

IN THE MATTER OF THE SHEKU BAYOH INQUIRY

CLOSING SUBMISSIONS ON BEHALF OF: (1) MS. NICOLE SHORT; (2) PC CRAIG WALKER; AND (3) THE SCOTTISH POLICE FEDERATION

Executive Summary

1. Within the written opening statement lodged on behalf of those that we represent in advance of the evidential hearings, it was noted that it would be naïve to think that the events on 3 May 2015 have not had a material impact upon lives and families of the officers who attended the scene that day. That remains true, and the giving of evidence to the Inquiry has had a profound impact upon their lives.
2. Ms. Short has had her police career prematurely brought to an end as a result of having been the victim of an assault by Mr. Bayoh. Despite following their training, putting themselves in harm's way, and doing their best to save the life of Mr Bayoh, all of the officers involved will forever be associated with this incident.
3. PC Walker and Ms. Short provided full, frank and uninhibited evidence to the Inquiry to try and assist the Chair and his Assessors in their task. Despite not invoking their privilege against self-incrimination, they have spoken of the harrowing and traumatic events that unfolded that day and exposed themselves to intense, and often hostile, media scrutiny and had their evidence misrepresented by individuals on social media. Despite the incontestable evidence confirming that Ms. Short was assaulted by Mr. Bayoh, and having played no part in Mr. Bayoh's restraint, Ms. Short has been vilified.

4. It is submitted that their evidence, and the remainder of the evidence ingathered by the Inquiry, confirms that they provided honest and reliable evidence to the best of their ability to both the Inquiry and to PIRC when a criminal investigation was ongoing in 2015.

5. This was a tragic incident that resulted in the death of Mr Bayoh. It needs to be recognised, however, that the police have a duty of care to everyone they come into contact with, but primarily they must protect the public from possible harm. Therefore, when called by a number of people to a person reportedly armed with a knife, they are duty bound to respond and deal with that situation. The dangers of a lone individual acting aggressively and erratically with a knife are all too clear. A failure to respond to such calls immediately may have significant unintended consequences, such as the example provided by Ms. Joanne Caffrey and her delayed response to an incident which resulted in someone suffering an arterial bleed [Day 30, 2 December 2022, page 7, line 2 to page 8, line 4]. That is, indeed, what happens if police officers are mandated to stand by: people die.

6. The incident that police officers were responding to on 3 May 2015 is, thankfully, a rare occurrence. Regrettably, knife crime and reports of individuals in possession of a bladed weapon in Scotland are not. Police officers are duty-bound to put themselves in harm way to protect the public. The attending officers, restricted by the limited resourcing made available to them, responded to the call without fear or favour. They put themselves in harm's way to protect the public, but what transpired was something that neither PC Walker nor Ms. Short had any prior experience of and it is unlikely that they will experience such an incident again.

7. On 3 May 2015, there was an immediate threat to life with reports of Mr. Bayoh 'chasing someone' whilst in possession of a large knife. The potential risk to the person being 'chased' and members of the public was significant and self-evident. Mr. Bayoh was reportedly on the move in possession of a deadly weapon. He was on the main thoroughfare through Kirkcaldy at a time where the road would be particularly busy standing the changing shift patterns at the nearby hospital. He was near residential housing in an area where members of the public would routinely walk. Any attempt to suggest that Mr. Bayoh did not present a high risk to members of the public does not stand-up to logical scrutiny. Any suggestion that responding officers should have allowed Mr. Bayoh to leave the locus is an extraordinary and ill-advised suggestion and would have put members of the public at an unacceptable level of risk and amounted to a dereliction of duty for the officers involved. They were duty-bound to engage with Mr. Bayoh and deal with the situation to protect the public. As noted by Mr Graves, an expert commenting upon the actions of the officers, they did everything correctly, which was go to the scene, locate the individual and attempt to engage the individual.

8. The majority of 'knife incidents' do not involve a situation where a person is experiencing a medical emergency, such as Mr. Bayoh. In the absence of the incident being declared a firearms incident, or specialist resources being readily available, unarmed uniformed police officers were required to attend. Given the reports that Mr. Bayoh was in possession of a large knife, it was reasonable to conclude that it was still within his possession. To proceed on the basis that Mr. Bayoh did not have a knife, notwithstanding the extent of the intelligence available to the contrary, would have exposed the attending officers and members of the public to an unacceptable level of risk. The police officers were advised that Mr. Bayoh was chasing someone. A planned delay prior to engaging with Mr. Bayoh would have exposed members of the public, in

particular the person who was being 'chased', to an unacceptably high risk and officers would be in breach of their duty to protect members of the public.

9. The Chair is invited to consider the potential implications of a delayed response or deciding not to engage Mr. Bayoh. What level of risk would members of the public been exposed to had Mr. Bayoh managed to enter Ms. Limbert's vehicle? What level of risk would members of the public been exposed to had Mr. Bayoh attempted to enter someone's property? What level of risk would members of the public been exposed to had Mr. Bayoh absconded from the area to an unknown location? Mr. Bayoh was acutely unwell when he was on Hayfield Road which meant he posed a significant risk to all those around him. He was in that state as a result of his decision to take illicit drugs. Once in that state, he armed himself with a knife and roamed the streets. He had to be dealt with. Any other scenario is unthinkable.
10. It was reasonable, and submitted entirely correct, for PC Walker and Mr. Paton to conclude that containment without engaging Mr. Bayoh was not possible. In those circumstances, engagement with Mr. Bayoh was the only reasonable and proportionate tactical option that would serve to protect the public. What transpired was not something that they could have foreseen, and it is not something for which they should be held responsible.
11. The Inquiry has heard evidence that Mr. Bayoh was a loving son, father, brother, uncle and friend. He was described as a kind, loving, friendly man who would help anyone who needed it. Those that we represent would not demur from that description. That was not, however, the man who was on Hayfield Road on 3 May 2015. With the benefit of hindsight, and solely with the benefit of hindsight, Mr. Bayoh was suffering from a constellation of symptoms that would fall into the bracket of an Acute Behavioural Disturbance

