provided to DS Graeme~..."

23 I couldn't recall his name at the time, but that's

1 DS Graeme Dursley:

2 "... for transmission to officers at locus."

3 Q. So this was the second death message that is referred to  
4 there?

5 A. Yes.

6 Q. Let's see what the reasoning is just below on that page.

7 A. "Provide next of kin and family with further information  
8 regarding the death of Sheku Bayoh."

9 Q. So had you been made aware, either by Colin Robson or  
10 through discussion with DSI Dursley, that the family had  
11 been concerned and were asking a number of questions?

12 A. Yeah, yeah and as I previously stated that's why we went  
13 for the second message.

14 Q. Looking at the second death message, and we can have the  
15 handwritten version back on screen if you wish, can  
16 I ask you about the content of that? This is the first  
17 time there has been mention of police contact.

18 A. Yeah.

19 Q. There we are. There's mention that he became  
20 unconscious and was taken by hospital -- sorry, by  
21 ambulance to ... Scottish Ambulance Service and despite  
22 best efforts by the medical staff died shortly after  
23 9.00.

1           We've discussed that death message with Mitchell and  
2           Parker and others, Dursley and Robson. Looking at that  
3           now, what are your views about whether that -- it  
4           clearly shared more information, but do you think that  
5           shared sufficient information with the family?

6           A. So it was based, as I stated previously, on the  
7           information I had at the time that I could verify. So  
8           the aspect, the incident this morning, location of where  
9           it occurred, the actions of Police Scotland officers to  
10          the best of my knowledge, what I had at that time, the  
11          fact he had become unconscious at the locus, conveyed to  
12          hospital by Scottish Ambulance Service and he had died  
13          within the hospital despite the best efforts, so the  
14          five main areas of what I knew at that particular time.

15          Q. Looking back now at the way the death messages were  
16          delivered, we've heard evidence from Collette Bell that  
17          she was told that Mr Bayoh had been found dead, she gave  
18          evidence about having made reference to a passer-by  
19          having found Mr Bayoh. She left the office, police  
20          office, under the impression he'd been murdered, she  
21          knew nothing of him having been conveyed by ambulance  
22          and having died after medical staff intervened. We've  
23          heard evidence from Kadi Johnson about the first death

1 message and differences between what Collette was told  
2 and what she was told, and then we see this third death  
3 message with more information.

4 In hindsight, from looking back on how these death  
5 messages were relayed to the family and to  
6 Collette Bell, do you have any comments to make about  
7 how that could have been done differently?

8 A. I mean, it's such a significant aspect of any  
9 investigation that you get that information right and  
10 there is a consistent message throughout your engagement  
11 with the family at all times, I can't -- what the  
12 officers told to Collette Bell, I'm aware of  
13 Collette Bell's evidence, but I find it unlikely that  
14 officers would have said something like that in the  
15 knowledge that they had, and again the first -- the  
16 message to the family was extremely brief and short  
17 with, as I say, with the rationale in my head and  
18 Lesley's that we would deploy family liaison almost  
19 immediately. But that could have done -- we could have  
20 basically said this set of words to -- and I take your  
21 point around that, this could have been the death  
22 message initially to the family and not simply that  
23 Mr Bayoh had passed away.

1           So you can only base it on the information you have  
2           at that time, and again it does appear cold, it appears  
3           it's not transparent and it appears that there's other  
4           information that we may have that we're holding back on,  
5           I can understand all that. However, I based what I had  
6           there on what I knew at the particular time. There was  
7           very little more that I knew at that stage, to be honest  
8           with you, to give the family.

9           Q. So from the perspective of SIO --

10          A. Yeah.

11          Q. -- and from the perspective of the investigation --

12          A. Yeah.

13          Q. -- and integrity of the investigation, this second death  
14          message as delivered to the Johnsons could have been  
15          delivered to Collette Bell in the morning; is that what  
16          you're saying?

17          A. I obviously wasn't there at the time, and I had no  
18          control over that, because that was done without my  
19          knowledge, so ...

20          Q. As SIO do you see any --

21          A. Yeah, no --

22          Q. -- information in here that couldn't have been shared  
23          with Collette Bell in the morning?

1           A. So at that stage in the morning we are really just  
2           getting a grip on exactly what's occurred, so Collette's  
3           with us I think about quarter to 10 to about 11 o'clock,  
4           I believe, and again, that is such an early part of the  
5           investigation, it's limited to what we know at that  
6           stage. By the time we delivered this at 3 o'clock or  
7           thereabouts, we had filled in significant gaps in  
8           respect of the timeline and the movements of the  
9           deceased.

10          Q. Looking at this message, is there any information in  
11          this message that wasn't available to you in the  
12          morning?

13          A. No.

14          Q. Is there any reason that this information couldn't have  
15          been shared with Collette Bell in the morning?

16          A. Probably not. However, we were looking at obviously  
17          discussing in more detail with the next of kin at the  
18          time, as I say, it was unusual that we would -- the  
19          first person we made aware of the death of Mr Bayoh was  
20          the partner, which is unusual, but again just with the  
21          circumstances I can understand why they did do it. So  
22          it was unusual and the information they gave was  
23          extremely brief at that time.

1           Now, that may have been one of two things. One,  
2           that the officers delivering the message weren't fully  
3           aware of exactly what's contained within this death  
4           message, I mean, they're speaking to her at 10 o'clock  
5           in the morning or 10.30, and again the direction with  
6           Colin Robson may have been something different at that  
7           particular stage, prior to him making me aware that they  
8           had delivered that death message. So there's no reason  
9           why it couldn't have been, the information was known at  
10          that particular stage, if that answers your question.

11         Q. Yes, thank you.

12                 You talked about -- you used the word "consistent",  
13                 and I'm interested in your experience of death messages.  
14                 We've heard that the first death message to Collette --  
15                 not to Collette, sorry, to the Johnsons -- wasn't noted  
16                 down, and I'm interested in whether your understanding  
17                 is that death messages are not normally written down?

18         A. No, I mean, they are and they aren't, to be honest with  
19                 you, there's no hard and fast rule with them, you know  
20                 what I mean, a lot of times that's the normal course of  
21                 the duty of a police officer, whether that's a uniform  
22                 officer on patrol who's sent to inform a family of  
23                 a death of a family member, maybe in another part of the

1 UK or elsewhere. They will simply be told the  
2 information they have is that he has passed away and can  
3 they make contact with such and such, so again that  
4 information would be very, very limited at that time.

5 In respect of a major crime investigation, it is  
6 normally kind of written down, nine times out of ten  
7 it's written down, to be honest with you, the first  
8 death message which is delivered by again usually  
9 detectives prior to the involvement of the family  
10 liaison officers, they would basically run it through  
11 the SIO or the deputy SIO around the fact that this is  
12 what they're intending to deliver as such.

13 So again, in my experience, it normally is written  
14 down what is delivered to the family at that time.

15 Q. And in terms of ensuring consistency, if that message is  
16 shared with more than one member of the family or next  
17 of kin --

18 A. Yeah.

19 Q. -- or partner, how does writing it down assist with  
20 that?

21 A. It's a form of words, it's a form of words that are  
22 there are to basically deliver that consistent message.

23 Q. So I suppose the flipside of that, if it's not written

1 down anywhere, how do you ensure that consistency?

2 A. Well, in respect of this one we ensured -- the  
3 consistency was we ensured that the officers who  
4 delivered the original death message to Collette  
5 delivered the same wording and the same message to the  
6 next of kin initially for that death message.

7 Q. I'd like to move on to look at the minutes for  
8 a Gold Group meeting the next day, if I may --

9 A. Yeah.

10 Q. -- just to complete this. So this is PS03161. Sorry,  
11 I've rushed too far ahead. I'm interested in looking at  
12 the 2015 Gold Group minutes, which are PS06493. Sorry,  
13 we will come back to that one.

14 Again, this, I think you gave evidence about this  
15 last week, that there was a Gold Group meeting at 8.15  
16 in the evening?

17 A. Yeah.

18 Q. And again you attended, Houston attended, and I think if  
19 we move down the page we'll see that PIRC were also  
20 there, and so were MIT and John Ferguson, who was also  
21 from PIRC as I understand it?

22 A. John was, yeah.

23 Q. If we could look at page 2, agenda item 3, please, I'm

1 interested in -- sorry, let's move further down. Let's  
2 look at 5. Family concerns. It says -- thank you, we  
3 were there:

4 "Chief Superintendent McEwan discussed  
5 brother-in-law of deceased, he is part of an independent  
6 advisory group and had advised the initial attending  
7 officers that he knew Mr McEwan and requested that he  
8 attend and speak to him within 24 hours.

9 "Chief Sup and Chief Insp Shepherd attended at home  
10 address of [next of kin], highly charged environment,  
11 deceased's partner Collette and extended family within,  
12 family concerned that early contact they had was  
13 purposely vague. They were unhappy they had not been  
14 told anything about who contacted the Police and  
15 Ambulance. Chief Sup provided them with  
16 an understanding of events. Chief Sup discussed the  
17 role of the PIRC and reassured them it would not be  
18 P Division officers investigating the incident.

19 "TASK -- Family crave reassurance and are asking  
20 about witnesses etc they do not wish anything publicised  
21 until they inform deceased Mother who is in London."

22 Then if we can just move on to the next page, it  
23 goes on:

1           "Discussed that police did not know [next of kin]  
2 whilst Collette ... was at Police Station.

3           "Chief Sup discusses initial decision to have  
4 Police Scotland FLOs but now hand over to PIRC FLOs for  
5 arrangement to gain entry to house of deceased re  
6 collecting belongings for child. Discussion re initial  
7 contact on phone from PIRC.

8           "Chief Sup discusses family desperate to know about  
9 PM, and also arrangements on having them conveyed to  
10 mortuary in Edinburgh.

11           "TASK -- To address all family issues raised."

12           I'd like to go through this agenda item with you, if  
13 you don't mind, and ask you some questions, if we move  
14 back to the top please.

15           Tell us about the discussion in relation to the  
16 visit by Chief Superintendent McEwan.

17       A. Yeah, so that was, Chief Superintendent McEwan discussed  
18 at the conclusion of the second Gold Group with --  
19 there's a small group: myself, the Chair, ACC Nicholson,  
20 DCS Boal were present, I think Nicky Shepherd was  
21 potentially there as well, and Garry had indicated or  
22 DCI Chief Superintendent McEwan had indicated that he  
23 was aware of the brother-in-law of the deceased, and

1           that also came back from the two officers who had  
2           delivered the second death message that a family member  
3           had asked for Mr McEwan to make contact with the family  
4           or provide them with some further information at that  
5           time.

6           So when they returned, the two officers, to  
7           Kirkcaldy that information was passed through Dursley to  
8           Colin Robson to myself, that they had actually requested  
9           or suggested that Garry makes contact with them, Chief  
10          Superintendent McEwan to basically provide them with  
11          some other information around that. That was due to  
12          they knew each other from I think a previous -- a forum  
13          within Fife.

14          So that's -- that discussion took place and this was  
15          the aspect of the -- we were aware of the kickback and  
16          the resistance from the family round about  
17          Police Scotland officers being involved in any aspect of  
18          this at the conclusion of delivering the second death  
19          message and the decision had been made by myself and  
20          Lesley, that there was no point at that time deploying  
21          Police Scotland FLOs -- I think I provided that  
22          information previously -- because of that resistance,  
23          and it would be more beneficial that we simply deploy

1 FLO -- FLOs from PIRC when they do attend, and I know  
2 DSI Keith Harrower was trying at that time to get PIRC  
3 FLOs to attend that evening around that.

4 But Garry had offered to attend,  
5 Chief Superintendent McEwan had offered to attend at the  
6 family home with Chief Inspector Shepherd and tried to  
7 basically answer some of the difficult questions that  
8 they had and that was agreed by the ACC, he agreed that  
9 that may well be beneficial at this stage. As I say,  
10 it's unusual for a Chief Superintendent to attend at the  
11 next of kin's home address, or the silver commander as  
12 Garry was, but, as I say, I could see the rationale  
13 behind that.

14 Q. And was that a reflection of the nature of the family's  
15 concerns and the contact that we've heard Ade Johnson  
16 had with Garry McEwan?

17 A. I think it was both, I think it was the previous  
18 relationship that they had but also it just wasn't  
19 appropriate at that time to deploy Police Scotland FLOs,  
20 and myself and Lesley agreed with that, just because of  
21 the resistance that had basically come from them.

22 Q. And was that resistance or concern from the family only  
23 about Fife police officers or was it any police

1 officers?

2 A. I think it was Police Scotland officers in general, but  
3 in particular Fife officers, because of the nature of  
4 the incident, but I think that was what was -- you know,  
5 Fife officers are Police Scotland officers.

6 Q. And we have heard that there may have been investigators  
7 in PIRC who are former police officers?

8 A. Yeah.

9 Q. Was that a concern of the family's that you were aware  
10 of in relation to PIRC as well?

11 A. No, I wasn't aware of that, no.

12 Q. And you'll see there that it says:

13 "Chief Sup [that's Garry McEwan] provided them with  
14 an understanding of events. Chief Sup discussed the  
15 role of the PIRC and reassured them [the family] it  
16 would not be P Division officers investigating the  
17 incident."

18 A. Yeah.

19 Q. What area did P Division cover?

20 A. That was Fife, that was Kirkcaldy and the surrounding  
21 Fife area.

22 Q. So not just Kirkcaldy police officers?

23 A. No.

1 Q. Lochgelly, Cupar, officers from there?

2 A. Mm-hm.

3 Q. When he reassured the family it would not be P Division  
4 officers investigating the incident, what awareness was  
5 there within the Gold Group that in fact there were  
6 officers from P Division helping with the investigation?

7 A. So I think Garry's referring to the fact that he knew at  
8 that stage it was going to Major Investigation Team  
9 officers, so it was going to the MIT, and that there  
10 wouldn't be any P Division officers involved in it  
11 whatsoever and it would be PIRC led, so I think that's  
12 why he can reassure them that there wouldn't be anyone  
13 involved, within that division, in the investigation.

14 Q. I'm interested in, we talked last week about it being  
15 PIRC-led?

16 A. Yeah.

17 Q. But you talked about the fact they only had four or five  
18 investigators --

19 A. Yeah.

20 Q. -- who were brought to Kirkcaldy to deal with the  
21 matter, and as I understood your evidence last week, you  
22 were talking about police officers continuing to be  
23 a resource that PIRC would rely on in carrying out --

1 A. Yes.

2 Q. -- the investigation.

3 Was there a view that P Division officers should not  
4 be involved in the investigation?

5 A. No, not at that stage, no. I mean, the following -- the  
6 4 May we moved on to the MIT, I mean, in a numbers --  
7 Major Investigation Teams came in in numbers to manage  
8 the investigation with PIRC. As I said in previous  
9 evidence, is that there were a number of P Division  
10 officers not from the Kirkcaldy area but had come in  
11 from elsewhere and P Division were managing critical  
12 actions.

13 So they continued doing that for the first day  
14 around that, and I was more than content (inaudible)  
15 with it. However, the eventual end game with this is  
16 that after 3 May we were going to move to a complete  
17 PIRC-led, MIT-supported investigation for the entirety.

18 Q. So on 3 May P Division officers did continue --

19 A. Yes.

20 Q. -- to be involved, but the following day, 4 May, you say  
21 there were no P Division officers involved?

22 A. Yeah, there may have been one or two, just to basically  
23 tidy up one or two actions that they were involved in,

1 but in general we were removing all P Division officers  
2 from the enquiry.

3 Q. So when you say tidying up on the 4th, what sort of  
4 things do you mean?

5 A. They may have -- without going into individual officers  
6 and what actions they had at this time it's difficult to  
7 say. I mean, an action may require further  
8 investigation to eliminate what your action has been  
9 asked. So if you are asked to -- such as "Eliminate  
10 Pat Campbell from the investigation", you know what  
11 I mean, it's maybe checking his statements, CCTV, the  
12 movements, corroboration of his movements.

13 So again, there may be other aspects that they would  
14 be asked just to conclude that action around what they  
15 had at that time. But again, the intention, as I say,  
16 was that we would not utilise P Division officers for  
17 the investigation itself.

18 Q. So the intention was there but perhaps P Division  
19 officers did continue for a period of time --

20 A. Yeah, yeah.

21 Q. -- to complete actions?

22 A. That discussion was at an early stage between myself and  
23 Lesley Boal round about the intention was to attempt to

1           utilise Police Scotland detectives from outwith the Fife  
2           area and that was an earlier discussion with Lesley,  
3           you know what I mean, when I was made aware of it, that  
4           that whole transparency, the kind of independent aspect  
5           of our role -- I had no concerns with the P Division  
6           officers but just how -- you know, through the lens how  
7           that may look as such.

8           So, as I say, there was an early discussion with  
9           myself and Lesley around that but due to the fact that  
10          resources were tight in the early part of the  
11          investigation and some of the P Division officers from  
12          outwith Kirkcaldy had really significant actions round  
13          about Collette Bell, round about one or two of the other  
14          significant witnesses, we -- my take on that is that we  
15          would continue with them and in respect to that,  
16          I didn't see anything around any integrity issues with  
17          it.

18        Q.   When you use the phrase how it would look "through the  
19            lens" --

20        A.   Yeah.

21        Q.   -- what would the concerns be, as far as you were aware?

22        A.   I think there was a -- what we were almost pre-empting  
23            was the fact what we were moving towards on day two

1 would be a completely independent investigation from  
2 P -- without P Division officers having any footprint on  
3 it at all. So day one, early stages, you're going to  
4 have that -- the aspect of local officers still being  
5 involved in it but with the intention that eventually  
6 you move towards an investigation solely resourced from  
7 a Police Scotland perspective by Major Investigation  
8 Team officers which would support the PIRC-led  
9 investigation.

10 Q. When was the point reached, as far as you're aware,  
11 where you were satisfied that no P Division officers  
12 were involved in the investigation?

13 A. So I was involved in it for the first two days.  
14 I couldn't answer that, to be honest with you, I'm not  
15 sure, but I know that that's where we were moving  
16 towards, but, as I say, one day just merged into the  
17 other day, as you can imagine.

18 Q. In terms of the remit of PIRC, we talked last week about  
19 that --

20 A. Yeah.

21 Q. -- and how we may -- we will hear further evidence about  
22 this, but it may be that there were five letters from  
23 the Crown Office extending the remit of PIRC over

1 a period of time?

2 A. Right.

3 Q. What clarity did you have on 3 or 4 May as to the  
4 precise remit and scope of the investigation to be  
5 carried out by PIRC?

6 A. So my understanding, and I hadn't seen the terms of  
7 reference that you're referring to there, was that the  
8 PIRC were the lead investigation and would examine the  
9 lead-up to the death of Mr Bayoh as well as the  
10 subsequent actions of the response to his death. That  
11 was my initial understanding for day one and day two,  
12 what their remit was. There were other aspects that may  
13 well fall into Police Scotland officers round about,  
14 I mean, the background or whatever, but that whole focus  
15 on the incident at Hayfield Road and the subsequent  
16 response around that was quite clear in my head that  
17 that sat with PIRC leading on it.

18 Q. But in terms of having a clear picture available to you  
19 as to what parts of the investigation may remain with  
20 Police Scotland --

21 A. Yeah.

22 Q. -- and what parts were handed over to PIRC --

23 A. Yes.

1 Q. -- looking back now, do you feel that you had a clear  
2 picture in your mind of what parts perhaps remained with  
3 Police Scotland and what parts were handed over?

4 A. Yeah, I mean, it was clear that, I mean, we were  
5 supporting PIRC from the early morning of 3 May, it was  
6 their investigation, we were simply supporting it, we  
7 had the assets on the ground at that time to manage it.  
8 The -- I don't think the terms of reference and the  
9 visibility of the terms of reference from  
10 a Police Scotland perspective came until potentially the  
11 end of day two, day three, and I think that was into  
12 Keith Hardie, who had taken over my role as such around  
13 it. But certainly I had no visibility at all of what  
14 the terms of reference were. We were running with the  
15 priorities which we've already discussed around that but  
16 the more detailed aspect of how the kind of choreography  
17 of the investigation would thereafter play out was  
18 something that would be managed between PIRC and the  
19 Major Investigation Teams more than myself as responding  
20 to it.

21 Q. So you talked last week about was it the golden hour or  
22 the golden hours?

23 A. Yeah.

1 Q. And during that period, is that a fixed period or is  
2 it ...?

3 A. It can last more than an hour.

4 Q. During that period, was it essentially Police Scotland  
5 that were doing --

6 A. Yes.

7 Q. -- the investigation?

8 A. Yes.

9 MS GRAHAME: I wonder if that would be a --

10 LORD BRACADALE: A convenient point? Well, we'll take  
11 a 20-minute break.

12 (11.30 am)

13 (A short break)

14 (11.55 am)

15 LORD BRACADALE: Ms Grahame.

16 MS GRAHAME: Can I ask you: was there a formal handover to  
17 PIRC in the morning? You were made aware they were  
18 taking the lead in the investigation, and I'm interested  
19 in whether there was some sort of formal handover at  
20 that stage or did that happen later?

21 A. Are you talking about 10.22 when I speak to  
22 Keith Harrower?

23 Q. Yes, you had that initial conversation with

1 Keith Harrower at that time in the morning.

2 A. Yeah. So, I mean, it was clear -- Keith obviously  
3 informed me at that time that he had been instructed to  
4 lead on the investigation by Crown Office, so it was  
5 clear -- it was clearer to me before that, to be honest  
6 with you, I had been informed at 9.45 by Craig Blackhall  
7 who had had that discussion with Dave Green from  
8 Crown Office and Craig had contacted me back to inform  
9 me that PIRC would lead on the investigation, so at  
10 10.20 when Keith contacted me, Keith just reinforced the  
11 fact it was going to be PIRC-led.

12 Q. And what about a formal handover where you give  
13 a briefing?

14 A. Yeah. So that really didn't happen until, through the  
15 course of the day, you know what I mean, the PIRC attend  
16 at 13.30, 13.35 hours, we get into an investigative  
17 briefing at that time, thereafter into a Gold Group,  
18 thereafter into a forensic strategy meeting, and  
19 thereafter a further Gold Group that evening. So  
20 that -- the enquiry was still, although being led by  
21 Keith as a lead investigator for PIRC, was heavily  
22 supported by myself and my resources from  
23 Police Scotland at that time, and I didn't actually do

1 a handover in respect of my role to Keith Hardie, the  
2 DCI from the MIT, until I think it was the second day  
3 after the post-mortem examination. So I continued with  
4 that involvement all the way through the second day as  
5 well.

6 But it was clear round about the -- and again, that  
7 whole aspect, the question you're asking about a formal  
8 handover, that was a kind of gradual progress through  
9 the different forums and meetings and the progression of  
10 the investigation around the fact once HOLMES, the  
11 HOLMES team were into the investigation on day two and  
12 that more defined structure round about PIRC-led, fully  
13 supported by MIT, was thereafter going to take the  
14 investigation on over the coming days and weeks.

15 Q. So if we look at your policy file, I think you gave  
16 evidence last week about the handover to Keith Hardie  
17 from MIT --

18 A. Yeah.

19 Q. -- and I think is that at the rear of your policy file?

20 A. Yeah, yeah.

21 Q. It may be decision number 22, if I'm right. I may be  
22 wrong on that. No, it's not that one.

23 (Pause)

1 A. So it's -- I think Keith's detailed it ... 24 is --  
2 Q. 24?  
3 A. Yeah, and then 25 is Keith basically indicating that  
4 that's the meeting that handovers occurred with  
5 Keith Harrower -- sorry, with Keith Hardie.  
6 Q. So 24 mentions Chief Superintendent Garry McEwan?  
7 A. Sorry, decision 20 ...  
8 Q. Sorry --  
9 A. Sorry, I'm at 29, it is, sorry.  
10 Q. Sorry.  
11 A. Sorry, it's just my writing.  
12 Q. No, not at all. So decision number 29, page 61478. And  
13 what does that say?  
14 A. It's:  
15 "Handover meeting with Detective Super~...  
16 It's actually DCI:  
17 "... Keith Hardie at Livingston Police Office."  
18 Q. So that's the official handover to Keith Hardie at MIT?  
19 A. So it actually happened the previous evening on the 4th,  
20 however, it just basically ran into the morning of the  
21 5th, and the morning of the 5th I met Keith out at  
22 Livingston Police Office and we sat down and had  
23 a coffee and did a more thorough handover in respect of

1           some of the areas that we were going to concentrate on  
2           at that time and some of the work that had been carried  
3           out so Keith had a full understanding of where we were.

4       Q.   Tell me when the handover with Keith Hardie was the  
5           previous day, that wasn't a formal handover then?

6       A.   No, it was -- it was during the progress of the evening  
7           of the 4th, there was a meeting after the post-mortem  
8           examination results came through, I think it was round  
9           about 19 ... 19.30, 19.35, it was a meeting between --  
10          what had actually happened on that day was that the PIRC  
11          had changed on the 4th, the lead investigator, so  
12          Keith Hardie stood down, I think he was on annual leave,  
13          I'm not sure.

14      Q.   Harrower?

15      A.   Harrower, sorry, and Billy Little took on that role so.

16      Q.   I think you mentioned that last week?

17      A.   Yeah, so basically what happened with that was  
18          Keith Hardie and Billy Little had attended the  
19          post-mortem examination and Keith had contacted me with  
20          the result.  Thereafter we did -- I'd arranged a meeting  
21          with Billy Little back at the -- back at Kirkcaldy  
22          Office that evening, I think it took place prior to the  
23          last Gold Group meeting and that was really just a kind

1 of more definitive handover with PIRC at that stage

2 because Keith -- sorry --

3 Q. Billy Little?

4 A. -- Billy Little was coming on to it at that point.

5 Q. So that was the 4th, the day after?

6 A. I think it was the evening of the 4th, the day after,  
7 yeah.

8 Q. Do you remember what time that handover was?

9 A. I think it was 19.30. It may be detailed in my actual  
10 policy file actually.

11 Q. I was going to ask you, is --

12 A. 28th. I think it's 28th:

13 "Meeting with PIRC new lead Billy Little regarding  
14 the scope of the investigation to date."

15 And then:

16 "Instruction from DCS Boal/ACC Nicholson that  
17 enquiry will now rest with the MIT SIO Detective Super."

18 But it was actually DCI Keith Hardie that was the  
19 lead on it.

20 Q. Right, so there was a meeting with the new lead,  
21 Billy Little, that was 4 May?

22 A. Yes, the evening of the 4th, after the post-mortem  
23 examination.

1 Q. After the post-mortem and before the Gold Group meeting?

2 A. Yeah.

3 Q. Or maybe there wasn't -- did you just say there was  
4 a Gold Group meeting on the evening of the 4th?

5 A. Yeah, 19.15 or 20.15, I think there was a 20.15 one.

6 Q. I thought that was on 3 May?

7 A. Ah, sorry, the 3rd, yeah. Sorry. No, 4 May was the  
8 post-mortem in the afternoon and there was a meeting  
9 with myself and PIRC on the evening at Kirkcaldy Office  
10 at 19.30 with Billy Little and some of the PIRC reps  
11 round about a more thorough kind of handover with Billy  
12 at that time.

13 Q. So that was the handover to Billy Little, who was taking  
14 on the lead role for PIRC. What about an official  
15 handover to Keith Harrower?

16 A. Yeah.

17 Q. He was for PIRC on 3 May?

18 A. Yeah, so that morning a thorough investigative handover  
19 was prior to the second Gold Group round about  
20 14.00 hours on 3 May, that was a meeting I explained  
21 round about my team, plus Keith's team and round about  
22 that these are the investigative priorities and this is  
23 where we are with it, just bringing Keith and the team

1           fully up to date with where we are with things.

2           Q.   So PIRC arrive at Kirkcaldy at roughly half past one?

3           A.   Yeah, yeah.

4           Q.   You go into a meeting with PIRC, that's the handover to

5           PIRC as far as you're concerned?

6           A.   So it was very clear in my head from 9.30 that this was

7           PIRC-led, you know what I mean, I think round about the

8           mechanics and the priorities and all that had all been

9           discussed through the course of the morning with Keith,

10          although remotely, but this was the first time we'd

11          actually been able to sit round a table and discuss it

12          in detail.

13                 So round about handover as such, I was always aware

14          that they were leading on it. I mean, it's Keith's

15          ultimate decision round about the actions and priorities

16          and anything to do with the investigation, but round

17          about that more thorough full investigative update came

18          prior to the Gold Group meeting.

19          Q.   So if we're thinking about a handover where you hand

20          over responsibility --

21          A.   Yeah.

22          Q.   -- of the investigation to PIRC, when did that take

23          place?

1       A. So I would suggest it was before the Gold Group meeting,  
2       the 14.40 one, round about that investigative handover  
3       whereby Keith is actually at Kirkcaldy Office leading on  
4       the investigation in person with the support from myself  
5       and my team around that, so --

6       Q. And is that Keith Harrower?

7       A. Keith Harrower, yeah.

8       Q. And they're in Kirkcaldy at that time?

9       A. Yes.

10      Q. So is that handover noted in the policy file?

11      A. I don't think it is, but, as I say, it was -- it was  
12      very clear in both our heads that at 10 o'clock, 10.30,  
13      when Keith phones me at 10.22, that they were leading on  
14      it, it wasn't a case of handing over as such, they were  
15      always leading on it from very early that morning, it  
16      was just a case of a more -- a further investigative  
17      update to ensure they were fully sighted on all aspects  
18      of the investigation to date.

19                But as in an official handover, it was clear from  
20      9.30 in the morning to me that this was not  
21      Police Scotland-led, this was PIRC-led, but they did  
22      require significant support around it.

23      Q. Looking back now, do you think that having a formal part

1 of the process where there was an official handover and  
2 setting out the scope of what was being handed over  
3 would maybe have assisted?

4 A. I don't think so, I think from the investigative  
5 priorities and the areas under my control at that early  
6 stage in the handover I don't see really anything at all  
7 we could have done any better, with the exception of the  
8 family liaison aspect of it which we've already  
9 discussed.

10 Q. And --

11 A. I think -- sorry, I think the problem with the PIRC  
12 deployment at that stage, other than the resources, is  
13 that over the course of 24, 36 hours they changed the  
14 lead investigator. So Keith had --

15 Q. What issues did that cause?

16 A. Just obvious challenges, the fact is you're bringing  
17 someone on fresh into the investigation when you've been  
18 there for 12, 13 hours at that stage, you know what  
19 I mean, before that ... before Billy Little's appointed  
20 around that. So again, there was challenges with the  
21 fact that the change of a senior investigator from PIRC  
22 at such an early stage of a critical investigation would  
23 undoubtedly cause challenges.

1 Q. When you use the word "challenges" can you give us  
2 an example, what do you mean?

3 A. Just a natural awareness of the investigation and where  
4 the priorities lay, and some of the issues that we'd  
5 came across during the course of 3 May from the early  
6 morning right through to the evening, as well as  
7 obviously the challenges with the family liaison and  
8 some of the problems we'd encountered that day.

9 So again, what we had was that Keith Harrower had  
10 been fully briefed on it through the course of that  
11 morning into the afternoon, into the evening, and  
12 thereafter we have a change of senior investigator from  
13 the PIRC side which, to be honest with you, if we'd done  
14 that with Police Scotland and we'd changed our SIO after  
15 day one it causes the same problems because it leads to  
16 potential confusion, it leads to more additional  
17 briefings having to be given to who's came in to take on  
18 that particular role. So, as I say, it's probably not  
19 the best practice in respect of how you run  
20 an investigation.

21 Q. Is that the type of thing that Police Scotland would do,  
22 change a senior investigator --

23 A. So we would normally do a handover now at this stage.

1 In 2015 we were in the very early stages of it whereby  
2 the majority of homicides and extended investigations  
3 would normally sit with the Major Investigation Team, so  
4 what would happen, and what did usually happen, is that  
5 I would go out and deal with the initial stages of  
6 a homicide and within a couple of days I would do  
7 a handover to the Major Investigation Team to basically  
8 thereafter take the investigation on, which would  
9 probably run for a number of weeks or months.

10 So that's the way it does work with Police Scotland,  
11 but the initial stages is still with the on-call  
12 detective super or a detective chief super who would see  
13 that aspect of it, but a great majority of the  
14 investigations, unless the homicide is quickly resolved,  
15 they normally fall with the Major Investigation Teams to  
16 take primacy on.

17 Q. And that's within a couple of days did you say?

18 A. Yeah.

19 Q. Why was, if you have awareness of this, why was  
20 Billy Little not involved on 3 May?

21 A. I genuinely don't know. As I say, I was given no  
22 indication by DSI Keith Harrower that he was intending  
23 on not being there on the 4th as such, so I don't

1           actually know why that was.  Something in my mind makes  
2           me think he was going on annual leave, but I'm unsure on  
3           that, I don't know how I got that information, but  
4           that's maybe came from Billy Little.

5       Q.  Was it a surprise to you that he wasn't there on the  
6       second day?

7       A.  Yeah, yeah, I wasn't, I wasn't -- I think I'd been made  
8       aware on the evening of the 3rd, but again I can't  
9       recall exactly who made me aware of that, but I was --  
10      I knew Billy Little was coming on to run the  
11      investigation from the PIRC side.

12     Q.  And how were you feeling about this change in PIRC of  
13     their senior investigator?

14     A.  It really didn't make any, any significant ... of note  
15     to me.  There was nothing at all -- I mean, it was just  
16     a case that I would have to now go back and brief the  
17     new DSI coming on, although there is absolutely no doubt  
18     Keith Harrower would have gave Billy quite an extensive  
19     handover, I would imagine, you know what I mean, in  
20     respect of that, and that was clear when I spoke to  
21     Billy Little, he was aware of the work that had been  
22     progressed over that period of time.  But, as I say,  
23     it's -- I think it was mainly due to the kind of

1 personal circumstances of Keith Harrower, he was  
2 finishing after that particular day, which I think it  
3 was potentially a pre-planned holiday that he had or  
4 whatever, so again from my own perspective it really  
5 didn't matter that much to be honest.

6 Q. When Billy Little came in on the 4th, did he change any  
7 of the decisions that had been made or priority actions  
8 that had been identified?

9 A. I don't recall. However, I had a briefing, I had a --  
10 I chaired a joint -- I think we've seen the document  
11 minutes, I chaired a meeting with -- which was  
12 an investigative meeting on the morning of the 4th round  
13 about 10 o'clock and I'm sure Billy Little was at that  
14 with a number of other PIRC resources who had attended  
15 that morning, as well as Police Scotland MIT resources.  
16 I can't recall him changing anything --

17 Q. Right.

18 A. -- at this stage. Again, I may be wrong on that.

19 Q. Can I go back to the minutes of the evening meeting of  
20 the Gold Group at 20.15. We were looking at that just  
21 before the break. PS06493. I hadn't quite completed  
22 the questions I wanted to ask you about that. Can we  
23 look at item 5 again, please, that's the bottom of

1 page 2, I think. So it says there:

2 "TASK -- Family crave reassurance and are asking  
3 about witnesses etc they do not wish anything publicised  
4 until they inform deceased Mother who is in London."

5 Then if we can go on to the next page, paragraph 3:

6 "Chief Sup discusses Family desperate to know about  
7 [post-mortem], and also arrangements on having them  
8 conveyed to mortuary in Edinburgh."

9 And:

10 "TASK -- To address all family issues raised."

11 Can I ask you about the nature of this part of the  
12 discussion at the Gold Group meeting, about the family's  
13 concerns?

14 A. Yeah. So the family concerns were obviously around --  
15 as it states there, round about the post-mortem  
16 arrangements and how quick that they'd actually been put  
17 in place for the following day, and that's what's  
18 detailed there with -- we have Chief Superintendent  
19 Garry McEwan coming --

20 Q. Can I stop you there?

21 A. Yeah.

22 Q. When you say they were concerned about how quick the  
23 post-mortem had been put in place the following day,

1 we've heard evidence that the family didn't know that  
2 the post-mortem was going to take place on 4 May until  
3 they found out on 5 May, in the morning. So can you  
4 think back to this discussion, which is at 20.15 on  
5 3 May, and tell us what your recollection of that  
6 discussion is?

7 A. Yeah, so the discussion at that time was that the family  
8 liaison for the post-mortem arrangements would sit  
9 solely with PIRC at that stage because of the challenges  
10 that we had from Police Scotland perspective, and that  
11 resulted in obviously following this we had  
12 Keith Harrower contacting the family via telephone and  
13 thereafter arranging to visit the family to make them  
14 aware of the arrangements for the post-mortem  
15 examination and that we would be requiring family  
16 members for identification. So I'm unsure exactly what  
17 Keith explained to the family round about the  
18 arrangements for the post-mortem examination.

19 Q. Keith Harrower?

20 A. Keith Harrower, yeah, but that aspect of it following  
21 this Gold Group sat solely with PIRC, the deployment of  
22 family liaison officers to the family from PIRC, and not  
23 Police Scotland, and the liaison with the family in its

1           entirety would sit with PIRC and not with  
2           Police Scotland at that time.

3           Q.   Subject of course to any other arrangements through  
4           Chief Superintendent McEwan?

5           A.   So there wasn't any other arrangements.

6           Q.   There wasn't anything else?

7           A.   No.

8           Q.   So where it says "Task" at the end of item 5 --

9           A.   Yeah.

10          Q.   -- "To address all family issues raised."

11                 That was a task to be carried out by PIRC?

12          A.   By PIRC, yeah.

13          Q.   And I think we said before the break that this was  
14                 a meeting that was attended by Keith Harrower and  
15                 John Ferguson from PIRC?

16          A.   To the family?

17          Q.   No, they were present at the Gold Group meeting.

18          A.   At the Gold Group, at this meeting, yeah.

19          Q.   So they were aware of this part --

20          A.   Yeah.

21          Q.   -- of the discussion.

22                 And there was mention on the previous page, just at  
23                 the bottom, about the family wanting reassurance and not

1 wishing anything publicised until they informed the  
2 deceased's mother, who is in London.