(ABD). This disturbance was likely prompted by drug induced psychosis or psychostimulant intoxication from the consumption of Alpha-PVP. None of the attending police officers share any responsibility for Mr. Bayoh consuming Alpha-PVP. They share no responsibility for Mr. Bayoh's acute presentation of drug induced psychosis or psychostimulant intoxication. They share no responsibility for Mr. Bayoh assaulting Mr. Saeed. They share no responsibility for Mr. Bayoh obtaining a knife and roaming the streets of Kirkcaldy placing members of the public at significant risk.

12. Without the benefit of hindsight, it was not possible to determine preemptively that this was a medical emergency, or the officers should approach matters differently. This could only be determined once they had engaged with Mr. Bayoh. After initial engagement, matters escalated quickly, and preservation of life and minimisation of risk became the paramount consideration.
13. At the stage of agitation shown by Mr. Bayoh, individuals can become very violent, very unwell, and there's no reasoning with them. De-escalation techniques are unlikely to be effective once a person has reached this level of agitation.
14. There is incontestable evidence that prior to Mr. Bayoh being brought to the ground to be restrained, he had violently assaulted Ms. Short. On any view, his assault to Ms Short meant that physical restraint and obtaining control of Mr. Bayoh was not only justified but mandated.
15. The restraint itself was dynamic, involved multiple officers, and a significant struggle from Mr. Bayoh. The fact he was struggling notwithstanding the number of officers involved is, with the benefit of hindsight, unsurprising

given the retrospective diagnosis that he was suffering from drug induced psychosis or psychostimulant intoxication which often results in such persons struggling against restraint to exhaustion. Despite speculation to the contrary, there was no evidence that Mr. Bayoh was struggling due to an inability to breathe from mechanical or positional asphyxia. Instead, the Inquiry has heard evidence that drug induced psychosis or psychostimulant intoxication can result in individuals struggling to exhaustion due to not being able to comprehend what is occurring. At the point where Mr. Bayoh was controlled and it was safe to do so, an ambulance was called and appropriate first-aid provided. The police officers followed their training in engaging with Mr. Bayoh. The level of force used was proportionate and reasonable in the circumstances.

16. The total period of restraint lasted at most 4 minutes and 4 seconds. On any view, this was a very short restraint. Mr. Bayoh was not held in any one position for a significant period of time due to the period of restraint and its dynamic nature. Further, he was not fully prone throughout. This is confirmed by the evidence of the officers that were involved, the struggling during the restraint, the fact he was seen performing 'a press up', and the fact he was able to be handcuffed to the front which would not have been possible if Mr. Bayoh had been fully prone throughout.
17. When Mr. Bayoh became unresponsive, prompt medical care was provided. Despite efforts from the attending officers to save Mr. Bayoh's life, he was pronounced dead at 09:04am in Victoria Infirmary.
18. The exact mechanism of death is unclear. The pathologists are generally in agreement that the cause death was multifactorial. There were no physical

injuries which caused or contributed to his death. The physical injuries were described as being superficial and of a minor nature.

19. The drugs consumed by Mr. Bayoh, particularly the Alpha-PVP, likely prompted his drug induced psychosis/psychostimulant intoxication. The drugs consumed can, of themselves, result in sudden death. They can cause tachycardia and increase the risk of a fatal cardiac arrhythmia. He was then involved in a restraint which prompted a significant struggle. Struggling against restraint in these circumstances may also result in a cardiac rhythm abnormality developing. Such an outcome may result in death. Despite speculation to the contrary, there is no pathological evidence that Mr. Bayoh was subject to positional or mechanical asphyxia. Mr. Bayoh was subject to a significant period of resuscitation which can cause petechial haemorrhages forming.

The approach to the assessment of the evidence

20. This Inquiry is being undertaken approximately 7 years, with submissions 8 years, after the event. The time between the first arrival of officers at Hayfield Road (07:20:23) and the airwave transmission indicating that Mr. Bayoh was now unconscious (07:25:17) amounts to 4 minutes and 54 seconds. It was a fast moving, dynamic, and highly stressful situation.
21. The Inquiry have focussed on the events at Hayfield Road on 3 May 2015 in minute and forensic detail. Witnesses have been asked not only to comment upon their acts and/or omissions at the time, but also to comment upon their thoughts and their state of knowledge as they were in 2015. Any such evidence would ordinarily be treated with caution simply due to the nature of fast-moving events, together with the passage of time. Further, this is a situation

where there has been significant media interest with multiple news stories, comment on social media, together with television documentaries focussing on the events. Despite best efforts of witnesses to seek to try and eliminate any external influence on their recollection, there will inevitably have been an impact. It is submitted that the best evidence are the contemporaneous records and statements obtained in 2015 which are untainted by indirect influence from external factors and the passage of time. Reference is made to *Onassis v Vergottis* [1968] Lloyd's LR 403 at 431, *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Another* [2020] 1 CLC 428; [2013] EWHC 3560 (Comm) at paras 16 to 20, on the difficulties associated with memory and its impact on witness evidence.