3 Do you remember any part of the discussion regarding  
4 Mr Bayoh's mother who was in London?

5 A. Yeah, I can, that I think she'd planned to travel up to  
6 Scotland the following day or the days after this, but  
7 it was -- it was coming from Garry McEwan to be honest  
8 with you. The only aspect of that was that -- that  
9 I had any input on was that I had spoke to Dave Green  
10 round about the post-mortem examination, I think I spoke  
11 about this last week, round about in the absence of any  
12 formal identification what can -- basically what was the  
13 fallback options around that, and Dave Green had  
14 explained to me at that time that there was no  
15 flexibility with the timing of the post-mortem  
16 examination the following day due to the availability of  
17 pathologists.

18 Q. I think you did mention that last week.

19 A. Yeah, yeah. So that's the only aspect I have on it, but  
20 I can recall Garry mentioning that the deceased's mother  
21 resided in London and was travelling up.

22 Q. From your memory of that meeting, was there -- what  
23 impression did you have about the family's perception or

1 attitude towards the post-mortem and about a formal  
2 identification taking place with their involvement?

3 A. So my understanding from that forum that I can recall  
4 was that there were -- there was still resistance from  
5 the family about attending to identify Mr Bayoh prior to  
6 the post-mortem actually taking place the following day.

7 Q. And when you say resistance, can you help us understand  
8 what your --

9 A. Yeah.

10 Q. -- impression was of the level of that resistance?

11 A. It really came from Garry McEwan, to be honest with you,  
12 and it was really about the fact that they had made it  
13 clear that they would not attend for the post-mortem  
14 examination, for the identification aspect.

15 Q. We've heard evidence that they wished to give time for  
16 the deceased's mother, to arrived from London before  
17 they would formally identify Mr Bayoh prior to the  
18 post-mortem. Do you have any recollection of that being  
19 expressed at this Gold Group meeting?

20 A. No, as I say, that whole aspect of post-mortem,  
21 identification, liaison with the family, passed straight  
22 over to PIRC in respect of any involvement, I had no  
23 involvement at all after this forum.

1 Q. Was there any discussion about clarifying the family's  
2 position in relation to the post-mortem?

3 A. I think there was, and I think that thereafter sat with  
4 Keith Harrower to make that engagement with the family,  
5 and that thereafter led to the subsequent phone call and  
6 visit to the family that evening.

7 Q. Again, that was something that you understood PIRC to be  
8 taking control of?

9 A. That was very clear, in respect of that.

10 Q. And did you have any other involvement with that matter  
11 from this meeting?

12 A. No, and I think I detailed it in one of my policy logs  
13 round about the fact that that whole aspect sat with  
14 PIRC.

15 Q. Do you want to look at the policy log and just  
16 identify~... it may be decision 17. I'm not sure.  
17 There's mention there of the family and the post-mortem.

18 (Pause)

19 A. No, that was just about the various aspects that I'd  
20 discussed with Dave Green around --

21 Q. Right.

22 A. -- other than -- but I think there was an additional  
23 entry. Yeah, I think 22 maybe just clarify -- I don't

1 know if it will clarify it a bit.

2 Q. 22.

3 A. Sorry, that's on the 4th, that's on the day after  
4 actually, it was just about the FLOs from the PIRC to be  
5 deployed to deliver the cause of death to the family.  
6 No, I don't think I've detailed it.

7 Q. Do you want to look at your daybook? Maybe you have  
8 something in there.

9 (Pause)

10 If we go to page 6, we were talking about the death  
11 message note that you'd taken at the end, and then on  
12 the right-hand side there's some notes that you've  
13 taken.

14 A. Yeah.

15 Q. And then they go on to the next page, 7.

16 A. I don't think there is anything at all.

17 Q. Nothing there?

18 A. No.

19 Q. But in any event that's your recollection now?

20 A. Yeah.

21 Q. And if we could go back to the minutes, sorry, which are  
22 PS06493, I'd like to come on to item, agenda item 12,  
23 which is at the bottom of page 3. It's just any other

1 business, and then if we move on to the top of the  
2 following page, there are actions listed, and one action  
3 is:

4 "Liaise with PIRC re deployment of their FLOs, not  
5 deploying FLOs of Police Scotland."

6 A. Yeah.

7 Q. So was it at this meeting that that decision was taken  
8 not to deploy Police Scotland FLOs?

9 A. It was actually before that, but that was rubber stamped  
10 at that forum as such by the gold.

11 Q. We've heard -- you gave evidence last week that officers  
12 had been recalled to duty --

13 A. Yes.

14 Q. -- and brought to Kirkcaldy to act as FLOs but they were  
15 then released from that obligation --

16 A. Correct.

17 Q. -- at that stage.

18 Then it says:

19 "A definitive resolution is required re contact with  
20 family and reassurance to them."

21 Can you explain what that was?

22 A. I think it was that discussion round about-- did this  
23 now best sit with the PIRC to take on in its entirety

1           around any future liaison with the family. I think it  
2           kind of explains it a wee bit below, about the PIRC  
3           (inaudible) family and the arrangements.

4       Q. It says:

5                       "Chief Superintendent not averse to going back to  
6           the house if required to assist in retrieving items for  
7           the baby of Collette Bell. Telephone contact to be made  
8           by PIRC re the family and arrangements etc for conveying  
9           to mortuary."

10      A. Yeah.

11      Q. So certainly at that Gold Group meeting can you tell us  
12      what your understanding was in relation to the family,  
13      the purpose for the family being conveyed to the  
14      mortuary? You'll see where you've noted that  
15      previously, on page 3, where at the top of that page --  
16      this was at the end of item 5 -- there was comment about  
17      arrangements on having them, the family, conveyed to the  
18      mortuary in Edinburgh, and then that's repeated under,  
19      "Action", on the final page.

20                       So again can you explain your understanding of why  
21      this was being discussed, of the family being conveyed  
22      to the mortuary?

23      A. Yeah, so that's normal arrangements that we would make

1 for a deceased's family. Rather than trying to get them  
2 to explain where the City Mortuary is and where to park  
3 and so on and so forth, the family liaison officers  
4 would normally convey the family or the next of kin to  
5 the mortuary and thereafter explain the whole process of  
6 identification. So again, that's pretty normal  
7 arrangements for any incident as such.

8 Q. And was the purpose of this for identification?

9 A. Yes, it would be, yeah.

10 Q. At this Gold Group meeting was it your understanding  
11 that the family would have some involvement with  
12 identification prior to the post-mortem?

13 A. I think it was intended and it was hoped that they  
14 would, but again that thereafter passed in its entirety  
15 to Keith Harrower and PIRC to manage that engagement  
16 with the family around the post-mortem exam --  
17 arrangements.

18 Q. So you won't know whether it was explained to the family  
19 that there was no flexibility in relation to the timing  
20 of the post-mortem?

21 A. I wouldn't. No, that would need to come from  
22 Keith Harrower.

23 Q. We'd have to hear evidence --

1 A. Yeah.

2 Q. -- from him about that. Thank you.

3 I'd like to move on to the next set of minutes for  
4 the Gold Group meeting, please, which is 4 May 2015, and  
5 minutes that we have for 12.30 the following day.

6 I think that's PS03161. You will see these minutes,  
7 this is the following day, 12.30, there's no reference  
8 there to who was present at that meeting. Do you  
9 remember?

10 A. Hmm. (Pause). I genuinely don't. I think I'd only  
11 slept for about an hour that day into the next day, type  
12 thing, so I was unsure exactly who would have been at  
13 that.

14 Q. Right, and you were at that anyway.

15 A. Yes, I was at it, yes.

16 Q. So we see in the factual update, paragraph 3 under the  
17 factual update, item agenda 2, move down, the mention of  
18 the name DI Stuart Wilson. Who was he?

19 A. Stuart was in the MIT at that time.

20 Q. So this was in relation to an officer from MIT, not  
21 Hardie?

22 A. No, one of Keith Hardie's team.

23 Q. What did DI Wilson, what was his role?

1 A. I think Stuart came on in the afternoon of 3 May to  
2 offer some assistance with the investigation.

3 Q. So he was part of that team?

4 A. Yeah.

5 Q. And it says there:

6 "Factual update~...

7 "Officers despatched from Kirkcaldy and on arrival  
8 were faced with deceased to engage them physically,  
9 assaulting a female officer and fighting with others."

10 Can you explain what the factual update was at that  
11 time? I'm interested in particular in the words:

12 "... on arrival were faced with deceased to engage  
13 them physically."

14 Can you explain that?

15 A. (Pause). It looks to me as if it's been written, it  
16 looks very much kind of police talk, descriptions, the  
17 way it's written, "Deceased to engage them physically",  
18 it's something that we would put in a police report as  
19 such. But I don't know who has written the minutes, to  
20 be honest with you. But I think what it generally means  
21 is that the officers were call -- were aware of a number  
22 of calls on that morning to attend Hayfield Road and on  
23 arrival had been involved in a physical coming together,

1 or altercation with the deceased.

2 Q. You gave this factual update, did you?

3 A. I did, but it looks as if it's a very condensed version  
4 of what's actually been said.

5 Q. I'm interested in whether this minute suggests that the  
6 deceased was an aggressor?

7 A. No.

8 Q. Or whether it just simply is talking about there being  
9 some sort of physical engagement between the officers  
10 and the --

11 A. Yeah. I think all that is is a kind of high level  
12 synopsis of exactly what I have said, in a kind of more  
13 detailed update.

14 Q. As we move down to item 3 on the agenda, you will see  
15 this is:

16 "Investigative process - DI Stuart Wilson."

17 And you've explained he was with MIT?

18 A. Yeah.

19 Q. And if we can look at a paragraph:

20 "There are potentially 210 dwellings between  
21 Arran Crescent and Hayfield Road locus."

22 And you mentioned last week about house-to-house  
23 enquiries --

1 A. Yeah.

2 Q. -- being undertaken. Were those house-to-house  
3 enquiries being undertaken by Police Scotland officers?

4 A. They were under the instruction of PIRC but supported by  
5 Police Scotland so we had the most -- we had the legs on  
6 the ground as such, chapping doors. As you say, the  
7 house-to-house is basically split into the initial  
8 zones, the kind of priority zones that we were looking  
9 at, at that time, and that early discussion with PIRC  
10 was round about that they were looking to note  
11 statements from any significant crucial eyewitnesses; if  
12 we chapped a door and we identified someone they would  
13 ask for us to make them aware and they would attend and  
14 detail that statement. But the great majority of the  
15 210 houses that had to have their door chapped, that was  
16 going to be done by Police Scotland.

17 Q. You talked last week about having 20 or 22 detectives  
18 involved with the investigation under your --

19 A. Yeah.

20 Q. -- role. Did that, were there officers within that  
21 number who then carried out these house-to-house --

22 A. So this is 4 May, so this is when we have significant  
23 MIT resources now attending at Kirkcaldy to take on the

1 investigation long term. So these were -- as I say, 95%  
2 of the resources from Police Scotland were MIT resources  
3 with the remainder being resources that had carried out  
4 initial actions the day before but were just completing  
5 those actions as I've discussed.

6 Q. How many MIT resources came online on 4 May?

7 A. I'm unsure.

8 Q. Can I ask you about the task that we just see at the  
9 bottom, if we can move that up slightly:

10 "TASK -- Advice to be gained from PIRC regarding the  
11 disclosure of the PM results to the officers involved in  
12 the incident. Supervisor to be identified to carry this  
13 disclosure out."

14 I'm interested in your recollection of this item,  
15 this task on the agenda.

16 A. Yeah, so there was obviously we were moving towards the  
17 post-mortem examination that afternoon on 4 May and  
18 I think it was Garry McEwan that had raised the matter  
19 round about -- and he raised it to the Chair -- round  
20 about the disclosure of post-mortem results to the  
21 officers involved in the restraint. So there was quite  
22 a detailed discussion around that, and PIRC were  
23 involved in it to an extent but again, the main

1 representative from PIRC at that time was Keith --  
2 sorry, was Billy Little, who was in attendance at the  
3 City Mortuary for the post-mortem, I believe.

4 So there was -- first of all, there was a discussion  
5 round about we would deploy PIRC FLOs to deliver the  
6 death message -- sorry, the result of the post-mortem  
7 examination to the family, and the second aspect to that  
8 was round about -- and I think it was, as I say,  
9 Garry McEwan, the Chief Super, who had indicated he  
10 thought it would have been beneficial in their status as  
11 witnesses to provide, for their welfare and wellbeing,  
12 a result of the post-mortem examination as well.

13 Q. Right, can I just ask you about this. This meeting took  
14 place before the post-mortem had been carried out?

15 A. Yeah.

16 Q. And you've said there was to deliver the information  
17 about the post-mortem to the family, that was going to  
18 be done by PIRC; is that right?

19 A. That was going to be done by PIRC FLOs.

20 Q. PIRC FLOs?

21 A. Yeah.

22 Q. Was there any discussion about when that was to be done?

23 A. So that would have been done, my understanding was after

1 the post-mortem results were known, which was on the  
2 evening of 4 May.

3 Q. 4 May. But that was under the control of PIRC?

4 A. Yes.

5 Q. Now, the idea of telling police officers who are  
6 witnesses the results of the post-mortem, I'm interested  
7 in how this came around, because, I mean, is this  
8 something that's normally done, telling witnesses about  
9 the post-mortem?

10 A. Police witnesses or witnesses in general?

11 Q. Well, first of all would you normally tell witnesses in  
12 general?

13 A. Erm ... it's not a normal process that I'm aware of,  
14 that we would normally tell witnesses in general round  
15 about the result of a post-mortem examination. Family,  
16 yeah, definitely.

17 Q. Is it part of a process if you've got officers involved  
18 that you would tell them, if they're witnesses?

19 A. I'm aware that it has been done before in respect of  
20 deaths in custody in that respect, just round about the  
21 whole welfare/wellbeing aspect of it. But these aren't  
22 normal events.

23 Q. Right. So when you say they're not normal events, who

- 1 raised the issue about telling police officers?
- 2 A. So I think that was Garry McEwan, as the divisional  
3 commander for P Division Fife and looking after the  
4 welfare of his officers at that time.
- 5 Q. Did he explain at this meeting why he was making this  
6 suggestion?
- 7 A. No -- I think he did actually, but I can't recall  
8 exactly his rationale behind it, but I think it was  
9 around the grounds of their welfare and the fact that  
10 they were obviously extremely traumatised and concerned  
11 exactly what had occurred around the restraint of  
12 Mr Bayoh, and that discussion thereafter took place with  
13 the Chair, with ACC Nicholson, round about obviously the  
14 direction or the authority for that would simply sit  
15 with PIRC and not with Police Scotland because they were  
16 the lead investigators in respect of that.
- 17 Q. You talked about the hypotheses last week, you've talked  
18 about keeping an open mind on all of them until you were  
19 in a position to exclude them, you've not got initial  
20 personal accounts or operational statements from the  
21 officers --
- 22 A. No.
- 23 Q. -- at this stage. What concerns did you have, as SIO,

1           about sharing information with the officers about the  
2           cause of death?

3           A. Yeah, so it was mainly what information we would share  
4           was, I wouldn't say was my concern but I wanted to be  
5           made aware of what we were actually going to share with  
6           them.

7           Q. Why was that?

8           A. As you say, mainly down to the hypotheses that were  
9           apparent and whether or not there had to be some further  
10          discussion around whether or not we would disclose that  
11          once we found out what the results of the post-mortem  
12          were at that point. So this discussion was based solely  
13          on welfare and wellbeing of the officers, about  
14          supporting them in the days and weeks ahead around what  
15          the result was. But again my thoughts were: okay, let's  
16          see what the results of the post-mortem are, and  
17          ultimately that decision lay with PIRC, it did not lie  
18          with me.

19          Q. So you expressed concerns about wanting to know what the  
20          post-mortem --

21          A. Yeah.

22          Q. -- results were?

23                 When you later discovered what the results were, did

1           they come -- did PIRC come to you and ask you to be part  
2           of a further discussion about this matter?

3           A. Yeah.

4           Q. Tell us about that.

5           A. So, and I think I can refer to it in my policy file, but  
6           they did --

7           Q. Do you want to go to that?

8           A. Yeah, so I think it's policy decision number 22.

9           Q. Tell us what you have written here.

10          A. So -- so, sorry, can I take you to decision 20, first of  
11          all?

12          Q. Yes. So decision 20 is page 61469.

13          A. So this is the information coming back to me from  
14          Keith Hardie at the City Mortuary regarding the result  
15          of the post-mortem examination.

16          Q. Right, let's just get this on the screen, decision 20,  
17          61469, and what does this say here?

18          A. "Information from post-mortem examination regarding  
19          cause of death. Edinburgh City Mortuary. DCI Hardie  
20          present."

21                 And I've got in inverted commas basically what Keith  
22          has informed me:

23                 "Unascertained pending toxicology."

- 1 Q. When did you get that information --
- 2 A. So I got that round about, I think it was about half  
3 past 6 on the 4th, I got a phone call, Keith was still  
4 at the mortuary, the post-mortem had ran for the best  
5 part of four hours or thereabouts, and he basically  
6 phoned saying that's it just concluded and here are what  
7 we have at this point and that basically he'd asked  
8 that -- Billy Little was there at the time as well and  
9 Billy had indicated that he was wanting a meeting now at  
10 Kirkcaldy Police Office directly after that.
- 11 Q. Then can we look at the reasoning, please, and what does  
12 it say there?
- 13 A. Yeah, so:
- 14 "Meeting to be arranged with PIRC at 19.30 hours at  
15 Kirkcaldy Police Office to discuss findings and  
16 communications back to next of kin and family and also  
17 to officers involved in incident."
- 18 Q. Was that the meeting that you mentioned earlier --
- 19 A. Yes.
- 20 Q. -- with PIRC? And you were present at that?
- 21 A. Yes, I was.
- 22 Q. And there was a discussion as part of that meeting about  
23 whether to share the results with --

1 A. Yes.

2 Q. -- the officers. Tell us about that meeting.

3 A. So that thereafter if you go to decision 22.

4 Q. Thank you. It says:

5 "Agreement with PIRC~..."

6 A. So:

7 "Agreement with PIRC at meeting within Kirkcaldy  
8 Police Office with PIRC deputy lead investigator [that's  
9 Billy Little] to progress the following."

10 So the two points that came from that meeting:

11 "FLOs to be deployed. PIRC to inform next of  
12 kin of cause of death."

13 And secondly:

14 "An agreed form of words to be developed by SIO and  
15 PIRC in respect of notification of officers involved in  
16 incident."

17 Q. So was that you and someone from PIRC?

18 A. It was myself and Billy Little.

19 Q. Can we find that form of words?

20 A. Yeah. So that's in the -- that's the next decision.

21 Q. And this was a form of words that was to be shared with  
22 the officers?

23 A. And the next of kin.

1 Q. And the next of kin. Can you tell us what we see on  
2 page -- on, sorry, decision number 23?

3 A. So:

4 "Agreed form of words from PIRC agreed~..."

5 So:

6 "Following post-mortem of Sheku Bayoh cause of death  
7 has been detailed as unascertained pending toxicology.  
8 There is no evidence of any blunt force trauma injury  
9 which would have been a contributory factor to  
10 Mr Bayoh's death."

11 Q. What does it say under -- we won't read that.

12 A. Yeah.

13 Q. "Reason", and then it says:

14 "To ensure no mixed messages to family and others  
15 is~..."