22. This line of authority was recently followed by Lady Wise in *Henderson v Benarty Medical Practice* [2022] CSOH 28, at [49]ff. Following this approach, caution is needed when considering the oral testimony on its own. The search should be for consistency with evidence known to be reliable, such as the airwave transmissions and (where capable of being interpreted) the CCTV footage.

Standard of a reasonable officer

23. The Inquiry are examining the acts and/or omissions of various parties with the benefit of hindsight. Although this will be instructive in establishing what changes, if any, could be made to avoid a similar set of circumstances occurring in the future, it is not appropriate when assessing the individual acts and/or omissions of the officers who responded to the call. It is not appropriate to assess such matters with the benefit of hindsight as this will inevitably result in applying a 'counsel of perfection'. Their actions should be judged on what options were available to a 'reasonable officer' based upon the information made available to them at the material time. Thereafter the Chair should seek

to assess whether any of the actions of the officers were outwith the options open to a 'reasonable officer', and if so, what justification, if any, has been provided for such a departure.

24. This is the basis upon which the remainder of these submissions proceed.

Evidence of Ms. Joanne Caffrey

25. The Inquiry heard evidence from two experts in relation to restraint, namely Ms. Caffrey and Mr. Graves. With regard to Ms. Caffrey, her evidence should be treated with caution. Her report is incoherent in parts, contradictory, contains comment on matters outwith her area of expertise, and a number of examples of *ipse dixit*.

26. With regard to her report [SBPI-00181], the Inquiry sought to elicit information from her on a range of matters, for example the Area Control Room (ACR) and deployment of an Armed Response Vehicle (ARV). Ms. Caffrey does not have the necessary expertise to comment on such issues. In the absence of such expertise, her evidence on such issues would be inadmissible in civil proceedings. The extent of her experience to comment upon operational policing was not demonstrated. The majority of her experience appeared to relate to restraint in the custody suite setting which is wholly different. Further, the Inquiry invited comment from Ms. Caffrey on the reasonableness of the actions of the police officers under reference to the training that they had been provided. Ms. Caffrey had no direct first-hand knowledge of the training provided to police officers in Scotland prior to 2015.

27. Ms. Caffrey, although identifying the correct question that her report was required to consider, continuously failed to address the question. Rather than

addressing whether the acts of the police officers in question were reasonable, she instead sought to identify *other* reasonable tactical outcomes which may have resulted in a different outcome. This is improper and does not address the correct question. A prime and obvious example of such a failing was at para.13.8.1 where she correctly identifies a number of tactical options that were open to a reasonable officer in the circumstances. Rather than concluding that the actions of Mr. Paton and PC Walker were in accordance with one of the tactical options she had identified, Ms. Caffrey criticises the officers and identifies that a reasonable officer would have chosen a different tactical option without providing an explanation as to why previously noted tactical options that were available were now 'unreasonable' [Ibid, para. 13.9.9].

28. Within her report, she placed significant emphasis on the airwave transmission from PC Smith at 07:21:38 that Mr. Bayoh was "secure on the ground" yet ignored his subsequent evidence that the transmission was made from a distance and proved to be inaccurate by the time he got to the restraint [Day 11, 27 May 2022, page 78, line 21 to 23, "*As I've got there that's become clear that's not entirely accurate and the male was still struggling with them*"].
29. At page 352 of her report, Ms. Caffrey notes that there has been no adverse judicial comment made against her, or her evidence. This is untrue. Her evidence has been the subject of adverse judicial comment, namely in: *Gemmell v The Scottish Ministers* 2022 Rep. L.R. 78 and *R. (on the application of Wilby-Newton) v Police Appeals Tribunal* [2021] EWHC 550 (Admin). In those cases, her evidence was subject to significant criticism. It is unclear why Ms Caffrey said what she said in this regard, or why she did not disclose these adverse judicial comments. A Rule 9 application was of course submitted in this (and other) regards, but this line of questioning was not permitted.

30. Ms Caffrey's approach seemed to be one in which she advocated standing off from positions of danger in an attempt to de-escalate. Whilst doubtless that may be appropriate in certain instances, her general approach cannot possibly be sensible in all. She graphically illustrated the failings in her approach in relation to the one situation she was able to depone to having attended a violent incident herself. Having delayed police intervention, when the decision was eventually made to intervene an arterial bleed was discovered. That is, indeed, what happens if police officers are mandated to stand by: people die.

31. For the above noted reasons, Ms. Caffrey's evidence should be treated with caution and the evidence of Mr. Graves should be preferred.

Background and Mr. Bayoh movements on 2nd and 3rd May 2015

32. The Inquiry's ability to consider the background circumstances, specifically the evening of 2 May and the morning of 3 May 2015, has been curtailed due to Mr. Zahid Saeed's refusal to provide full and frank evidence to the Inquiry. The statements he provided to the PIRC [PIRC-00032, PIRC-00033, and PIRC-00034] are contradictory in nature. It is unclear to what extent the Inquiry can rely upon the statements given to the PIRC standing the material inconsistencies. He provided a statement to the Inquiry on 22 March 2022 [SBPI-00071] but sought to distance himself from it during his oral evidence without adequate explanation. Reference is made to the Chair's warning to Mr. Saeed on Day 4, 13 May 2022, page 27, line 13 to page 28, line 12, "*Mr. Saeed, it has been.....very well*". Given the prior inconsistencies in his statements, and his inadequate evidence before the Inquiry, the Chair is invited to treat Mr. Saeed's evidence with a degree of caution unless vouched by another reliable source of evidence.

33. We have, however, been forced to rely upon his Inquiry statement [SBPI-00071], together with the statements of Martyn Dick [PIRC-00030 and PIRC-00031] as providing detail on what occurred on 2nd/3rd May 2015.
34. There is no evidence to suggest that Mr. Bayoh had a predisposition towards violence, although there is evidence to suggest that he held negative attitudes towards the police [Day 40, 9 February 2023, page 95, line 21 to page 96, to line 10, "*Yeah. But I think.....that's how he felt as a black man*"]. On the contrary, there is a wealth of evidence to suggest that Mr. Bayoh was a good-natured individual and his reported actions on 2nd/3rd May 2015 were out of character.
35. On 2 May 2015, Mr. Bayoh attended Mr. Ade Johnson's address for the purpose of attending his niece's birthday party. There were no issues reported with his demeanour [SBPI-00071, page 1, para. 3, "*I am asked about the...but everyone was behaving*"].
36. In the evening of 2 May 2015, Mr. Bayoh attended his home address with Mr. Saeed. They consumed alcohol [SBPI-00071, para. 5, "*We arrived after...three o'clock in the morning*"] and drugs [SBPI-00071, page 2, para. 6, "*I am afraid.....before in my company*"]. It was acknowledged by Mr. Saeed that both he and Mr. Bayoh had consumed MDMA and Ecstasy during the course of the evening.
37. Although Mr. Bayoh was described as being "*quite safe with drugs*", reference was made to a prior occasion where he had a negative experience at the beginning of 2015 [SBPI-00071, page 3, para. 7, "*I am asked about whether we ever...some sort of bad company*"]. Under reference to this occasion, Mr. Saeed described Mr. Bayoh as starting "*to assume that people were talking about him, about his race, about his colour.....At that point I thought he was hallucinating*"

[Ibid]. The importance of the prior occasion resulting in a negative effect and the issue of sensitisation is considered in more detail at para. 215 below.

38. Mr. Saeed left Mr. Bayoh unaccompanied from 1.30/2.00 am to 3.00am [SBPI-00071, page 4, para. 9, "*I am asked again about... "what took you so long?"*"]. Mr. Saeed was unwilling to provide an explanation for why he left Mr. Bayoh's address for this period or what he was doing at this time [PIRC-00033, page 3, para 6, "*About one o'clock.....I don't want to say why I was away and who I was visiting*"]. He was not able to confirm what further drugs, if any, Mr. Bayoh had consumed during this period [SBPI-00071, page 5, para. 11, "*My concern was....if he had taken anything more*"]. Toxicology confirmed the presence of MDMA and the drug 'Alpha-PVP' in Mr. Bayoh's system at post-mortem. Accordingly, if Mr. Saeed's evidence is to be accepted, Mr. Bayoh consumed an unknown quantity of Alpha-PVP between 1.30am to 3.00am on 3 May 2015 or alternatively the MDMA which had been taken prior to then was mixed with Alpha-PVP.

39. Mr. Bayoh and Mr. Saeed attended Mr. Martyn Dick's at approximately 4am [SBPI-00071, page 4, para. 11, "*I am asked about what we did....taken anything more*"]. Shortly after arriving, Mr. Bayoh's demeanour changed [Ibid, "*but his mood did change.....he was agitated and I felt like it was uncomfortable*"]. He appeared paranoid and confused about the conversations between Mr. Saeed, Mr. Dick and Ms. McLeod [PIRC- 00030, page 4, "*I thought it was really incoherent...thought this was a good idea*"]. He began to demonstrate 'ideas of reference' [COPFS-00130, page 19 and SBPI-00298, para. 24]. The atmosphere became "*more nervous*" [PIRC- 00030, page 4, "*At first he was making....trying to reassure Shek*"]. Mr. Bayoh was described as "*taking everything the wrong way*", being "*unpredictable*", and not seeming himself [PIRC- 00030, page 4], "*a bit agitated*" and "*acting out of character*" [SBPI-00071, page 5, para. 11]. The

situation developed resulting in Mr. Bayoh abruptly indicating that he was going to leave which he did at approximately 5.30am [SBPI-00071, page 5, para. 12, *"I am asked how things progressed....see if he's all right"*]. Mr. Saeed expressed the view to Mr. Dick that he didn't *"know what's up with Shek. I don't know what's going on with him at this moment but it's not like him"* [Ibid].

40. There was no indication that this change in behaviour was due to a specific event or disagreement between the parties at Mr. Dick's house. Mr. Saeed indicated that he felt Mr. Bayoh was *"experiencing the same reaction as he had back in January"* under reference to drugs that Mr. Bayoh had taken. The change in behaviour from Mr. Bayoh was sufficient to cause concern [SBPI-00071, page 5, para. 12, *"there was a slight elephant in the room.....see if he's all right"*].

41. Mr. Saeed left Mr. Dick's address to follow Mr. Bayoh, but he could not be found. Mr. Saeed drove to Mr. Bayoh's home address at Arran Crescent, where Mr. Bayoh was located. Mr. Saeed was *"concerned about his behaviour and because of what happened back in January [he] thought he was having the same episode again"* [SBPI-00071, page 5, para. 13]. Mr. Saeed and Mr. Bayoh entered the address at Arran Crescent. Mr. Saeed noted: *"We were in the kitchen and he asked me if was CID. I was surprised, very surprised, quite shocked, to be fair. But at that point I knew he wasn't thinking straight. He was either hallucinating or his mind was playing tricks with him."* Mr. Bayoh continued to allege that Mr. Saeed was in the CID. His demeanour continued to change [SBPI-00071, page 7, para.16, *"Shek agreed with me...It was like an instant, within five seconds"*]. Mr. Saeed did not feel safe [SBPI-00071, page 8, para.18, *"the back door was open....my gut was telling me to leave"*].