16 A. Passed.

17 Q. "... passed to ensure consistency."

18 So that was a form of wording agreed for -- to be  
19 shared with all of the officers --

20 A. Yeah.

21 Q. -- who had attended Hayfield Road?

22 A. Yes.

23 Q. And the next of kin?

1 A. Yeah.

2 Q. As far as you understood?

3 Do you know if PIRC did share that with the next of  
4 kin?

5 A. That action was solely for PIRC to take on.

6 Q. Right, and who was going to share that information with  
7 the officers?

8 A. So basically I think I've detailed it. Yeah, I think in  
9 the next decision so that, the direction for the Chair  
10 at the Gold Group meeting which we've already discussed  
11 was that as soon as we were aware of the outcome and the  
12 results from the post-mortem examination that I would  
13 inform ACC Nicholson directly around what that was.

14 ACC Nicholson had spoke to me around the fact that  
15 he believed that message would have been -- would be  
16 better delivered by Chief Superintendent Garry McEwan to  
17 the officers because he had personal knowledge of them,  
18 I didn't, and that he was -- he was probably better  
19 placed round about welfare and wellbeing to pass that  
20 message to the officers.

21 So again, the aspect to that decision is that  
22 Chief Superintendent briefed -- so I phoned Garry McEwan  
23 on the -- after speaking to Mr Nicholson saying, "This

1 is the cause of death are you quite happy for this?"

2 And I read out verbatim the information we were going to  
3 pass to the officers, and ACC Nicholson endorsed that  
4 and asked me to contact Garry McEwan and pass that  
5 information to him at that time, and I think I can  
6 recall Garry actually was writing it down as I was  
7 speaking to him on the phone around what exactly he was  
8 going to say so there would be no mixed messages around  
9 that.

10 Q. Do you know who actually delivered the --

11 A. I think it was Garry.

12 Q. Himself?

13 A. To all the officers, yes.

14 Q. To all the officers?

15 A. Yeah, yeah.

16 Q. Do you know how he did that?

17 A. So, Garry had said to me that he was going to come into  
18 Kirkcaldy Police Office to do it. Now, I don't know  
19 whether that was to do with the privacy and he would be  
20 able to make phone calls privately within  
21 Kirkcaldy Office but he was at home at that time, so  
22 I took it he was coming in to make the phone calls from  
23 Kirkcaldy Office and it was going to be done via

1           telephone and not in person. But again, I may be wrong  
2           with that.

3           Q. Do you know when that --

4           A. That happened later that evening.

5           Q. That evening, 4 May?

6           A. Yeah, yeah. Yeah, yeah.

7           Q. So it had been -- the suggestion had been raised by  
8           McEwan, the wording was drafted and noted in your policy  
9           file by you, and Keith Harrower from PIRC?

10          A. Yeah.

11          Q. That was then approved by --

12          A. No, sorry, Billy Little.

13          Q. Oh, sorry. It was approved by Billy Little from PIRC?

14          A. Yeah, yeah.

15          Q. Approved by ACC Nicholson?

16          A. Yes.

17          Q. And then essentially delivered to McEwan to roll out to  
18          all of the officers --

19          A. Correct.

20          Q. -- who had attended Hayfield Road?

21                 You've mentioned the welfare issue. We've heard  
22                 that -- we've heard from Conrad Trickett that he was  
23                 post-incident manager and he was required in his role to

1 balance the welfare of the officers with the  
2 facilitating the investigative needs of the  
3 investigation. Why was Conrad Trickett not involved in  
4 any of these discussions?

5 A. One, he wasn't part of the Gold Group. Two, the role of  
6 PIM wasn't as ... we weren't aware of the whole aspect  
7 of what the PIM brought to post-incident procedures and  
8 to an investigation, so again it wasn't widely known  
9 what his role was, in respect of that, and not having  
10 him at the Gold Group he didn't have the ability to  
11 provide that input round about, "This is what I should  
12 do in respect of that". So again --

13 Q. I think last week you gave evidence that you thought  
14 with hindsight it would have been of benefit to have him  
15 within the Gold Group?

16 A. Absolutely, yeah.

17 Q. Do you think in relation to this discussion that there  
18 would have been benefit in having input from  
19 Conrad Trickett as PIM?

20 A. Yeah, but ultimately that decision lay with the gold  
21 commander, ACC Nicholson, to -- who he deemed to be more  
22 appropriate to deliver that message, so again I could  
23 see his rationale behind doing that and not coming from

1 Conrad.

2 Q. Was it only ACC Nicholson's decision as to who should  
3 deliver it or was it also his ultimate decision whether  
4 it should, in fact, be delivered?

5 A. Ultimately, yes.

6 Q. And as SIO, did you have any lingering concerns about  
7 providing information to police officers who had been at  
8 Hayfield Road in relation to the cause of death prior to  
9 actually having initial personal accounts or operational  
10 statements from them?

11 A. So, ideally I would have preferred to be in the position  
12 of having the personal initial accounts or operational  
13 statements, but I wasn't -- I knew for a fact that that  
14 obviously wasn't going to happen. So my perception of  
15 the cause of death was -- it was very vague in respect  
16 of that wording which is within that. It's a pretty  
17 general result that comes from a number of post-mortem  
18 examinations where further analysis is required  
19 regarding the cause of death around that.

20 So it was relatively brief and it really didn't say  
21 very much, to be honest with you, you know what I mean,  
22 it was obviously pending toxicology and pending further  
23 information at that time. So, balancing the welfare,

1 did it impact on my investigation or the PIRC  
2 investigation? Ultimately it wasn't my decision to  
3 simply decide that at that time but Billy Little was  
4 happy for it to go out to the officers concerned and  
5 ultimately the decision lay with Billy.

6 Q. So, was the decision ultimately Billy Little's or was  
7 the decision ultimately ACC Nicholson's?

8 A. So the decision to allow the message to go to the  
9 officers sat with Billy Little. The decision about who  
10 would deliver the message sat with ACC Nicholson, and  
11 thereafter he instructed me to deliver the message to  
12 Garry McEwan to deliver to the officers.

13 Q. So the decision to share information about cause of  
14 death with the attending officers --

15 A. Yes.

16 Q. -- rested with Billy Little?

17 A. Yeah, and that's detailed in the policy file on the  
18 discussion I had with Billy Little at that time.

19 Q. We may have heard that -- the suggestion that without  
20 information about the cause of death from the  
21 post-mortem, officers would be unwilling to give any  
22 sort of statement. Was that part of the discussion that  
23 you had either at the Gold Group meeting or the meeting

1 with PIRC at 7.30 in the evening?

2 A. There was some reference to it, I think it came from  
3 Chief Inspector Shepherd or potentially Garry McEwan,  
4 I'm not sure, that there was information about the fact  
5 that officers were not going to provide a statement  
6 until the result of the post-mortem examination, so that  
7 there was information there, it hadn't come directly to  
8 me, but it was discussed at the Gold Group and it was  
9 perhaps an extension of what I already knew, they  
10 weren't willing to provide statements.

11 Q. What influence did that have on you as SIO? You've  
12 explained last week that there was a gap and you wanted  
13 to get statements.

14 A. Yeah. It would have been extremely beneficial if that  
15 was the case, that they would have provided operational  
16 statements directly after that, which we know now wasn't  
17 the case. However, did it impact as SIO and did it  
18 impact from a PIRC perspective on the information we've  
19 provided the officers? I thought the information we  
20 gave them was extremely vague around the result of the  
21 post-mortem examination and, as I say, I think that the  
22 legal advice they supplementally got was to delay any  
23 statement at all until after toxicology comes back and

1           that there was thereafter a delay of 30 days or so  
2           because of that.

3           Q. In relation to the wording of the cause of death we  
4           looked at a moment ago, there was specific reference to  
5           blunt force trauma and that not having been part of  
6           the --

7           A. Yeah.

8           Q. -- cause of death. What were the particular reasons for  
9           noting blunt force trauma?

10          A. So that all came from the information that I was given  
11          from Keith Hardie, who was at the post-mortem  
12          examination. So again, it was, as I say, very vague  
13          information at that time, but again, it was -- the cause  
14          of death was unascertained at that time, so again we  
15          were not eliminating any potential hypothesis at that  
16          stage.

17          Q. We've heard about PC Tomlinson and his concerns when he  
18          returned to Kirkcaldy Police Office on the morning that  
19          he'd struck Mr Bayoh on the head on a number of  
20          occasions with his baton, and we've heard other evidence  
21          that striking someone with a baton to the head is a red  
22          zone, I think it was called, or a red area that can  
23          cause death. Was there any part of the discussion or

1 the rationale or the thinking to provide some sort of  
2 reassurance to PC Tomlinson that he had not caused death  
3 as a result of striking Mr Bayoh to the head with  
4 a baton?

5 A. Yeah, so I didn't have that information round about  
6 Tomlinson, so the information we passed to the officers  
7 was a form of words which was agreed between PIRC and  
8 myself but ultimately PIRC signed off on it, and, as  
9 I say, for me it was relatively vague round about what  
10 information we were passing to the officers. The  
11 information you've explained to me I wasn't aware of,  
12 and that obviously came subsequently during the noting  
13 of more extensive statements and accounts. But at that  
14 stage, as I said before, and I've consistently said, the  
15 gap was the fact that I didn't have that information  
16 which would have gave me that -- allowed me to fill the  
17 gap from an investigative perspective.

18 Q. So, even though we've heard evidence from PC Tomlinson  
19 that he came back and he spoke to officers in Kirkcaldy  
20 Police Office, in particular I think Austin Barrett,  
21 that wasn't information that was available to you on  
22 3 May?

23 A. No, there was no information at all coming to me from

1 the officers or from the Federation -- Austin Barrett  
2 obviously was a Federation member, but I never met  
3 Austin Barrett on the day, it was Amanda Givan, but as  
4 I've already gave evidence, Amanda Givan's direction was  
5 that they would not be providing statements.

6 Q. Reflecting now on that decision to share the information  
7 with officers, it may be said that there is a perception  
8 on the part of the family or the public more widely, and  
9 concern, that people who were witnesses but where they  
10 had not given initial accounts or operational statements  
11 were being shared information about cause of death, and  
12 concern that that might influence in some way their own  
13 account which they'd not yet given.

14 Can you understand that that decision could give  
15 rise to concern in public perception, in perception with  
16 the family?

17 A. Yeah.

18 Q. And how would that impact on your role as SIO?

19 A. So the information we gave, when we gave the officers  
20 that information, they were witnesses, their status did  
21 not change at all through the course of my involvement  
22 with them, there was no reasonable cause to suspect that  
23 they had been involved in any criminality or any

1           misconduct. From the information -- and the very vague  
2           information we had was that force had been reasonable,  
3           but again there was huge amount of gaps within what had  
4           actually happened round about force but there was  
5           nothing to indicate excessive force that we could pick  
6           up at that particular stage, so their status was that of  
7           witnesses.

8           So again, back to welfare, wellbeing, support of the  
9           officers was that we would provide them -- and again,  
10          there was quite a detailed, as I say, with Garry McEwan  
11          with the Chair, with a number of other members, round  
12          about the rationale of providing this information to  
13          them, but it was simply based on their welfare and  
14          wellbeing.

15        Q. Were you ever in a position -- you've described your  
16          involvement as SIO.

17        A. Yes.

18        Q. Were you ever in a position to exclude the hypothesis  
19          that excessive force had been used on Mr Bayoh?

20        A. Not when I -- no.

21        Q. Or that it had been used on him because he was black?

22        A. So I think that's two questions there, two separate  
23          questions.

1 Q. I haven't finished my first question, that's why I was  
2 asking. So was there ever a position when -- a point at  
3 which you were involved as SIO where you were able to  
4 exclude the possibility and the hypothesis that  
5 excessive force had been used?

6 Let's leave that at one question.

7 A. No, there was not, no. When I had done a handover to  
8 Keith Hardie, to the MIT, that hypothesis still remained  
9 open.

10 Q. And was there ever a point in time when you were  
11 involved as SIO that you could exclude the possibility  
12 that the actions of the officers had been influenced by  
13 the fact that Mr Bayoh was black?

14 A. At no times, at no time at all.

15 Q. So those hypotheses could not be excluded as  
16 possibilities by you?

17 A. So the hypothesis round about the attack or the  
18 restraint happened on him because he was black was not  
19 one of the hypotheses I've already mentioned to you.

20 Q. Well, why not?

21 A. Because the aspect of the information I had at the  
22 particular time did not indicate in any way that it was  
23 racially motivated.

1 Q. Was that not something that you considered because you  
2 were keeping an open mind?

3 A. Absolutely, but the aspect that I had at that time round  
4 about the hypotheses that I was running with, with the  
5 circumstances of Mr Bayoh being in the street with  
6 a knife, this was not some unprovoked attacked or  
7 restraint by police officers at the stage, with the  
8 information I had.

9 Q. But if you were keeping an open mind, you were aware  
10 that Mr Bayoh was black?

11 A. Absolutely.

12 Q. And you've talked last week about the fact that there  
13 were a number of Inquiries down south --

14 A. Yeah.

15 Q. -- and we'll come on to that later today, but why was it  
16 not part of your working hypotheses about excessive  
17 force being used?

18 A. So excessive force being used was a hypothesis which  
19 I have already described, yes.

20 Q. And was it not part of any hypothesis that the reason  
21 for excessive force being used could have been because  
22 Mr Bayoh was black?

23 A. There was nothing which I had in respect of the

1 information or evidence, and we have independent  
2 witnesses from the public that have called about  
3 Mr Bayoh being in the street with a knife, acting  
4 erratically. The restraint came as a result of  
5 Mr Bayoh's behaviour, that did not in any way -- there  
6 was no relevance at all, the fact he was black, in  
7 respect to that. The restraint occurred because of his  
8 activity and because of his behaviour.

9 Q. But he had died at the scene, and you've said the  
10 post-mortem was unascertained.

11 A. Yes.

12 Q. When I say the post-mortem, I mean cause of death was  
13 unascertained. So were you closing your mind to the  
14 possibility that the fact he was black had something to  
15 do with the circumstances?

16 A. No, and I've already said that one of the hypotheses  
17 which remained open was excessive force had been used,  
18 and, as I say, that was still apparent and still evident  
19 until I actually handed over the investigation.

20 Q. Before I move on to other questions about this, can  
21 I ask you briefly about completion of paperwork. We've  
22 talked last week and today about statements. Can you  
23 explain the obligations on officers to complete use of

- 1 spray forms in May 2015?
- 2 A. I genuinely can't. In my role, even back then, it's  
3 nothing I would have actually had kind of hands-on  
4 experience of doing. I'm aware there were online forums  
5 or electronic forms that they had to complete, but  
6 regarding how you complete them and where you submit  
7 them through to, I think it's to the Officer Safety  
8 Training Unit, or wherever else it goes to. But in my  
9 role in 2015 there was nothing I really actually got  
10 involved in was the completion of use of spray forms,  
11 that would have been their line manager that would have  
12 basically ensured that the various processes were  
13 carried out around that, but nothing as SIO I would have  
14 been involved in.
- 15 Q. What about use of force forms?
- 16 A. Similar, I mean, that's the personal responsibility of  
17 the officers or their line managers to complete.
- 18 Q. In the absence of getting initial personal accounts or  
19 operational statements, would these forms not have  
20 provided some assistance to you as SIO?
- 21 A. Absolutely.
- 22 Q. And did you consider at any stage whether you could --  
23 you had some leverage in terms of requiring the officers

1 to complete these forms prior to going off duty?

2 A. It was clear from my discussion with Amanda Givan that  
3 there was -- they were not going to complete notebooks,  
4 forms or provide operational statements prior to legal  
5 advice.

6 Q. And so you classed the use of spray forms and the use of  
7 force forms as part of that?

8 A. Yes.

9 Q. And did you consider whether any further steps could be  
10 taken by you as SIO in relation to these forms?

11 A. Erm, not at that time, not on 3 or 4 May, that was  
12 obviously something that was going to come through the  
13 subsequent investigation, but, as I say, on 3 May,  
14 extremely fast-moving, it was clear that the advice from  
15 the Federation was not to provide any further  
16 information at this stage until seeking legal advice.

17 Q. And we've heard that although that can be the advice, it  
18 is still an option for officers to --

19 A. Yeah.

20 Q. -- give statements or to complete forms or to give  
21 information, even if the legal advice is not to do that.  
22 At any time did you consider asking the officers  
23 individually if they would be prepared to give initial

1           personal accounts or statements or complete any of the  
2           forms?

3           A. Yes, so that sits with the PIM, because PIP's been  
4           initiated, so again that sits with Conrad.

5           Q. And did you ask Conrad Trickett to facilitate obtaining  
6           use of spray or use of force forms.

7           A. Not in particular, but I did ask around personal initial  
8           account/operational statements, as I've just --

9           Q. Yes, you gave evidence about that.

10                        So was there anything done by you in relation to  
11           seeking the forms to be completed?

12           A. No, I mean, it was discussed but the position of the  
13           officers was so clear that they were not going to be  
14           providing any statements, documentation at all. I take  
15           your point round about: well, is there anything more we  
16           can do to almost ask or direct them that they have to do  
17           it? You know what I mean, it's a really difficult one:  
18           how do you actually force someone to give a statement or  
19           give a personal initial account when their position is  
20           they are basically not doing anything at all until they  
21           seek further legal advice around this at this stage?

22                        The SOP states that obviously officers should  
23           account for their accounts and their movements whilst on

1 any tour of duty or whilst engaged with ... but again,  
2 how do you physically do that without their consent to  
3 provide that information to you? You know what I mean,  
4 it's extremely difficult, you know what I mean, you can  
5 ask them, you can prompt them to do it, thereafter if  
6 they don't you revert back to performance regulations  
7 and misconduct or whatever else. But at that stage of  
8 a critical investigation, what can you actually  
9 physically do?

10 Q. Did you consider the possibility of using misconduct or  
11 disciplinary proceedings as some sort of lever to  
12 encourage the completion of the forms?

13 A. No. No, no. But it was in the back of my mind because  
14 I was aware obviously that officers have a duty to  
15 provide information to an SIO as such in respect of that  
16 and I think it was the investigation of death SOP at the  
17 time, they should make you aware of the circumstances of  
18 the death.

19 But again, standard operating procedures are there  
20 as how it should work, but again sometimes there are  
21 occasions such as this whereby you're left with  
22 a significant incident whereby the advice and the legal  
23 advice they are getting, even before I arrived --

1           they've got a Federation rep there before I arrived  
2           providing that direction, Amanda (inaudible) she did do  
3           that.

4           But it was clear from my engagement and through the  
5           course of that whole day of 3 May that there was -- it  
6           was extremely unlikely that they were going to submit  
7           anything at all, and, as I say, that progressed through  
8           the 3rd and into the 4th and on the 4th it became the  
9           indication was that they would potentially submit after  
10          the post-mortem examination, but with the post-mortem  
11          examination being extremely vague in its findings it  
12          thereafter brought in the whole aspect of the toxicology  
13          which takes a period of time.

14        Q.    What could you have done if you'd wanted to raise the  
15            spectre of disciplinary or misconduct proceedings; what  
16            could you have done in your role as SIO?