42. At the point where Mr. Saeed sought to leave the property, it is Mr. Saeed's evidence that Mr. Bayoh assaulted him [SBPI-00071, page 8, para. 18, *"The minute I turned my back to walk out the kitchen door that's when Sheku sucker punched*

me from behind....I blame the drugs"]. The impression given from the evidence of Mr. Saeed is that this altercation was one sided where he was attacked by Mr. Bayoh. Mr. Saeed describes a sustained, violent, unprovoked attack, where Mr. Bayoh sought to use a washing line pole as a weapon [SBPI-00071, page 8, paras 18 to 22, *"The back door was open...he was a gentleman"*]. Mr. Saeed indicates that this was out of character [SBPI-00071, page 10, para. 22, *"Sheku has never, ever acted in this way towards anyone."*]. Mr. Saeed explained that he eventually managed to create distance and escape from Mr. Bayoh. He is not, therefore, able to provide further evidence on the movements of Mr. Bayoh prior to his death.

43. There is support from a number of witnesses [PIRC-00110, page 2, *"the boxing was on... 'stop, please stop. I'm sorry"*] that the altercation outside the property was one sided with Mr. Bayoh attacking Mr. Saeed. There is, however, no independent evidence to support Mr. Saeed's position of what occurred within the property or whether there was a further altercation between them. There was, however, evidence of a disturbance within the property with fridge magnets on the floor and in the garden, and a television being on the floor upstairs [Day 40, 09 February 2023, page 10, line 22 to page 11, line 16, *"I remember arriving.... 'what is going on here, what's happened?'"*]. Further, there is evidence to suggest that Mr. Bayoh may have fractured his rib prior to being restrained by the police at 07:21:03 [SBPI-00310, para. 118]. In the absence of evidence from Mr. Saeed to clarify this position, or evidence of Mr. Bayoh being involved in a further incident that could have fractured his rib prior to coming into contact with the police, it is reasonable to conclude that Mr. Bayoh sustained the rib fracture, and potentially other injuries, during the altercation with Mr. Saeed either in the altercation outside the property or some other altercation within the property which was not witnessed by others.

44. Mr. Neil Morgan provided a statement to the Inquiry [SBPI-00024]. Mr. Morgan's evidence concerned Mr. Bayoh's movements at Arran Crescent. Mr. Morgan described being told by his daughter that Mr. Bayoh was fighting someone in another neighbour's garden and he went to assist [Day 4, 13 May 2022, page 36, line 19 to 23, "*Chris — saw.....went out to assist Chris*"]. Mr. Morgan left his property but did not immediately see Mr. Bayoh, but eventually located him [Day 4, 13 May 2022, page 38, line 11 to 15, "*When I first...then I saw Chris*"]. Mr. Morgan approached Mr. Bayoh and noted that he was carrying a large kitchen knife of approximately 6 to 8 inches [Day 4, 13 May 2022, page 41, line 6 to 20, "*I approached him....8 inches, 6—8 inches*"]. The knife noted by Mr. Morgan was similar to the one recovered at the scene [Day 4, 13 May 2022, page 42, line 12 to 13, "*What I actually thought in my head is what it does look like there.*"]. Mr. Morgan recalled that he engaged Mr. Bayoh in conversation and said: "*What you doing with that?*" I said "*Look, you can't walk around with that, you're going to get done*". I said "*Look, come back to the house, something's upset you. Come back, have a cup of coffee, a cup of tea, you need to settle down. Just come back.*" [Day 4, 13 May 2022, page 43, line 5 to 13]. Mr. Morgan considered that Mr. Bayoh was "*not himself*" [Day 4, 13 May 2022 page 43, line 19, "*He wasn't himself*"]. In his statement to the Inquiry he said "*I could see he was upset about something so I wanted him to chill out a bit, relax a bit.....I invited him in for a cup of tea or coffee so he can relax a bit*" [SBPI00024, para. 22]. Mr. Morgan would note that he "*looked like someone who has had a good drink. He wasn't staggering like if he was drunk. You could see he was just generally upset. He wasn't in a rage or frenzy or nothing like that. He clearly wasn't normal*" [SBPI-00024, page 4, para. 23].

45. Mr. Bayoh's movements thereafter towards Hayfield Road were noted by members of the public and recorded on CCTV and dashcams.

46. Notwithstanding the sudden change in behaviour, knowledge of taking illicit substances, Mr. Bayoh's sudden paranoia, and the sustained unprovoked attack on him, Mr. Saeed did not report or share his concerns for Mr. Bayoh with Police Scotland or other emergency services. Notwithstanding being aware of an assault, change in demeanour of Mr. Bayoh, Mr. Bayoh being 'upset', Mr. Bayoh being in possession of a knife whilst possibly under the influence of an unknown substance, Mr. Morgan did not report or share his concerns for Mr. Bayoh with Police Scotland or other emergency services.