17        A.    So there's a number of things, but that probably sits  
18            more with their line management round about the fact  
19            that they failed to do that. So there is that whole  
20            line management aspect starting from the sergeant to  
21            their inspector. So round about the aspect that  
22            Stevie Kay has the role of the governance of that shift  
23            as such, of the officers involved.

1           And regarding my own perspective of it is that if  
2           the legal advice is not to provide anything at all, as  
3           I say, other than -- I'm not -- I'm unsure, I mean do we  
4           put down or do you actually move towards misconduct at  
5           such an early stage on the back that the Federation  
6           advice is not to provide anything at that stage? So  
7           again, it was trying to kind of balance this through.  
8           It was extremely unusual, as I said, 27 years I've never  
9           had the refusal of operational statements, but I'm still  
10          a bit puzzled how you force someone to give a statement,  
11          and I think that's the challenge I had.

12       MS GRAHAME: Thank you.

13                   I'm conscious of the time.

14       LORD BRACADALE: We'll stop for lunch and sit at 2 o'clock.

15       (1.02 pm)

16                               (The short adjournment)

17       (2.04 pm)

18       LORD BRACADALE: Detective Chief Superintendent, could you  
19          help me clarify a couple of things, please.

20                   Could we have on the screen the minute of the  
21          Gold Group meeting on 4 May, that's PS03161, isn't it?  
22          Can you help me to understand how the minute of the  
23          meeting is produced?

1           A. Yeah, so it will be an identified minute taker which the  
2           Chair or a member of -- either the gold or silver  
3           commander will identify. That individual is obviously  
4           within the room whilst the meeting commences, and in the  
5           great majority of Gold Groups there are a kind of  
6           running parallel action log which thereafter moves from  
7           meeting to meeting in respect of that. The individual  
8           usually who takes the minutes is probably not actively  
9           involved in the investigation, it's usually someone  
10          independent from that who's brought in just simply for  
11          that kind of bureaucratic process. They will condense  
12          what's been said into a synopsis of what they deem to be  
13          the basis of what is being communicated by the  
14          individual who makes that input.

15                 The important aspect of the Gold Group minutes is  
16                 that at the conclusion and when they're drafted they  
17                 should be sent back to the gold commander to have final  
18                 sign-off. So ultimately ACC Nicholson should have  
19                 signed off on all the Gold Group minutes that have been  
20                 progressed over the two days, 3rd and 4 May, and as  
21                 I say, only after the sign-off by ACC Nicholson will  
22                 they thereafter be published.

23          LORD BRACADALE: So if there are different editions of these

1           minutes, should I understand that a final version will  
2           be approved by the Chair?

3           A. That's the way it should work, sir.

4           LORD BRACADALE: Now, was there anyone from PIRC at this  
5           meeting?

6           A. I'm sure there were, on the 4th, yeah. I don't think --

7           LORD BRACADALE: Who was that?

8           A. I don't think it was Billy Little, however, I think he  
9           was at the post-mortem examination, but I'm not sure who  
10          it was, but I know for a fact there were PIRC  
11          representatives at the investigative briefing I gave at  
12          10 o'clock that morning on the 4th. So I think we've  
13          already looked at the minutes of that meeting, sir, so  
14          there were PIRC representatives at that meeting that had  
15          came online on the 4th, that came to that forum, but in  
16          the absence of membership of that Gold Group I can't  
17          actually say who was at it, but I would imagine  
18          certainly there would have been some representatives  
19          from PIRC at it.

20          LORD BRACADALE: On another matter, were you aware as to  
21          whether there were written terms of reference for PIRC  
22          provided by the Crown Office on 3 May?

23          A. No, but I was aware it was getting drafted, so I'd spoke

1 to Keith Harrower, the DCI, on the 3rd and he says that  
2 there were definitive terms of reference getting drafted  
3 by Crown Office for PIRC, but I did not have sight of  
4 them.

5 LORD BRACADALE: Did you ever have sight of them?

6 A. No, I didn't.

7 LORD BRACADALE: Thank you.

8 Ms Grahame.

9 MS GRAHAME: Thank you.

10 Perhaps if possible could we go back to, I think  
11 it's PS784, we talked about this, I think this is the  
12 briefing note that you've just --

13 A. Yeah.

14 Q. -- referred to. We've not discussed them today, but  
15 they were previously part of your evidence. So there  
16 they are. Do you remember looking -- is this the  
17 briefing notes you're referring to?

18 A. Yes, that's correct.

19 Q. This is a briefing note from 10 o'clock in the morning  
20 on 4 May and we did note previously you have had chaired  
21 this briefing?

22 A. That's correct.

23 Q. And that PIRC had asked for all original manuscript

1 statements to be given to them, along with typed copies.  
2 Was that a request made at the meeting by someone from  
3 PIRC, or was it something that you raised at the  
4 meeting?

5 A. I believe I'd raised that at the meeting.

6 Q. Right.

7 A. On the knowledge that that's what PIRC were looking for.

8 Q. And I think you gave evidence last week that that was --  
9 I put to you that that would include officers?

10 A. Yes.

11 Q. But would it also include other original manuscript  
12 statements from witnesses that you'd obtained?

13 A. Yeah.

14 Q. Then it mentions further down that:

15 "The PIRC lead is Billy Little."

16 Do you see the name of anyone there from PIRC?

17 A. No, but I don't think Billy was at that meeting, as  
18 I say, I think he was at the post-mortem, I think the  
19 post-mortem was due to start at 2 o'clock, I believe.

20 Q. If we could maybe look through that first page and then  
21 on to the second page, do you see any other references  
22 to anyone from PIRC there that might help?

23 (Pause)



1 A. Yes, that's correct.

2 Q. Could I ask you to look at a statement from Lesley Boal,  
3 please, and this is SBPI 00223. We've not yet heard  
4 evidence from Lesley Boal. This is a statement that  
5 DCS Lesley Boal gave on 23 September and 4 November last  
6 year. It's been signed and I'd like to look at  
7 paragraph 121, please:

8 "Ch Supt McEwan and I didn't discuss the nature of  
9 the investigation. Race as a possibility was not  
10 discussed with Ch Supt McEwan. However, it is in the  
11 back of your mind when you're thinking about all  
12 possibilities. In terms of hypotheses, one would have  
13 been that the male had been treated differently because  
14 he was a black male. I can't remember having  
15 a conversation with anybody else about it, but the  
16 feeling I got was that everybody was thinking along the  
17 same lines as me that it was a possibility that the  
18 actions of the police officers or a police officer was  
19 because Mr Bayoh was black."

20 I wonder if, looking at that, do you have any  
21 comments about whether this was something that you had  
22 in your mind?

23 A. I think it was a wider aspect of the impact that we had

1 the death of a black male within Kirkcaldy after police  
2 contact. It was, as I said prior to the break, we had  
3 the circumstances of the incident and the fact that  
4 restraint had been made and officers responded to  
5 a spontaneous incident involving Mr Bayoh. The  
6 community impact, the media impact, the climate within  
7 the UK at that time in 2015, as I said, the previous  
8 incidents we had, down south in particular, where about  
9 the death of individual black males in particular  
10 following restraint was, I mean, was paramount, I mean,  
11 it was significant and I've already gave evidence around  
12 that. The hypothesis round about restraint and the  
13 aspect of Mr Bayoh being black, there was nothing to  
14 indicate that that was a motivation for the officers  
15 that I could see at that particular time, but it was  
16 something I was aware of.

17 Q. So did that possibility remain open until at least you  
18 could get the statements and accounts of the officers?

19 A. Yeah, and that linked into the whole aspect of restraint  
20 being one of the hypotheses and round about the  
21 motivation and what would thereafter subsequently come  
22 from that, from once we got the personal accounts off  
23 the officers involved.

1 Q. So when you were considering the hypothesis of restraint  
2 having contributed to his death and you were considering  
3 the information that you were aware of regarding  
4 particular matters about the -- as DCS Lesley Boal says  
5 here, that the male had been treated differently because  
6 he was a black male; that was one of the hypotheses, was  
7 it?

8 A. So that's Lesley's hypothesis, that's one of the things  
9 that she's saying that she hasn't shared with anyone  
10 around that, as she quite rightly points out, but again  
11 I was keeping a very open and transparent approach to  
12 this. Was this a particular option that was going to  
13 develop as we got personal initial accounts, that there  
14 was some aspect that it was racially motivated, so it  
15 fitted in with the aspect of the hypothesis round about  
16 restraint being used, excessive force potentially being  
17 used: what was the motivation around excessive force  
18 being used if it was excessive force? So it was, it was  
19 obviously, it was a significant aspect of the response  
20 to the investigation.

21 Q. So the restraint and the possibility of excessive force  
22 having been used by the police officers at Hayfield Road  
23 was one of the hypotheses?

1 A. It was.

2 Q. And in keeping an open mind it was a possibility which  
3 you were bearing in mind that race was a factor, the  
4 fact that Mr Bayoh was black was a factor in that, in  
5 assessing that hypothesis?

6 A. Absolutely, there was nothing discounted at that  
7 particular stage.

8 Q. So that remained a part of the hypotheses and part of  
9 the investigation until it could be excluded?

10 A. Yes.

11 Q. And it couldn't really be excluded until you had initial  
12 accounts or operational statements from the officers?

13 A. Correct, and the wider aspect of the investigation as  
14 well, house-to-house, CCTV review, and so on and so  
15 forth.

16 Q. Thank you.

17 You've mentioned -- if we could go to your own  
18 Inquiry statement, please, you've mentioned in  
19 paragraph 47, and you've mentioned just a moment ago,  
20 other Inquiries that you were aware of in relation to  
21 deaths -- here we are -- of black men following on  
22 police contact.

23 I'll just read out this paragraph:

1           "For experiences arising from significant  
2 incidents -- such as the Stephen Lawrence, Habib Ulla,  
3 Sean Rigg and Christopher Alder cases -- as well as  
4 other incidents that were relevant to equality,  
5 diversity and race, there were significant inputs into  
6 the equality and diversity and OST courses over the  
7 years, in terms of identifying potential shortcomings  
8 and good practice. None of these courses 'stood still',  
9 they were constantly evolving. My impression is that  
10 the findings from the various inquiries and reviews are  
11 still filtering through into law enforcement.  
12 For example, the findings of institutional racism  
13 following the MacPherson Public Inquiry, led to  
14 significant internal review across all UK law  
15 enforcement agencies."

16           I'm interested in a number of things that you've  
17 mentioned in this paragraph. We will no doubt hear more  
18 evidence in the future about these matters, but since  
19 you've raised them here. We know, and a number of  
20 officers have given evidence about the Stephen Lawrence  
21 Inquiry, which was the MacPherson report, MacPherson  
22 Public Inquiry, that there was a finding of  
23 institutional racism in relevance to

1 the Metropolitan Police investigation into the murder of  
2 Stephen Lawrence. That was published in 1999.

3 And again, we'll hear more information about  
4 Christopher Alder, but we understand that he had been  
5 unlawfully killed in 2000. Sean Rigg died following  
6 unsuitable and unnecessary force from officers,  
7 including a prone restraint in 2012. The conclusion of  
8 the inquest jury into the death of Habib Ulla was in  
9 2015.

10 Would you agree that those Inquiries and those cases  
11 involved concerns about the use of force by police  
12 officers, and in particular there was concern about the  
13 treatment of black men in police custody, or after  
14 police contact, due to their race?

15 A. Yes.

16 Q. And that some of those concerns that were raised in  
17 these Inquiries demonstrate that there are, there may be  
18 different considerations for black people rather than  
19 white people?

20 A. Erm ...

21 (Pause).

22 So, again, I think you have assessment of -- my  
23 understanding of the cases are pretty -- is pretty

1 accurate around that, about the aspect of their arrest,  
2 they're in custody, and about their treatment and  
3 excessive force being used. Sorry, can you just repeat  
4 what the final question was on that?

5 Q. Let's just look at this generally, then. You seem --  
6 you've named these Inquiries specifically --

7 A. Yeah.

8 Q. -- and you've obviously got a working knowledge of these  
9 matters. Tell us what you know about ...

10 A. I probably would be doing them a disservice to try to  
11 explain each and every one of them, but I mean my  
12 synopsis was that, the Lawrence one aside, the three  
13 which I've mentioned there, I think there was one  
14 whereby there was apparent mental health issues with one  
15 of the individuals concerned, he attended hospital, and  
16 thereafter -- he was a previous victim of an assault and  
17 thereafter conveyed to -- restrained and conveyed to  
18 custody and died within the cell passageway. And again,  
19 it's clear that there wasn't an appreciation of the  
20 background to some of the individuals involved in these  
21 sort of critical incidents, that there should be  
22 a greater understanding of mental health, how we treat  
23 individuals when we come into contact with them, and

1           again, back into the whole aspect of restraint and what  
2           is appropriate in the circumstances. So --

3       Q. And what did you take personally from your understanding  
4           of these Inquiries in relation to the factor that there  
5           were concerns that these cases involved black men?

6       A. Yeah, I mean, my conclusion with them was that there was  
7           significant shortcomings on behalf of the police in  
8           respect of the management of each of these incidents  
9           involving black males.

10      Q. So can you give us a little more information about your  
11         understanding of what those concerns were?

12      A. Erm, so, as I said, I think -- I mean, it was to do with  
13         the level of restraint utilised in one or two of the  
14         incidents, it was to do with the lack of appreciation of  
15         underlying mental health issues with one or two of them  
16         as well, round about the -- is custody the correct place  
17         for these individuals who are going through such  
18         a traumatic event?

19                 So again, I can't recall in detail, as you would  
20                 appreciate, the ins and outs of every one of the cases,  
21                 but the outcome for me was that there had been  
22                 shortcomings and failings on behalf of the police in  
23                 respect of how we had responded, how we managed, how we

1           dealt with such incidents. And again, I mentioned that  
2           it was brought up on some of the OST courses, so some of  
3           the officer safety training courses you went on after  
4           that, they would perhaps refer to one of the cases round  
5           about an incident or a case down south or the findings  
6           from an incident down south whereby positional asphyxia  
7           or whatever was basically identified and the  
8           shortcomings were this or that in that respect.

9           So --

10          Q. Had you had training from Police Scotland in relation to  
11          these cases?

12          A. No.

13          Q. Is that how you knew the names?

14          A. No, no. Basically I'd done research myself. I was  
15          aware of the cases that were kind of running down south,  
16          and some of the findings of them, but I think what they  
17          did do for the OST, they didn't go into any detail that  
18          I can recall -- they maybe did name them but I can't  
19          recall them back to that time in the OST. But they  
20          would give you an understanding of -- such as a stated  
21          case or such as an incident whereby the findings  
22          thereafter led to a change in process or a change in  
23          procedure, that we no longer basically put someone face

1 down in a cell van, for example, while conveying them to  
2 custody. So it was more about the learning and the  
3 shortcomings that had been identified and thereafter how  
4 we were moving towards best practice as such.

5 Q. When did you do this research? Was it before preparing  
6 your statement?

7 A. So, no, that was after 2015, after I was involved in the  
8 incident within Kirkcaldy.

9 Q. So were you -- you've not really mentioned much about  
10 the concerns arising from these cases or Inquiries in  
11 relation to the fact that the men were black or concerns  
12 about the way the police treated people because they  
13 were black. What did you take from these Inquiries in  
14 relation to that?

15 A. As I say, I didn't go into them in any detail, I didn't  
16 study the cases individually, you know what I mean,  
17 I was just looking at what were the outcomes, what were  
18 the findings from some of the independent reviews that  
19 were done around it as such and just to take any  
20 learning I could from it.

21 Q. But not necessarily learning in relation to the factor  
22 of race?

23 A. Yeah, if there was race -- if there was finding in

1           respect of race, I would have took that as well. But,  
2           as I say, I can't recall in detail the three cases that  
3           I've detailed there.

4       Q. All right.

5           You've commented on the Inquiries. Can you help us  
6           understand how you reconcile your understanding of these  
7           Inquiries and the learning that you've taken from those  
8           when you've also said in your Inquiry statement that  
9           race had:

10           "... no basis for considering race as a factor in  
11           the circumstances at Hayfield Road."

12       A. So that was to do with my decision-making, that race  
13           didn't impact on how I responded to that incident as  
14           an SIO.

15       Q. Right.

16       A. There was obviously a wider understanding and  
17           appreciation that race was going to be significant in  
18           respect of this incident, but I think what I've  
19           mentioned in my statement was that in respect of being  
20           open, being transparent in my decision-making and my  
21           direction round about where the priorities lie was  
22           pretty standard for any investigation I've managed in  
23           respect of an unexplained death.

1 Q. So in identifying your priorities and your actions, race  
2 wasn't a factor in identifying those?

3 A. They are standard priorities that you would deal with  
4 for any unexplained death, no matter regarding any  
5 ethnicity.

6 Q. And if there are wider implications in relation to black  
7 men, for example, are there any standard priority  
8 actions where you automatically include race as  
9 something to be prioritised and considered?

10 A. Yeah, and that's why we had the Gold Group structure.  
11 So again, the whole aspect of it had been deemed  
12 a critical incident because of the death of Mr Bayoh.  
13 Also the fact is that the wider aspect of Mr Bayoh being  
14 black was discussed at the Gold Group and the wider  
15 aspect of the community impact, the media coverage, the  
16 public perception. That's why we had that whole  
17 Gold Group governance in place. As I say, the pillar  
18 I was dealing with was the investigation and I was  
19 taking anything from the Gold Group which may cross over  
20 in respect of his race or ethnicity.

21 Q. Despite that discussion in the Gold Group, there was  
22 nothing said there that actually altered your priority  
23 actions in terms of the investigation?

1       A. So there was a wider appreciation of what we were  
2       dealing with, and the community impact and the public  
3       perception around it. So there were challenges with it,  
4       because of that.

5               So in answer to your question, yeah, it did impact  
6       on my priorities, it did impact on my approach to the  
7       investigation in respect of Mr Bayoh being black, but it  
8       was a wider consideration, not just for the  
9       investigation but for the complete Gold Group and the  
10      Police Scotland response to his death.

11      Q. So you were SIO in relation to the investigation.

12      A. Yeah.

13      Q. What impact did those wider considerations have in  
14      relation to you, your role and your investigation?

15      A. So that impacted very much on the FLO strategy which we  
16      began to develop, although it didn't actually move to  
17      Police Scotland deployment, but ethnicity, his  
18      nationality, his religion, so again it was that wider  
19      appreciation of exactly how we could support the family  
20      in respect of some of those areas moving forward.

21      Q. Insofar as we're focusing only on the investigation of  
22      the events into Sheku Bayoh's death --

23      A. Yes.

1 Q. -- not the family liaison, what impact did race have on  
2 the actions you took in investigating the death of  
3 Sheku Bayoh?

4 A. So that was just keeping an open mind at all times  
5 around it, the hypotheses that may very much well  
6 develop over that, it was about putting in place the  
7 significant stepping stones, I mean, the base layer to  
8 allow us to basically move forward with the  
9 investigation, that we'd not missed anything at all as  
10 the days and weeks would progress, so my aspect was  
11 response, putting in place a framework for the  
12 investigation, with the knowledge that it was going very  
13 quickly over to PIRC and to the Major Investigation  
14 Teams, but taking cognisance of all the areas I've  
15 identified as priority as well as the aspect of race and  
16 whether or not there was some racially motivated aspect  
17 to that which may come online once we get personal  
18 initial accounts or when the further investigation  
19 develops.