47. Mr. Bayoh's consumption of MDMA and Alpha-PVP is unrelated to any act and/or omission of a Police Officer. Mr. Bayoh violently assaulting Mr. Saeed at his home address is unrelated to any act and/or omission of a Police Officer. Mr. Bayoh obtaining a knife from his home address is unrelated to any act and/or omission of a Police Officer. Mr. Bayoh's decision to take that knife and travel the streets of Kirkcaldy attacking and attempting to enter vehicles belonging to members of the public is unrelated to any act and/or omission of a Police Officer.

Information provided to Police Scotland Control Room

48. On 3 May 2015, the Police received numerous calls from members of the public reporting concerns regarding Mr. Bayoh. These calls were taken by the ACR.

49. The first call was received at 07:10:14 to 07:12:16 from Mr. Harry Kolberg. It was reported that there was *"6 foot eh black guy at eh T-hall area of Shell Garage"*. Mr. Bayoh is described as having *"thumped"* his car and it looked like he was *"actually carrying a knife and he started chasing the car"*. Mr. Bayoh was described as being *"quite a built guy"*, meaning *"quite muscly built"*. Mr. Bayoh was noted

to be moving. He was reported to have *“run down Hendry Road out of Templehall Avenue”* [SBPI-00082, pages 1 to 2].

50. A subsequent call was received from Mr. Simon Rowe. Mr. Rowe advised that he had *“just spotted a black man with what looked like a huge blade walking along Templehall Avenue towards the Hub garage”*. Mr. Bayoh was again noted to be on the move [SBPI-00082, page 3].

51. A further call was received from Ms. Joyce. She reported that *“there’s a black man, he’s walking along, he’s onto the Victoria Road, Hayfield Road. [Inaudible] He’s got about a 9 inch knife in his hand”*. He was noted to be walking *“quite smart”* towards the hospital [SBPI-00082, page 4]

52. A further call was received from Mr. Alan Pearson. Mr. Pearson reported that *“there’s a guy in the middle of the street with a knife in his hand”*. He was reported to be heading towards the hospital, although the road name was unknown. Mr. Bayoh was described as being *“a big coloured guy eh, quite well built white Tee shirt”*. Mr Pearson confirmed that Mr. Bayoh had a large knife that was approximately 9 inches long. He was described as having a *“big build”* and about *“six foot”* [SBPI-00082, pages 5 to 6]

53. A follow up call was received from Mr. Kolberg who reported that Mr Bayoh was on the road between Hendry Road and the hospital. He believed it to be Hayfield Road. Mr. Bayoh was reported to be *“jumping out trying to hit other cars, he stopping vehicles....he’s jumping on cars jumping oot in front of them and everybody’s having to reverse and turn around”* [SBPI-00082, page 7].

54. A call was received from Ms. Linda Limbert at 07:16:36. She reported *“a man with a knife, a black man on Hayfield Road in Kirkcaldy, just at the roundabout.”* Mr

Bayoh was noted to be “*carrying a huge big big knife...*”. Ms Limbert noted that when “[Mr Bayoh] was trying to stop [her], [she] realised what he had in his hand”. He was reported to be at the roundabout walking along Hayfield Road [SBPI-00082, page 8].

Decision Making in the ACR

55. It is the responsibility of the ACR to manage the initial response to an incident.

At no stage was this incident declared a firearms incident. The individual who had the power to declare a firearms incident and authorise the deployment of an ARV was Inspector Steven Stewart [Day 5, 17 May 2022, page 127, line 24 to page 128, line 2 “*I mean he can request an ARV, but ultimately on that day it was myself as a trained tactical firearms commander who would be the individual who authorised and deployed armed...ARV’s to an incident*”]. Although PC Walker or Ms. Short may have been able to request that the incident be declared a firearms incident, they did not have the power to declare one [Ibid]. In any event, APS Maxwell had already requested that an ARV attend. Accordingly, neither PC Walker nor Ms. Short can be criticised for any failure of Inspector Stewart to declare the incident a firearms incident prior to the officers arriving at the scene.

56. In the absence of Inspector Stewart declaring a firearms incident, the standards and procedures of the Armed Policing Operations SOP (PS-10985) do not apply. Neither PC Walker nor Ms. Short can be criticised for failing to follow the Armed Policing Operations SOP (PS-10985) in those circumstances. Had the incident been declared a firearms incident, the approach taken by PC Walker and Ms. Short would have been to follow the Armed Policing Operations SOP.

57. The decision to deploy response officers to the area is a decision that was not taken by either PC Walker or Ms. Short, although it is submitted that standing the lack of specialist resources that were available and in close proximity, deployment of unarmed uniformed officers was the only practically and reasonable option given the level of risk to members of the public.
58. Acting Sergeant Maxwell asked the ACR about the availability of an ARV and also a dog unit. The circumstances did merit consideration of deployment of specialist resources standing reports that Mr. Bayoh was in possession of a large knife.
59. Whether the incident could realistically be managed as a firearms incident is dependent on the availability of specialist resources and their proximity to the incident. The nearest ARV was in Edinburgh, approximately 40 minutes away [Day 14, 7 June 2022, page 139, line 24 to page 140 to line 13, "*Well, certainly.....that particular time*"]. Accordingly, it is unlikely that such specialist resources would have been able to respond to this incident unless Mr. Bayoh was able to be contained without engagement for a sustained period of time. Although the exact *locus* was unknown prior to the attendance of PC Walker and Mr. Paton, upon their arrival it was clear that containment was not a viable option. To contain the area, which was a built-up residential area, would require a significant number of police resources, namely officers [Day 9, 25 May 2022, page 13, line 20 to 24, "*More than two....specifically Hayfield Road as well*" and page 29, lines 15 to 19, "*I have mentioned here a....striking distance from a bladed article*"]. APS Maxwell indicated that in order to contain a subject on Hayfield Road, you would require over 20 officers to be involved [Day 14, 7 June 2022, page 156, line 6 to 14, "*Q. What about Hayfield Road....if it had been required.*"] Further, the locus presented a number of different paths or places that an individual could seek to go to avoid police which would increase the

risk to the public [Day 9, 25 May 2022, page 14, lines 3 to 7]. Proceeding with containment by mirroring movements would have been very difficult to do without a large number of officers [SBPI-00190, para. 68, "*I am asked what tactical....it then puts more officers at risk of attack*"]. Based on the number of officers that were on shift and able to respond to the call, safely containing Mr. Bayoh on Hayfield Road was not possible.

60. It will also be recalled that matters escalated very quickly on the arrival of the police at the *locus*. They did not know in advance exactly where Mr Bayoh was. Unless they are to be criticised for exiting the vehicles on arrival – which criticism would be bizarre and unwarranted – there was no realistic possibility even to consider, let alone implement, confinement. Officers required to make rapid decisions in a situation which would have been terrifying given the reports of Mr Bayoh being armed with a knife and attacking vehicles.

61. Whilst there is no record of it on the audio-visual timeline, numerous officers recall being aware that the nearest ARV and dog unit was in Edinburgh, approximately 40 minutes away [Day 14, 7 June 2022, page 139, line 24 to page 140 to line 13, "*Well, certainly.....that particular time*"]. This information is, as a matter of fact, correct. It is submitted that this was either widely known by the officers at Kirkcaldy police station or it was conveyed to those officers via a point-to-point call which is not recorded on the airwave transmissions.

62. Standing the lack of specialist resources that were in close proximity, and the nature of the locus, it was reasonable to conclude that containment was not a viable option and would expose members of the public to unacceptable levels of risk. If the officers had simply allowed Mr Bayoh to continue walking down the path, and if he had remained in possession of a knife (something that was

reasonably assumed to be the case) then the foreseeable consequences would have been alarming.

63. Had specialist resources, such as an ARV and a dog unit, been readily available and in close proximity, then other reasonable options would have been available. But they were not.
64. At no stage was the incident declared a firearms incident and specialist resources were not confirmed until after the officers had arrived at the locus [Day 15, 8 June 2022, page 113, line 7 to page 114, line 1, "*Q. Can I ask you....A. Yes.*"]
65. Although it was originally categorised as a 'Grade 2' call, it was eventually upgraded to a 'Grade' 1 call. A Grade 1 call is an incident which relates to: (a) an immediate threat to life; (b) a serious crime is in progress or likely to occur or a suspect for a serious crime is present or nearby; (c) to allow evidence of a serious crime to be secured, that would otherwise be lost; (d) a road traffic collision involving personal injury has occurred; (e) where a person who is especially vulnerable needs urgent assistance; or (f) the person receiving the call assesses that an immediate response is required.
66. The decision to categorise this as a 'Grade 1' call is a decision that was not taken by either PC Walker or Ms. Short, although it is submitted that that was in any event a correct categorisation. The circumstances reported by members of the public disclosed an immediate threat to life mandating an immediate response. There was no information provided by members of the public that would indicate that Mr. Bayoh was vulnerable and required urgent assistance. There was no indication that this was a medical emergency.

Information passed to response officers from ACR

67. The first message passed to the police officers who would be responsible to responding to the 'Grade 1' call was at 07:16:32 which noted the following:

"I need you to divert er to Hendry Road a disturbance on-going, male armed with a knife African looking male chasing someone may be carrying a knife described as big with muscles about six foot tall wearing a white t-shirt and dark coloured jeans there's another job coming in about it, stand by"

[SBPI-00047]

68. The next call from ACR at 07:17:04 noted the following:

"Yeah [inaudible] that's another grade one call coming in for the Victoria Road Kirkcaldy, male armed with a knife, male in possession of a large knife, a black male wearing white t-shirt and jacket walking along the street with a large knife in his right hand about a nine inch blade"

[SBPI-00047]

69. At 07:18:27, ACR advised the officers that:

"Roger one is [REDACTED]....the second caller is from [REDACTED] so I take it he's passing by....That's a further call advising the male is in Hayfield Road near to a Gallagher's pub"

[SBPI-00047]

70. At 07:19:44, ACR advised:

"Roger Hayfield Road that was the last place he was seen near Gallagher's pub"

[SBPI-00047]

71. At 07:19:58, ACR advised:

“That’s another call saying he was seen walking in the direction of the hospital in the middle of the road”

[SBPI-00047]

72. At approximately 07:20:13, PC Walker and Mr. Paton arrived at the locus [SBPI-00047].

Risk assessment by PC Walker

73. It is impossible for Police Officers to be trained to address every circumstance that they may encounter. This is due to the diverse nature of the circumstances that they may encounter on a daily basis. As such, not every technique used may be prescribed within officer safety training. Officers are, however, trained to carry out a dynamic risk assessment within the framework of the National Decision Model.

74. The extent of the information disclosed to PC Walker and Mr. Paton by the ACR was that this was a ‘Grade 1 call’ requiring an immediate response, there were multiple reports of a large black male, in possession of a large knife, on the move in the Templehall area of Kirkcaldy, who was chasing someone in the early hours of Sunday, 3 May 2015. Neither PC Walker nor Mr. Paton can be criticised for the extent of information provided to them as they approached the locus. The information did, however, demonstrate an unacceptably high risk to members of the public.