20 Q. So when you've given evidence that there was nothing  
21 that you were able to identify that indicated race had  
22 been a factor in those early days of the investigation,  
23 and you're also saying, "I'm keeping an open mind", can

1           you reconcile those two things for us?

2           A. Yeah, absolutely. So the structure I put in place was  
3           what I would put in place for any major investigation  
4           that I respond to round about the priority areas, round  
5           about the loci, round about the significant witnesses,  
6           round about CCTV, round about house-to-house,  
7           door-to-door, round about any potential suspects. So  
8           again, all those areas are very familiar and consistent.

9           But again the -- what also is -- the hypotheses  
10          which I'm developing over the course of that early  
11          morning, one of them being restraint, and filtering from  
12          that is why was there excessive restraint if that  
13          thereafter basically comes out from the personal initial  
14          accounts of some other evidential stream that there has  
15          been excessive force utilised due to the fact that it's  
16          been racially motivated.

17          So again, that aspect sits very clearly with that  
18          hypothesis round about excessive force and restraint  
19          being used around that. So, as well as keeping in place  
20          all of the significant powers for the investigation  
21          which allows it to basically progress, and as I said  
22          earlier on, I think it was last week, the timeline and  
23          the movements of Mr Bayoh right from the incident at the

1 home address in Arran Crescent to Hayfield Road, it was  
2 quite quickly established what we had, the aspect that  
3 we did not have was what occurred at Hayfield Road  
4 regarding restraint with the force used by the officers:  
5 was it excessive, was it reasonable? And also what was  
6 the motivation around that in that respect? So again,  
7 there was gaps, as I said before, and I was never going  
8 to close those gaps on 3 May.

9 Q. Looking back at the events in May 2015, and thinking  
10 about how things could be improved, can you think of any  
11 way that, you know, an awareness of the situation and  
12 the wider implications, the public concerns about cases  
13 such as the ones you mention here in paragraph 47, how  
14 can those wider concerns be reflected in the actions  
15 that you take in relation to an investigation? So are  
16 there any actions that you think could be even  
17 automatically included in any investigation into  
18 an unexplained death of a black man that would focus and  
19 prioritise the issue of race in that investigation?

20 A. So the media strategy is significant, and again the  
21 aspect of the reluctance to basically be more overt with  
22 the media strategy on day one, I think had a significant  
23 impact on the public perception. Saying very little or

1 nothing at all I don't think assisted that public  
2 perception of what we had. The issue around what I seen  
3 was a legitimate expectation of my officers providing me  
4 with operational statements I believe was also  
5 significant, and the public perception of how that would  
6 look, the fact that officers working for Police Scotland  
7 and involved in the response to a significant incident  
8 were refusing at that time to provide operational  
9 statements or personal initial accounts, so the public  
10 perception around that as well.

11 I think the media, I think it's important that we do  
12 get that right round about how we can provide that more  
13 transparent overview of what's occurred and that we are  
14 taking into account and consideration the aspect of  
15 race, and also the response by my own officers on that  
16 particular day.

17 So what we've got is the public perception is that  
18 they've seen very little coming from the investigation,  
19 it's almost a closed shop, for want of a better word,  
20 and the fact is that that, I've no doubt, caused  
21 community unrest, caused anxiety and concern with the  
22 family -- quite rightly so -- the fact that, obviously  
23 the kind of mixed messages that came from the death

1 message as such.

2 So I think there's a few things we could have done  
3 better in respect of being more open and transparent  
4 round about the wider consideration that race was  
5 a potential factor.

6 Q. And can you explain how an enhanced media strategy would  
7 assist your investigation into the death of Mr Bayoh?

8 A. Yeah. So I think that being overt with the media around  
9 the fact that we are looking for eyewitnesses to the  
10 incident, we are looking for anyone with dashcam  
11 footage, we are looking for any conversations on  
12 social media, for example, areas such as that, but  
13 almost that we -- it's a proactive media strategy that's  
14 developed other than all we are simply doing is reacting  
15 and putting -- and if asked are putting very few lines  
16 into the public domain, which I don't think helped,  
17 because it did look on reflection that we were  
18 potentially holding back information, whereby if we were  
19 far more proactive with the media side of things that it  
20 may have answered a lot of questions and again we could  
21 have involved the family with that as well and how that  
22 would have eventually played out. So I think there was  
23 some learning from myself around it as well.

1 Q. You've talked about statements. When you talk about the  
2 benefit that would have had to your inquiry, would  
3 initial personal accounts have been sufficient to help?

4 A. Yes. Basic facts, initial personal accounts would have  
5 been significant in respect of who done what, who was  
6 there and what was the use of force. We didn't have  
7 that. So you can take the investigation up to a certain  
8 extent, but because of the complete refusal of the  
9 officers to engage at that stage on 3 May, 4 May and  
10 thereafter into the early part of June, what we had was  
11 that significant gap in the understanding of PIRC,  
12 Police Scotland, regarding what actions the officers  
13 done at the scene and during the restraint.

14 Q. If you'd been instructed or ordered on 3 May to  
15 investigate race, so not just a hypothesis --

16 A. Yeah.

17 Q. -- you were working on but a specific instruction, how  
18 could that have translated into priority actions in your  
19 daybook?

20 A. So I think it probably would have come or emerged from  
21 a number of the priority actions that had been -- had  
22 developed at that particular time. But it was  
23 a consideration by me, it was a consideration by -- as

1 I say, Lesley Boal mentions it in her statement as well.  
2 I mean, it was the critical aspect to the incident, it  
3 was declared a critical incident at 9.10, the Gold Group  
4 structure got put in place, the whole aspect of race was  
5 significant and it was paramount throughout the course  
6 of the days I was involved in it.

7 Q. Can I ask you about paragraphs 491 and 492 of your  
8 Inquiry statement, please. 491 and 492.

9 (Pause)

10 While we're getting that on the screen, I think  
11 there's comment in these about the threat level, severe  
12 threat level, and you mentioned this last week.

13 A. Yeah.

14 Q. We talked about this, and the perception that -- here we  
15 are, 491 -- and you'll see that:

16 "... in a climate where there had been a number of  
17 well publicised deaths of black males in custody -  
18 particularly in England and the USA - where restraint  
19 had been a potential contributory factor."

20 And you talk about Lee Rigby and the threat level  
21 raised to severe.

22 Then at 492, again you talk about the threat level,  
23 and then 493:

1            "It was the perception that could possibly be taken  
2            from the incident in Kirkcaldy that it could be seen as  
3            some perhaps related to a terrorist activity or incident  
4            - but we knew it was not."

5            Would it be fair to say that you were focusing there  
6            in your statement about maybe the public wrongly  
7            assuming that 3 May was a terror incident rather than  
8            you having any basis for thinking that?

9            A. Probably about both, you know what I mean, as I've  
10           explained before, one of the hypotheses was: was it  
11           terror-related? Which we were quite quickly able to  
12           eliminate. But because of the climate and the landscape  
13           on 2015 with the attacks I've mentioned and the threat  
14           level at that level, the media reaction to something  
15           such as this undoubtedly would have caused public  
16           concern that they were potentially terror-related.  
17           Again, that links back into a more proactive media  
18           strategy to eliminate that suggestion.

19           Q. Earlier you've mentioned -- it was probably up the  
20           screen -- you have mentioned Lee Rigby, we've heard  
21           a number of witnesses talk about Lee Rigby in 2013, and  
22           we understand he was murdered by extremists who were  
23           Muslim and they were black. Did you have any concerns

1 in May 2015 that there might be preconceived ideas about  
2 Mr Bayoh, that he was some sort of terrorist extremist?

3 A. No. It was one of the early hypotheses I had that we  
4 had to eliminate the potential that it was  
5 terror-related, but we could do -- we've done that  
6 fairly quickly, within the first two hours, to be honest  
7 with you, you know what I mean, and there was no  
8 inference at all that it was terror-related. I think  
9 what I was trying to put over in the paragraphs there  
10 was it was a completely different landscape then from  
11 where we are now with these things, and I think it was  
12 also the public perception as well as the perception  
13 within law enforcement round about that threat level,  
14 round about the anxiety of responding to such as  
15 a knife-related incident and how rare this -- something  
16 like this was on a Sunday morning within Kirkcaldy.

17 So I've no doubt in the back of the officers' minds  
18 that they were attending -- they were probably unsure  
19 what they were responding to at that particular time and  
20 I daresay they were keeping all options open regarding  
21 what we were dealing with.

22 Q. So given what you knew about the threat levels at that  
23 time, do you think all officers would be considering

1 possible terrorism for attending a knife incident?

2 A. I can't speak for all officers, but I can -- I mean,  
3 when I was made aware of the incident, did I think that  
4 this could potentially be terror-related? Yeah, I did,  
5 but that was only one of a number of different  
6 hypotheses that I had in my head, so I think to not have  
7 that you probably wouldn't be doing your job, I wouldn't  
8 be doing my job, because you have to eliminate the  
9 potential that this is terror-related which, as I say,  
10 we were able to eliminate very, very quickly.

11 Q. Thank you.

12 Can I ask you to look at now paragraph 59. Sorry,  
13 I'm going way back to the beginning:

14 "When I got the initial call~..."

15 There we are. If we just go up the page slightly so  
16 you can see that. You've got a hard copy of your  
17 Inquiry statement if you wish to look at that.

18 A. No, it's okay.

19 Q. This is 59, second paragraph, and it talks here about:

20 " ... I just kept an open mind around what had  
21 occurred and began to consider the wider  
22 implications ..."

23 Is that what you were talking about shortly -- just

1 a moment ago, about the wider --

2 A. Yeah.

3 Q. And they were being discussed at the Gold Group meeting?

4 A. Yeah.

5 Q. And then, towards the bottom of that paragraph, if we  
6 could move down slightly, sorry, and it says:

7 "I had a wider appreciation and open-mindedness  
8 about what I was going to face at Kirkcaldy Police  
9 Office before I became actively involved there. Was  
10 this an incident triggered by ideology, or was this  
11 an incident simply involving the arrest of an individual  
12 and that this individual was black."

13 And that's really what you were talking about  
14 a moment ago, is it?

15 A. Yeah, I think it was just about keeping that open mind,  
16 I think the work I had done prior to attending at  
17 Kirkcaldy, I was in a good place around the strategy  
18 I had in mind to manage the various hypotheses as we  
19 went through the course of the morning, and again the  
20 terror aspect and the link to counterterrorism we  
21 eliminated very, very quickly.

22 Q. If we can go back up the page, please, do we see that  
23 just prior to the bit I read out you talk about you:

1            "... anticipated that due to the circumstances of  
2            the incident it might gain significant media interest as  
3            well as impact on the local community, particularly on  
4            minority groups."

5            What was it about the incident that made you  
6            particularly concerned about the impact on minority  
7            groups?

8            A. I think it was just the climate within the UK, the  
9            previous incidents involving the death of a black male  
10           whilst being restrained or in custody, and, as I say,  
11           you know what I mean, I thought, I knew right away that  
12           this was going to be a significant investigation, even  
13           at that early stage, and that I didn't delay getting  
14           there, I left almost immediately because I knew the  
15           challenging nature of what basically I was going to be  
16           confronted with. The --

17           Q. So even before attending the Gold Group meeting?

18           A. Yeah.

19           Q. -- where these implications were discussed, you said you  
20           realised pretty much immediately --

21           A. Yeah.

22           Q. -- that there would be~..?

23           A. Yeah.

1 Q. You gave evidence last week about doing checks, intel,  
2 background checks, that type of thing, and you mentioned  
3 that in connection with looking at your daybook. You've  
4 talked about the counterterrorism hypotheses. As part  
5 of that counterterrorism hypothesis and investigating  
6 that as a possibility, as I understand it, the police  
7 will carry out certain checks looking for intel --

8 A. Yeah.

9 Q. -- to see if there's any evidence available that would  
10 back up --

11 A. Yes.

12 Q. -- that counterterrorism hypothesis. As part of that  
13 investigative strand, would you instruct checks to be  
14 carried out on a variety of people involved in the  
15 incident?

16 A. So ...

17 Q. Or only the deceased?

18 A. No, I think -- no, I mean, I think I explained it last  
19 week, I may not have explained it very well, but we  
20 usually have an intelligence cell attached to any major  
21 investigation. That -- I mean, that could be literally  
22 two people doing all the background checks round about  
23 anyone who comes into an investigation.

1           Regarding the CT side of things, or  
2           counter-terrorism or terror-linked, I think there's  
3           probably two aspects to that. One is the aspect of the  
4           background awareness of UK policing, and I include  
5           within that the UK CT network around who this individual  
6           is and if there's any background that we should be aware  
7           of round about ideology, or round about threat.

8           And then there's a second aspect about looking more  
9           closely at the individual himself, what we might know  
10          about him, such as what we might find in the house what  
11          do we find in his property, what's on his mobile phone,  
12          what's on his computer system?

13          And I don't just mean that for Mr Bayoh, I mean in  
14          general around that, that's what we would normally do.  
15          So again, as well as doing the background intelligence  
16          checks nationally, internationally as well, we would  
17          also do that whole thorough examination of the  
18          background of the individual as well.

19          Q. You've talked about doing those checks in relation to  
20          Mr Bayoh; what about his family?

21          A. No. Unless there was something that came up and it was  
22          highlighted through the work we were doing round about  
23          the background of Mr Bayoh, we would not naturally go

1 through the full family unit in respect of that.

2 Q. What about friends who may be witnesses?

3 A. So friends that came into the investigation, I can't  
4 confirm, but unlikely for CT, it would mainly just be  
5 background checks on our normal police systems that  
6 we've access to. So, as I say, it would not be that  
7 more thorough examination of the wider aspect of any  
8 sensitive information that may be held on some our  
9 partner systems as such.

10 Q. Would the intel cell or unit be part of those checks if  
11 they weren't specifically CT checks?

12 A. Yeah, so they would deal with general checks across the  
13 investigation as it progresses, they would be there from  
14 day one right through to complete, and they would do the  
15 background checks of any individual of note who came  
16 into the investigation round about did we need to  
17 approach them, was there a threat from the individual,  
18 was there background that we needed to know?

19 So that would all be done with that. The reference  
20 to the wider aspect of the CT side would be through the  
21 National Intelligence Bureau and into the wider UK CT  
22 network, that we would do the more sensitive checks  
23 around was there anything at all indicating that this

1           was going to take place on 3 May in Kirkcaldy,  
2           for example.

3           Q. You said you've ruled out CT very quickly. What  
4           involvement did you have in engaging with the intel cell  
5           who were carrying out these checks?

6           A. I had no involvement.

7           Q. So who did?

8           A. So that would have been done through the investigation,  
9           I think it was done initially with Colin Robson into the  
10          intel side, or Graeme Dursley, and thereafter the second  
11          day we had the intelligence structure coming in from the  
12          MIT side, the Major Investigation Team, they would have  
13          come in on day two.

14          Q. So from day two, 4 May, checks in relation to intel or  
15          through the intel cell would be sort of led by MIT?

16          A. MIT, yeah, obviously under the guidance of PIRC.

17          Q. Under the guidance of PIRC, and from 4 May you've said  
18          that was Billy Little?

19          A. Yes.

20          Q. And in what circumstances would you anticipate it being  
21          of assistance to your inquiry to conduct checks on  
22          a person's legal representatives?

23          A. (Pause). I wouldn't imagine we would require to do

1           that.

2           Q. Is that something you had any involvement in, in  
3           relation to these events?

4           A. Absolutely not.

5           Q. Can you see anything in your own investigation and the  
6           hypotheses and the strategies you were developing where  
7           information or intel about a person's legal  
8           representatives would have assisted you?

9           A. No, I had no involvement in any aspect of that.

10          Q. And can you see any way that that intel might have  
11          assisted your investigation in any way, the  
12          investigation into the death of Mr Bayoh?

13          A. No.

14          Q. And once you ruled out counterterrorism very quickly,  
15          can you explain to us why further intel checks may have  
16          been required in relation to your investigation?

17          A. It does take a bit of time sometimes to run some of  
18          these checks through, but the information I was getting  
19          back was that there was nothing of any -- any concern  
20          that we could see around any -- that's been triggered,  
21          as I say in my statement, by any ideology. There was no  
22          CT aspect to it whatsoever. But again, we would run  
23          through the necessary checks, and as I've said they do

1 take a bit of time sometimes if we are looking at some  
2 of the international checks that we need to carry out.  
3 So -- and I mean, I think it was mentioned at one of the  
4 Gold Groups that we'd kind of almost wholly eliminated  
5 the aspect of CT.

6 Q. And from the way you're describing it I think the focus  
7 for you as part of the investigation was more about  
8 Mr Bayoh's potential ideology, that's what you were  
9 interested in, if that existed?

10 A. Yeah, that was one of the early hypotheses, as  
11 I indicated, you know what I mean, it was only one of  
12 those which again that was one that we could almost  
13 eliminate very, very quickly. And again, the other  
14 hypotheses thereafter remained open as 3 and 4 May  
15 progressed.

16 Q. Thank you.

17 Can I ask you to look at another paragraph in your  
18 Inquiry statement, please, 488:

19 "I have been asked to what extent Sheku Bayoh's race  
20 was a factor in my actions and decisions in this  
21 enquiry. None whatsoever."

22 I think you've expanded on that today.

23 A. Yes.

1 Q. "I have never made any decisions throughout my service,  
2 and also in my personal life, based on someone's race or  
3 ethnicity, or religion. The wider post-mortem  
4 considerations and the management of the remains of  
5 Sheku, that was not to do with race as such but more to  
6 do with his religion. Nothing I did, and no decisions  
7 I made, were influenced negatively in any way by race.  
8 It was positive that we had an understanding of family  
9 concerns in areas surrounding that issue. In the time  
10 I was involved in the investigation, race was never  
11 a factor in my outlook, decision-making or in any of the  
12 investigative strategies which I put in place. I had,  
13 and have, no negative preconceptions regarding race.  
14 I would say that I am anti-racist. Racism from my  
15 personal perspective is utterly deplorable and has no  
16 place either in policing or in society at large."

17 This expression "anti-racist", is that your  
18 expression?

19 A. No. However, it's something that I'm fully behind.  
20 I think it was raised by the Chief Constable in one of  
21 his bulletins to Police Scotland as such, indicating  
22 that we have to be proactively anti-racist, which I did  
23 agree with 100%.

1 Q. It may have been said at an opening statement in this  
2 Inquiry as well.

3 A. Was it? Oh, sorry. It is certainly on the force  
4 intranet as something the Chief has said.

5 Q. So in relation to the Chief Constable making those  
6 comments, has that influenced you --

7 A. I thought it was really accurate. I think that's the  
8 perception I have regarding it. It's just a total zero  
9 tolerance approach to it as such.

10 Q. Can you explain from your own perspective what the  
11 difference is for you between being anti-racist and  
12 simply being -- acting in a way that's  
13 non-discriminatory?

14 A. I'll do my best. I think anti-racist is that you  
15 proactively drive some of the aspects of discrimination  
16 you may see. So I'll give you an example, and sorry,  
17 it's not in my statement, but in 2019 two officers I had  
18 deployed down south for an investigation were involved  
19 in an incident involving two officers from a force down  
20 south and an Asian taxi driver, and basically what it  
21 was was the two officers from the force down south had  
22 made a racist remark to the taxi driver which caused the  
23 taxi driver to stop the vehicle and ask all occupants to

1 remove themselves from it, and there was further racial  
2 remarks made at that time by the two officers from down  
3 south.

4 Now, that wasn't reported at the time by the taxi  
5 driver but it was reported to me when the officers  
6 returned by one of the officers who confided in me and  
7 said this is what she had encountered and she just  
8 couldn't let it go. So, rather than simply just saying,  
9 "Okay, let's take a learning from that", what we did do  
10 was -- and again, this probably comes round about the  
11 aspect of being anti-racist and being proactive around  
12 it, so statements from both of the officers from  
13 Police Scotland, I contacted the force down south in  
14 respect of that, we produced a report, and asked them to  
15 fully investigate, which they did do. The taxi driver  
16 had CCTV footage within the taxi, and again we  
17 thereafter put the full report down south to the force  
18 and thereafter asked them to investigate in respect of  
19 criminality and any misconduct in respect of the two  
20 officers involved in it.

21 So it was just that aspect of although it's not  
22 reported, although it's happened elsewhere, the fact is  
23 there should be that more proactive approach to these

1 aspects, and I think -- I don't know if that maybe  
2 underlines exactly what I mean about being anti-racist,  
3 about being proactive around it.

4 Q. You mentioned that the female, you said she couldn't let  
5 it go --

6 A. Yes.

7 Q. -- is there a culture encouraging officers to let things  
8 go?

9 A. No, I don't -- certainly not now.

10 Q. Was this a while ago?

11 A. No, this was in 2019. So I think aspects of -- now I'm  
12 going back 25 years, you know what I mean, aspects of  
13 some conduct by police officers in respect of kind of  
14 sexist remarks and misogyny or even sectarianism and  
15 bigotry was probably more commonplace 25 years ago than  
16 it is now, thankfully.

17 As I say, the journey we've come on, the journey  
18 I've come on, since that particular time to where we are  
19 now, it's completely turned out thankfully. So, as  
20 I say, I wouldn't have expected her to let it go, and  
21 certainly I wasn't going to let it go in respect of  
22 that.

23 Q. I appreciate your own views on this, you've obviously

1 got a number of officers working with you as part of  
2 your investigative team in May 2015. You've described  
3 how many of these officers you'd never necessarily  
4 worked with.

5 A. Yeah.

6 Q. You'd not met before. How do you, as a leader, share  
7 your own views about being anti-racist and being  
8 proactive in these matters with a team, with your team?

9 A. Yeah. So it's difficult to do when you're on call and  
10 you're responding to an incident such as this because  
11 you can only really do that at any briefing you have  
12 with the officers when you can obviously detail what  
13 your thoughts and what your concerns are, and obviously  
14 the approach that should be taken around it.

15 It's more -- it's probably easier to do in your  
16 day-to-day role whereby you have a distinct divisional  
17 team of officers whereby you can put forward that  
18 message, messaging, that you can inform that culture on  
19 a more informed basis because you are almost working  
20 daily with the officers concerned. A lot of that comes  
21 from some of the work that we do round about what we  
22 call a people board within specialist crime division,  
23 round about that whole aspect to equality and diversity,

1 inclusion and some of the work that is ongoing across  
2 the force just now around that.

3 So it's easier to do -- I think my answer to your  
4 question is easier to do with your day-to-day activities  
5 as a leader within the organisation. It's more  
6 challenging and more difficult to do when you're maybe  
7 only there one or two days, you know what I mean, and  
8 you can only really do that at the briefing in the  
9 morning or the briefing at close of play, and again  
10 it's -- you are thereafter looking for, such as in this  
11 instance, for the PIRC and for the MIT to take on that  
12 longer term assessment and information to the  
13 investigative team round about any considerations that  
14 they may have.

15 MS GRAHAME: Right.

16 I do have one or two further questions but I'm  
17 conscious of the time. This might be an appropriate --

18 LORD BRACADALE: We need to have a break for the  
19 stenographer of 15 minutes.

20 (2.58 pm)

21 (A short break)

22 (3.21 pm)

23 MS GRAHAME: Is unconscious bias something that you're aware

1 of?

2 A. Yes.

3 Q. Have you had any training in unconscious bias?

4 A. Yes, I have.

5 Q. We heard evidence from Conrad Trickett about unconscious  
6 bias and his understanding of the position. If you've  
7 also had training in unconscious bias, have you held  
8 a mirror up to yourself to identify any?

9 A. I don't think I'll be as eloquent as Conrad was in my  
10 description of it. Yeah, it's the thread going through  
11 all our training that we're involved in just now across  
12 Police Scotland. The most recent one I done was  
13 February this year, I think it is detailed in my SCoPE  
14 record, which was the new Moodle training for EDI, where  
15 there's a whole aspect on unconscious bias.

16 So again it's, I think it's -- to me it's a pretty  
17 challenging concept around the aspect of that lifetime  
18 of experiences which subconsciously impact on your  
19 decision-making, and again how you reflect on that and  
20 ensure that any stereotypes or anything at all,  
21 preconceptions, don't ultimately impact on your  
22 decision-making. So that's the way -- what I took from  
23 the learning of it.

1           Regarding holding the mirror up, that was -- it  
2           wasn't part of the last training I'd done online, but it  
3           was a previous course I'd done, which was in person at  
4           the force training centre at Jackton, was around that as  
5           well, and a similar course where -- selection panel  
6           training, where the aspect of, I think they called it  
7           affinity bias at the time, round about you almost  
8           attempt to recruit or promote people with similar  
9           characteristics and attributes as yourself.

10           So I think it's something certainly within the force  
11           now, within Police Scotland, we're all very much aware  
12           of and take into cognisance round about our  
13           decision-making.

14       Q.   How comfortable or confident do you feel in identifying  
15           your own unconscious bias?

16       A.   I don't think you're comfortable with it, I think it's  
17           something you have to do as a leader in the  
18           organisation, I think it's appropriate that you do do  
19           it. So, as I say, it's something that you do have to  
20           look pretty deep and detailed around your subconscious,  
21           your decision-making, your -- the stereotypes you have  
22           in your life. I mean, this hasn't just come from the  
23           27 years I've been in the police, this is obviously all

1 tucked in -- all impacted on my subconscious over the  
2 last 50 years of my life.

3 So, as I say, I think it's something that is,  
4 it's -- I think it's pretty significant, it's good to  
5 have that realisation exactly what it is and how it does  
6 impact on your own -- your own leadership attributes and  
7 about how you can ensure that it doesn't negatively  
8 impact on your decision-making, particularly at  
9 a strategic level.

10 Q. Of the training you've had so far from Police Scotland  
11 into the concept of affinity bias or unconscious bias --

12 A. Yeah.

13 Q. -- do you feel that's provided you with any strategies  
14 that would allow you to identify unconscious bias either  
15 in yourself or in other officers?

16 A. I think it does, yeah. There is that greater awareness  
17 now across the force around it. It's nothing that you  
18 try to hide or basically do not take into account. So  
19 the affinity bias aspect round about selection panel  
20 interview, I can see that, I potentially was involved in  
21 some of that, to be honest, round about the fact, that  
22 preconception round about you've worked with that  
23 individual, you know how good that individual is so you

1 want that individual as part of your team.

2 And again, it's only once you have that training  
3 around it you begin to actually understand, well, there  
4 has to be a more open and transparent approach to this  
5 in respect -- and that's just an example now about  
6 selection interviewing and such. So, as I say, it's  
7 something that -- very much accepted, any aspect of  
8 decision-making, that there undoubtedly will be some  
9 aspect of unconscious bias that you have to consider,  
10 not just maybe with yourself but with the team and with  
11 the individuals that are around you at that stage.

12 Q. And do you feel any of the training has given you tools  
13 or strategies that you could use in your day-to-day work  
14 that would help you to flush out any unconscious bias or  
15 identify unconscious bias?

16 A. Yeah, I think it comes back to stereotypes, you know  
17 what I mean, it's round about -- I know Conrad spoke  
18 about the pilot being a male and round about the HGV  
19 driver reversing the truck, that you automatically  
20 think -- that aspect -- it's a man that's driving the  
21 vehicle. But I think there's a kind of wider aspect to  
22 that, and I think it's about -- with the individuals  
23 that you're leading or directing or are part of your

1 team at that stage, it's about having that confidence to  
2 basically flush out what some of the biases are at that  
3 stage and thereafter basically address them head-on, and  
4 thereafter -- therefore you can ensure that it doesn't  
5 impact negatively on your decision-making because you  
6 have went through that whole thorough, transparent  
7 process of bringing out some of these inherent biases  
8 that exist within us all.

9 Q. And do you feel it's allowed you not just to identify  
10 biases but to actually guard against them, not just  
11 simply tick a box saying, "That's a bias", but to  
12 actually alter your behaviour or the behaviour of  
13 others, having recognised a bias?

14 A. Yeah, I think it does. And I think it's something you  
15 need to be really strong with as well. So it's having  
16 that confidence that if you do recognise a bias and ...  
17 I mean, I can think of one or two I've been involved in,  
18 but I think it's how you thereafter communicate with  
19 your team round about the fact that we have to bring  
20 this out into the open, this can't be a consideration in  
21 respect of the kind of stereotypical attitude you may  
22 have towards some ethnic group or so on and so forth,  
23 and thereafter to bring that out into the open and

1           thereafter address it, as I say, kind of head-on as  
2           such.

3           Q. Can I ask you if the term racial threat theory means  
4           anything to you?

5           A. I don't think I picked that up through the training, no.

6           Q. What about the idea or preconceived idea that black men  
7           are more likely to be dangerous?

8           A. No.

9           Q. Are you aware of racial stereotypes in relation to black  
10          men, in relation to policing and crime? For example,  
11          we've heard some examples that may be classed that way  
12          of Mr Bayoh being the size of a house, having superhuman  
13          strength, there may be other racial stereotypes of black  
14          men being more engaged in criminality, perhaps being  
15          members of gangs, or as I've said being more likely to  
16          be violent, dangerous.

17          A. Yeah.

18          Q. Have you heard of these?

19          A. Yeah.

20          Q. And what steps -- in your role as SIO in May 2015, what  
21          steps did you take to investigate whether any of the  
22          officers in their actions in Hayfield Road were  
23          influenced by racial stereotypes or negative perceptions

1 about Mr Bayoh as a black man?

2 A. That would be something that would have to be considered  
3 through the course of the investigation. As I say,  
4 responding on day one to this with the actions of  
5 personal initial accounts was something that was going  
6 to be very difficult to do within that first 24 hours of  
7 the investigation, but that would be something that  
8 would have to be obviously taken into account once we  
9 began to get some sort of operational statement or more  
10 developed statement from them round about that whole  
11 aspect of, as you describe, some of the stereotypes that  
12 you've detailed there.

13 But on that first day, whilst responding to  
14 a critical incident, in the absence of engagement with  
15 the officers concerned, that was extremely difficult to  
16 engage with them around that aspect. Difficult to  
17 engage with them around the submission of a statement or  
18 a personal initial account, never mind anything else at  
19 that point. But that would obviously be something that  
20 I would suggest would come from the more detailed  
21 investigation as it progresses.

22 Q. And when you talk about paperwork, would that include  
23 the use of force forms or the use of spray forms that

- 1           weren't completed?
- 2       A.   Yes, absolutely, yeah.
- 3       Q.   What about Airwaves, we've heard evidence about Airwaves  
4           calls and discussions that took place and were recorded;  
5           we understand that point-to-point aren't recorded, but  
6           Airwaves communications amongst the team, did you take  
7           steps to recover those?
- 8       A.   It's one of the actions at that early stage was round  
9           about the recovery of all the transmissions around that.  
10          So again, that would be something that we would  
11          basically ... other than a general assessment in the  
12          first couple of days of it, I mean, the aspect of  
13          seizing it and thereafter looking at basically getting  
14          it, getting some statement around it would follow  
15          through the course of the general investigation, but  
16          it's significant to any investigation, a 999 call from  
17          any distressed individual, for example for a homicide,  
18          that would be significant and we would listen to  
19          immediately.
- 20      Q.   So you would recover 999 calls, Airwaves?
- 21      A.   Yeah.
- 22      Q.   You talked about call cards, STORM cards, previously;  
23          you looked at those on the morning of the 3rd?

- 1 A. Correct.
- 2 Q. Does your daybook detail the Airwaves messages?
- 3 A. No.
- 4 Q. No? Is there anything in your policy file?
- 5 A. No. As I say, it's more a kind of general action around  
6 Airwaves, it would be -- someone would be given the  
7 aspect of: go and basically detail everything on  
8 Airwaves, secure from the control room through  
9 3C Division around everything at all linked to this  
10 incident we're investigating, and plus transcription of  
11 all the recordings so we can thereafter begin to drill  
12 down and examine them in detail.
- 13 Q. Who would be tasked with that type of role?
- 14 A. It would be part of the investigation team, so you'd  
15 have two detectives actioned around that and they would  
16 have that whole aspect to go and basically engage with  
17 3C Division, which is the command and control aspect of  
18 it, to obtain -- as well as the details from STORM, the  
19 call cards, but also the Airwave traffic to inform the  
20 various individuals involved in the investigation.
- 21 Q. Is that something you instructed on 3 May?
- 22 A. No, it wasn't, no.
- 23 Q. Why not?

1           A. It was an action, it was an ancillary action that would  
2           have been progressed through the course of the first few  
3           days, but at that time with the resources we had there  
4           was far more significant actions to basically be  
5           progressed, with the finite resources we had at that  
6           time.

7           Q. Did you have concern about the finite resources you had?

8           A. On day one, we were quickly supported by MIT in the  
9           afternoon, and on day two the MIT basically came in with  
10          quite significant numbers, which was ideal. A Sunday  
11          morning in Police Scotland, you don't have significant  
12          resources on in general, particularly within the CID or  
13          detectives as such, so it usually is quite a challenging  
14          period, particularly during the changeover of shift as  
15          well, between that 6, 7 o'clock in the morning period.

16                 So we did -- well, I did my best to bring resources  
17          from around the force together for to carry out the  
18          investigation and the first day, as I say, we had great  
19          support across the force. But you never have enough  
20          resources, as you can imagine.

21          Q. Yes.

22                 And then finally, one of the things we discussed  
23          with Colin Robson was whether he would have had access

1 in 2015 to disciplinary records or misconduct records in  
2 relation to the officers who had attended Hayfield Road.

3 Is that something you considered recovering as part  
4 of your investigation?

5 A. On day one and day two it wasn't, but we would have  
6 access to them and we'd have an out of access contact  
7 for that, so Craig Blackhall was PSD on-call, he was  
8 a superintendent, so if we did require anything from  
9 Craig, I'm sure he would have facilitated that for us.  
10 But, as I say, in that initial response to such  
11 a critical incident, it wasn't an immediate priority,  
12 although obviously the subsequent investigation around  
13 that would bring that with it. But on that initial 12,  
14 24 hours, it wasn't an initial priority for me.

15 Q. Could you just give me one moment, please?

16 A. Okay.

17 (Pause)

18 MS GRAHAME: Thank you very much. I have no further  
19 questions.

20 LORD BRACADALE: Thank you.

21 I'll come to Mr Macleod in a moment under Rule 9.2.

22 Are there any other Rule 9 applications?

23 Mr Campbell, would you mind withdrawing to the

1 witness room, please.

2 (In the absence of the witness)

3 LORD BRACADALE: Yes, Ms Mitchell.

4 Rule 9 Application by MS MITCHELL

5 MS MITCHELL: Again, I'm obliged to my learned friend who's  
6 incorporated many of the questions that we put in our  
7 Rule 9.

8 The first issue that I'd like to raise with this  
9 witness is in relation to his interactions with PIRC and  
10 Officer Harrower. What I would like to explore with him  
11 is whether or not PIRC actually expressed the view,  
12 anyone in PIRC, to him directly that they did not have  
13 enough resources and as a result they would need to use  
14 resources from Police Scotland. The issue of resources  
15 is dealt with broadly, but what I'm looking for was: was  
16 there an actual discussion where perhaps the  
17 Officer Harrower said, "I don't have enough staff to  
18 cover this"? And also in relation to handover to PIRC,  
19 when the handover happened, were the hypotheses that had  
20 been ruled in and ruled out discussed as part of the  
21 handover?

22 Moving then on, it's a discrete issue, and it is in  
23 relation to Collette and her mum. This officer said,

1 I think yesterday -- sorry, not yesterday,

2 Friday(sic) -- that:

3 "Answer: I wasn't aware, and it would probably  
4 beneficial if her mother could maybe have taken her  
5 child, but I appreciate she was breastfeeding and that's  
6 obviously more difficult."

7 The Inquiry will remember that Collette's very  
8 strong memory of events was that there was such  
9 a request in fact for the mum and the baby not to come  
10 to the police station, and it's just to explore a little  
11 more with this witness why he says that it would be  
12 better if the witness had not come, as it may be  
13 an issue which will allow the Inquiry to come to the  
14 view that Collette's recollection in this matter is to  
15 be preferred.

16 The next matter is in relation to Zahid Saeed's  
17 sister and the search that was conducted of the family  
18 home. Now, Zahid Saeed's sister came to give evidence,  
19 and as I understand it, she may wish to give further  
20 evidence, particularly in relation to the fact that she  
21 was searched bodily, like at the airport, by a female  
22 officer, that she had her bag searched, and the officer  
23 searched her car, including moving the car seats back

1 and forward and checking the boot.

2 So, as it was put to this witness in the  
3 hypothetical about Martyn Dick and whether or not he  
4 considered that appropriate, I would just like to put it  
5 to this witness as well whether or not, given the fact  
6 that this isn't even a witness but a sister of a witness  
7 in a case, whether or not that was appropriate.

8 The next again discrete point arises from the  
9 Gold Group meeting at 20.18 on 3 May -- that's, for  
10 records, PS03139 -- and it is discussing the description  
11 of Zahid Saeed, when he is described as an associate of  
12 Mr Bayoh's, and I want to explore with this witness  
13 whether or not the word "associate" in the context of  
14 police language or discussion has any connotation.

15 Next, family concerns in relation to post-mortem  
16 arrangements. We've heard evidence that this witness  
17 spoke to Dave Green who said in effect, "This is when  
18 the post-mortem is happening because that's the only  
19 availability we have". What I would like to explore  
20 with this witness is when he was told that and simply  
21 why wasn't the family told that as the position? He  
22 must have known that relatively early on, given his  
23 handover to PIRC, and I would like to explore that if he

1           knew that and he knew that the PM was going to be taking  
2           place at this time, why wasn't there simply a line of  
3           communication to explain that to the family?

4           Next, moving on to the issue of what I've described  
5           here as the default position that police were acting  
6           legitimately. My learned friend has taken this witness  
7           through in some detail the fact that there was a gap in  
8           his knowledge and that gap related to what happened  
9           during the course of events in Hayfield Road in relation  
10          to force and in relation to what happened, and in  
11          fairness to this witness he repeatedly makes reference  
12          to the fact that he doesn't have this information.

13          What I would like for him to consider is  
14          paragraph 140 of his statement. If I might just read  
15          this out, it says:

16          "From the information that I had at that time,  
17          Sheku Bayoh was in possession of a knife a very short  
18          time prior to the altercation with the police on  
19          Hayfield Road. The actions and use of force from what  
20          I had established from an early stage led me to conclude  
21          that the force used would be necessary and proportionate  
22          to restrain Sheku and there was nothing else to the  
23          contrary based on the information that I had."

1           So what I would like to investigate with this  
2 particular officer is: first of all, he didn't have any  
3 information on the use of force, never mind indeed  
4 whether or not it was necessary and proportionate, and  
5 whether or not in effect it appears that he has taken  
6 a default position that, unless something came to his  
7 attention, the use of force was necessary and  
8 proportionate, whilst he was still involved in  
9 the enquiry.

10           Lastly in relation to race, the officer gave  
11 evidence saying that there was a wider aspect to the  
12 issue of flushing out racism, and he said:

13           "Answer: It's about -- with the individuals that  
14 you're leading or directing or are part of your team at  
15 that stage, it's about having that confidence to  
16 basically flush out what some of the biases are at that  
17 stage and thereafter basically address them head-on, and  
18 thereafter -- therefore you can ensure that it doesn't  
19 impact negatively on your decision-making ..."

20           What I would like to ask the witness is whether or  
21 not he has in fact put that into practice and whether or  
22 not he has addressed issues relating to race head-on and  
23 made any progress in respect of bringing out the

1           inherent biases that exist within us all.

2           Those are my questions.

3       LORD BRACADALE: Thank you. I'll rise to consider these  
4           submissions.

5           Before I do so, Mr Macleod, leaving aside any  
6           questions that I allow Ms Mitchell to ask, do you  
7           anticipate any broader Rule 9.2 application?

8       MR MACLEOD: No, sir.

9       LORD BRACADALE: Thank you. Right, I'll rise to consider  
10          this.

11       (3.44 pm)

12                               (A short break)

13       (4.01 pm)

14       LORD BRACADALE: I shall allow Ms Mitchell to ask questions  
15          about whether Mr Harrower expressed views about the  
16          resources of PIRC and whether the specific hypotheses  
17          were discussed.

18          In relation to the issue of whether the mother of  
19          Collette could have taken the baby away, I do not  
20          consider that I would be assisted by further exploration  
21          of that with this witness, so I shall not allow that to  
22          be explored.

23          In relation to the additional information from

1           Saadia Rashid, the sister of Zahid Saeed, the way to  
2           approach this, in my view, is for additional  
3           investigation to be carried out by the Inquiry in  
4           relation to any additional information that she wishes  
5           to advance, and until that is done it would not be  
6           appropriate to explore this on a hypothetical basis with  
7           this witness. So I shall not allow that.

8           In relation to the meaning of the word "associate",  
9           I don't think I would be assisted by any explanation of  
10          that.

11          I shall allow the proposed questioning in relation  
12          to telling the family about the post-mortem  
13          arrangements.

14          As to the default position expressed in  
15          paragraph 140 of the statement, I have to consider that  
16          in the light of the whole evidence of the witness, and  
17          when I come to do that I do not think I shall be  
18          assisted by any further exploration of the issue.

19          In relation to the last issue in relation to race,  
20          I consider that the issue of race has been sufficiently  
21          explored with this witness, so I shall not allow  
22          questioning on that either.

23          So, on that restricted basis, I shall allow you to

1 ask questions, Ms Mitchell.

2 Can we have the witness back.

3 (In the presence of the witness)

4 Questions from MS MITCHELL

5 LORD BRACADALE: Mr Campbell, Ms Mitchell KC, who acts for  
6 the Bayoh families, Sheku Bayoh's families, is going to  
7 ask some questions.

8 MS MITCHELL: You've explained to the Inquiry about the  
9 finite resources that Police Scotland has, and  
10 particularly at that time on a Sunday morning, and  
11 you've also explained to the Inquiry that it was clear  
12 to you that PIRC wouldn't be able to simply come in and  
13 take the entire case over simply because of the manpower  
14 that they had at that time.

15 Was there any expression by Keith Harrower about  
16 needing manpower and how that was to be dealt with?

17 A. No, there wasn't any detailed discussion around it,  
18 other than Keith had indicated that -- with some of the  
19 other conversations -- that it would be the Monday  
20 before they would be able to deploy any significant PIRC  
21 resources, but that would be unlikely to happen on the  
22 Sunday 3 May. And with that it meant we had discussions  
23 around, as I mentioned last week, around the joint

1 deployment of certain specific or specialist posts such  
2 as crime scene managers or production officers or family  
3 liaison officers. But there was no detail -- I wasn't  
4 aware of what that significant resource would look like  
5 as such.

6 Q. What I was hoping to understand or hoping to assist the  
7 Inquiry with understanding was: how was it that you came  
8 to know -- other than being told that, "We won't have  
9 many folk til tomorrow" -- who to put where?

10 A. So at 13.30 PIRC in its entirety turned up at Kirkcaldy  
11 Office, which was roughly I think five officers  
12 I counted, that was the extent of what we had, and it  
13 wasn't until late in the evening of 3 May, I think we  
14 managed to get -- or Keith managed to get an additional  
15 two out at that stage. I think we managed to obtain two  
16 FLOs at that particular stage, which was late in the  
17 evening of 3 May. But it was very clear round about  
18 capacity that it was very, very limited with PIRC, I was  
19 aware of that from the discussion, we weren't going to  
20 get 20 PIRC resources at that time, and any significant  
21 resources coming from PIRC would probably be the  
22 following day, as the enquiry obviously progressed.

23 Q. So can the Inquiry take it that rather than having

1 specific conversation between you and Keith Harrower  
2 about not having enough resources, it was simply obvious  
3 from the fact that they turned up and there was only  
4 five of them, with perhaps two to come, that that would  
5 simply be insufficient for the job?

6 A. Yeah. No, it's clear it was insufficient for the job on  
7 3 May, and that's why from a Police Scotland perspective  
8 we'd significant resources pulled from all over the  
9 country, as well as from the Major Investigation Teams,  
10 to support the PIRC in respect of the investigation.

11 Q. I'd like to move on, please, to talk about the  
12 post-mortem, and in particular you gave evidence to the  
13 Inquiry that you relatively early on had a conversation  
14 with Dave Green, who also gave you information about the  
15 availability of a pathologist to conduct the  
16 post-mortem, and would it be fair to say he made it  
17 clear that the post-mortem would only be going ahead at  
18 that certain time due to the restrictions that they had?

19 A. That's correct.

20 Q. Can you recall approximately what time that was you had  
21 that conversation?

22 A. So I spoke to Keith -- sorry, I spoke to Dave Green  
23 I think two or three times on 3 May, once round about

1           lunchtime, which I think was the discussion around the  
2           post-mortem. Later on in the late afternoon I had  
3           a further discussion, and that was round about  
4           potentially having to look towards other aspects of  
5           identification, which I touched on as well, if the next  
6           of kin or the family did not attend. But I think it was  
7           round about the lunchtime conversation I had that  
8           discussion round about the availability of -- of the  
9           pathologists and the constraints about on that. The  
10          information that was passed to me by Dave Green at the  
11          time was he was looking for identification to take place  
12          1 o'clock, at 1300 hours on the 4th, with the  
13          post-mortem taking place at 1400 hours, so that was the  
14          information I was passed at that time.

15        Q. And that was, as it were, set in stone?

16        A. It's purely within the jurisdiction of Crown Office,  
17          it's absolutely nothing to do with Police Scotland.

18        Q. Having that information and knowing that was going to be  
19          the case --

20        A. Yeah.

21        Q. -- that there weren't, as it were, other options, did  
22          you consider informing the family of that situation?

23        A. So that information was passed to PIRC as the lead

1 investigator for the -- for this incident. So, as  
2 I say, that information was passed to Keith as they  
3 thereafter, through the course of the afternoon and into  
4 the early evening, became the sole link into the family  
5 because of some of the challenges that Police Scotland  
6 probably had brung on themselves with the deployment or  
7 the lack of deployment of family liaison officers.

8 So, as I say, it was mainly the PIRC that had that  
9 aspect of the investigation, to liaise with the family,  
10 to make arrangements for their attendance for  
11 identification as the day and the evening progressed.

12 Q. So you had the conversation about noon with  
13 Dave Green --

14 A. It was later than that.

15 Q. -- or thereabouts?

16 A. It was later than that, I think it was about 1 o'clock  
17 or thereabouts.

18 Q. Okay.

19 A. Yeah.

20 Q. And then PIRC arrive at 1.30?

21 A. Yes.

22 Q. And they take over that part of the enquiry?

23 A. So that -- there was an investigative, not handover but

1 an investigative update to PIRC between myself, my team  
2 and PIRC round about 1400 hours, prior to the second  
3 Gold Group, which was almost in its entirety handing  
4 over to PIRC round about where we were with it, although  
5 obviously they had the lead from very early on that day.  
6 But that aspect was discussed with PIRC at that time  
7 round about -- and I believe that Keith had already --  
8 Keith had also spoke to Dave Green through the course of  
9 the early morning around the various aspects and what  
10 the likelihood of the post-mortem occurring the next day  
11 would be.

12 Q. So if we want to know exactly why that information  
13 wasn't passed on to the family, that this is when the  
14 post-mortem would be taking place --

15 A. Yeah.

16 Q. -- we would have to ask Keith Harrower about that?

17 A. Yeah, so Keith thereafter had the engagement with the  
18 family around that and the deployment of PIRC FLOs.

19 Q. You've discussed the handover, as you've described it,  
20 in relation to PIRC, and we understand from your  
21 evidence that was effectively a staged process --

22 A. Yeah.

23 Q. -- where some things were handed over at an earlier

1 stage than others. When you were handing over the  
2 reins, as it were, to Keith Harrower, did you discuss  
3 the various hypotheses that you had?

4 A. Yeah, so they were discussed at the investigative  
5 meeting at 2 o'clock with PIRC around the progression of  
6 the various aspects of the investigation that were being  
7 considered at that time. Regarding the handover, as you  
8 say, it was a more kind of staged and phased approach  
9 which thereafter carried on into the evening of the 3rd  
10 and even into the morning of 4 May as well, just because  
11 of the change of investigator or senior investigator  
12 from PIRC, as I described, with Keith stepping down or  
13 stepping back and Billy Little coming on at that time.

14 Q. When you discussed the various hypotheses, what  
15 hypotheses did you discuss?

16 A. So the five I detailed earlier on in my evidence round  
17 about: was it CT ideology? Was there some aspect of  
18 counterterrorism we had to consider? Was it through  
19 an earlier assault which had led to the death of  
20 Mr Bayoh? But that obviously had only occurred through  
21 the incident at Hayfield. Was it through to -- was it  
22 through alcohol, drink intoxication? Was there  
23 an underlying medical condition? So there was a number

1           of hypotheses that we were keeping an open mind around  
2           as such.

3       Q.   Was one of the hypotheses that you were keeping an open  
4           mind around, and did you pass this on to Keith Harrower,  
5           that a black man had died after restraint --

6       A.   Yeah.

7       Q.   -- and that was one of the things that had to be  
8           considered?

9       A.   Absolutely. I mean, that was discussed at the 10.22  
10          phone call with Keith round about what we had --

11      Q.   And was race highlighted in that --

12      A.   It was.

13      Q.   -- conversation?

14      A.   I mean, it was clear through all the Gold Group meetings  
15          as well that race was front and centre around the  
16          investigation. I mean, it was a consideration with  
17          everything we'd done around it. A conversation with  
18          Keith very early on was round about one of the  
19          hypotheses was: had death come as a result of restraint  
20          and by police action? And, again, that was very clear,  
21          and the aspect to that was, subsequent to that, was it  
22          racially motivated or was there some aspect of that  
23          racial aggravation which had brought about the aspect of

1 force being excessive as such? So again that was all  
2 discussed, and we were keeping an open and transparent  
3 mind around all that.

4 LORD BRACADALE: Ms Mitchell, in the light of that evidence,  
5 I shall allow you to explore the issue in paragraph 140  
6 of the statement.

7 MS MITCHELL: I wonder if we could have paragraph 140 of the  
8 statement available.

9 Throughout the course of you -- if we can just leave  
10 it for a moment, and then I'll ask about it, thank you,  
11 just have it available.

12 Throughout the course of your giving of evidence and  
13 also in relation to your statement, I think it's fair to  
14 say that you make it clear throughout that you had  
15 insufficient evidence to conclude your enquiries by the  
16 time you handed them over?

17 A. Yes.

18 Q. And the gap in your understanding was very specifically  
19 related to what happened at Hayfield Road between the  
20 officers and Mr Bayoh?

21 A. Yes.

22 Q. And I think you make it clear repeatedly that that gap  
23 meant that you simply did not know various factors.

1 For example, you did not know about the use of force and  
2 how it was carried out; you didn't know, we heard in  
3 evidence, the fact that it was alleged that PC Tomlinson  
4 had truncheoned Mr Bayoh to the head; you didn't know  
5 that when Sheku Bayoh was intercepted by the police he  
6 didn't have a knife and was holding his hands face up.  
7 All these things weren't known to you at that time; is  
8 that correct?

9 A. So the aspect of the knife, I was aware that he wasn't  
10 in possession of the knife during the restraint because  
11 of where the knife was discarded.

12 Q. When --

13 A. The other aspects that you're mentioning were as  
14 accurate -- the Tomlinson thing, I had no knowledge of  
15 that at all because we did not have any personal initial  
16 accounts.

17 Q. So it would be fair to say, in those circumstances, that  
18 you couldn't make an assessment whether or not the use  
19 of force was proportionate or was necessary in the  
20 circumstance?

21 A. Yes, that's accurate.

22 Q. I wonder in the circumstances if we can look at 140,  
23 paragraph 140. Now, do we see at paragraph 140 you've

1 written here:

2 "From the information that I had at the time,  
3 Sheku Bayoh was in possession of a knife for a very  
4 short time prior to the altercation with the police on  
5 Hayfield Road. The actions and use of force from what  
6 I had established, from an early stage, led me to  
7 conclude that the force used would be necessary and  
8 proportionate to restrain Sheku and there was nothing  
9 else to the contrary based on the information that  
10 I had."

11 Now, given what you've just told the Inquiry, could  
12 I ask you to reflect upon this, and in fact would it be  
13 fairer to say that from the evidence that you've given  
14 you ought not to have made a conclusion that the force  
15 used would be necessary and proportionate?

16 A. I think the word "conclude" there is probably  
17 inaccurate. The information I had at the material time  
18 was that there was nothing to indicate that there was  
19 a disproportionate use of force, on the information  
20 I had round about the earlier precursor incidents  
21 leading up to that, with Mr Bayoh in possession of  
22 a knife, acting erratically, three independent members  
23 of the public, the fact that he appears under the

1 influence at that stage as well, which is coming  
2 independently. So this information I did have.

3 So what I didn't have was what --

4 Q. The gap?

5 A. -- what aspect of the restraint and the use of force  
6 was. So that what I'm -- what I've put down there is  
7 accurate, as the fact is that I was -- there was nothing  
8 to indicate that it was disproportionate, the use of  
9 force. I think the word "conclude" -- because what  
10 I have is what I have at that particular stage, but  
11 that's not basically to say that that will not change as  
12 personal initial accounts, as more detailed statements,  
13 as eyewitness accounts, as CCTV footage comes into the  
14 investigation, but at that -- at that time, when I'm  
15 basically dealing with the incident at Hayfield Road,  
16 that's what I'm basically dealing with.

17 Q. So can I be clear that what you're saying is that "the  
18 actions and use of force from what I had established" in  
19 fact doesn't relate to the use of force, but it relates  
20 to the information you had before the police interact  
21 with him, namely where he was, what he was doing?

22 A. So the response by the officers concerned, on their  
23 officer safety training and what would be deemed to be

1           necessary and proportionate to deal with the threat  
2           posed to them at that particular time, on the basis of  
3           the information I had, there was nothing to say that  
4           that was disproportionate at that time. I don't know if  
5           that makes sense to you.

6           Q. I suppose the question is: did you have any evidence  
7           that it was proportionate?

8           A. No, I didn't have evidence one way or other, but what --  
9           as I say, I didn't have anything at all around the fact  
10          that it was disproportionate and the circumstances  
11          indicating the spontaneous response of police officers  
12          to an incident that they could not have perceived what  
13          they were going to basically face as they turned up, and  
14          at that particular time, and thereafter if you look at  
15          the other side from the actions of Mr Bayoh as he  
16          approaches Hayfield Road and thereafter the coming  
17          together, what I had at that stage was there was nothing  
18          to indicate, evidentially wise or through witness  
19          statements, that there was any disproportionate use of  
20          force. But I do take your point around that.

21          Q. I mean, the question really for you is: in those  
22          circumstances, was there any evidence you had in  
23          relation to the force at all?

1           A. No. Other than we had obviously recovered items  
2           within -- on Hayfield Road and the aftermath of that,  
3           obviously batons, CS had been recovered, and the knife  
4           had obviously been recovered as well.

5           Q. So you were able to ascertain that that had happened?

6           A. Yes.

7           Q. But in relation to how many officers engaged with  
8           Sheku Bayoh, how long he was held down, in what way he  
9           was held down, whether or not that was done  
10          appropriately, you didn't have any of that information?

11          A. Other than the number of officers we knew that were at  
12          the scene.

13          Q. And would you agree in those circumstances that what  
14          you've done is effectively assumed or presumed that what  
15          the officers had done was necessary and proportionate,  
16          rather than looked at the evidence and ascertained that  
17          it was necessary or proportionate?

18          A. So the evidence I had at the time was -- it was from my  
19          perception at that morning on 3 May -- was that I had  
20          details of the early movements of Mr Bayoh which led him  
21          to Hayfield Road, and the independent witnesses from the  
22          motorists whereby we have a male with a knife running at  
23          cars. So we had that information, I had that

1 information, just -- and obviously what I had thereafter  
2 was the officers coming out from the canteen muster area  
3 of Kirkcaldy Police Office, reacting to a spontaneous  
4 incident, and thereafter the coming together of Mr Bayoh  
5 with the officers who thereafter restrained him.

6 So from what I had -- and again I think we're  
7 probably coming at this in different angles -- but it  
8 was -- nothing could -- nothing I had indicated that it  
9 was disproportionate regarding their response. It  
10 wasn't premeditated, it was a spontaneous response to  
11 an incident which was developing at that time of the  
12 morning in Kirkcaldy.

13 Q. But you would agree that nothing you had either one way  
14 or the other would allow you to say whether or not the  
15 force used had been necessary and had been  
16 proportionate?

17 A. The identified actions of each individual officer I did  
18 not know, and what force was used.

19 LORD BRACADALE: Mr Macleod, anything arising?

20 MR MACLEOD: No, thank you, sir.

21 LORD BRACADALE: Detective Chief Superintendent Campbell,  
22 thank you very much for coming to give evidence to the  
23 Inquiry. We shall be raising in a moment for the day



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