75. There were a high number of calls received for this incident. It was unusual for such calls to be received early on a Sunday morning. As a result, PC Walker considered the possibility that this was a 'suicide by cop' scenario (SBPI-00039, para. 8).
76. The location of Mr. Bayoh was unknown. He was reportedly on the move 'chasing someone' in the 'Templehall area'. He was first reported to be on Victoria Road and latterly on Hayfield Road walking towards the hospital. From the point of view of the officers responding, there was no fixed location to attend which limited the tactical options available to them.
77. Prior to arriving at the scene, PC Walker reasonably believed that Mr. Bayoh would be in possession of a knife. This is due to the numerous independent reports of a man matching Mr. Bayoh's description carrying a large knife. If upon arriving at the scene, the knife was no longer visible, it was reasonable, and in keeping with his training, for PC Walker to proceed on the basis that Mr. Bayoh remained in possession of the weapon but that it was now hidden on his person [COPFS-00024, page 27, para. (b), "*With the perceived threat...being in possession of the weapon*"]. No reasonable criticism can be levelled against PC Walker from proceeding on that basis.
78. There was no information from the ACR to suggest that Mr. Bayoh was someone under the influence of illicit substances or alcohol. There was no information from ACR to suggest that Mr. Bayoh was in the midst of a mental health crisis. There was no information from ACR to suggest that Mr. Bayoh was suffering from drug induced psychosis or psychostimulant intoxication. There was no information from ACR to suggest that Mr. Bayoh was demonstrating symptoms consistent with Excited Delirium (ED)/ABD as per

their training. There was no information from ACR to indicate that this was a medical emergency.

79. On route to the locus, PC Walker carried out an initial assessment which constituted a 'dynamic risk assessment' in accordance with his training [Day 6, 19 May 2022, page 38, line 21 to page 40, line 17, "*I was very concerned...number of calls being received by the police.*"] and SBPI-00039, paras. 8 and 9]. Factors considered by PC Walker in his risk assessment were the words "*big, muscular and carrying a knife*" [SBPI-00039, para. 8]. The fact Mr. Bayoh was in possession of a knife and was reportedly 'chasing' someone formed part of his risk assessment [Day 6, 19 May 2022, page 41, line 23 to page 42, line 9, "*the fact that it had been passed as an ongoing.....yes*"]. The fact that Mr. Bayoh's actions were "overt" and were being noticed by a number of people to the point that they felt the need to phone the police was a concern. PC Walker considered this corroborated that the events were happening [Day 6, 19 May 2022, page 42, lines 12 to 20, "*Let's say the fact it was overt....exactly the same thing*"]. At no stage did Mr. Bayoh's race or perceived race play part of the risk assessment undertaken by PC Walker.

80. The incident presented a high risk to members of the public but also to the Police Officers that were responding to the call. The report that Mr Bayoh was in possession of a large knife and was reportedly chasing someone was sufficient for there to be a 'high' level of risk [COPFS-00024, page 25, para. a, "*There were a....assessment of 'high' based on this information*"].

81. All of the above factors formed part of PC Walker's initial risk assessment and his assessment that this was a 'high risk' incident was correct.

Initial engagement of police officers with Sheku Bayoh: PC Walker and Mr. Paton

Decision to engage

82. In the absence of the matter being declared a firearms incident, PC Walker and Mr. Paton were duty bound to respond and deal with Mr. Bayoh [COPFS-00024, page 39, para. (m), *“This was a tragic incident....duty bound to respond and deal with that individual”*] and deal with the situation to protect the public [SBPI-00190, para. 21, *“In terms of the risk....the risk to him”*].

83. When considering the decision to engage Mr. Bayoh, the Inquiry focussed on the transmission of Inspector Stewart at 07:20:12. This transmission stated:

“Inspector Stewart control room to the set attending eh... I’m monitoring this obviously from a...eh... an ARV perspective. If you get sightings of the male you need to make an initial assessment yourself ...em...and feedback through straight away and I will listen out on the channel”. [SBPI-00047].

84. This transmission ended at 07:20:30. PC Walker and Mr. Paton arrived at the scene at 07:20:14 and stopped their vehicle on Hayfield Road at 07:20:23. Movement is noted towards the front drivers side of their vehicle at 07:20:27 indicating that they had left their vehicle at this time. The decision to engage with Mr. Bayoh had been taken prior to Inspector Stewart’s transmission being concluded.

85. Neither PC Walker nor Mr. Paton heard the transmission from Inspector Stewart [SPBI-00039, para. 10, *“I have been asked...were dealing with the situation”*; Day 6, 19 May 2022: (1) page 76, line 23 to page 77, line 14, *“Just before that....why the radio was missed”*; (2) page 80, line 7 to 10, *“like I say....call at that point”*]. Even

if they had heard the transmission, it did not constitute an order or an instruction to “stand off” which has been suggested during the Inquiry.

86. In statement to PIRC (PIRC-00395), Inspector Stewart noted at pages 3 to 4:

“The purpose of that transmission was twofold. Firstly to ensure that the officers were aware of the need to make a Dynamic Risk Assessment of the situation they were entering into in accordance with their officer safety training and secondly to provide me with key information regarding the level of threat that was being presented. I need that information and intelligence live time to feed the NDM (National Decision Model) which I basically use to make an accurate threat and risk assessment. That in turn would inform my decision making as to what specialist resources may be required to be deployed.

My transmission was not one that I necessarily required to make at that specific point, but I was being proactive in reminding them of safety considerations and of the need to pass current information to me.

I can confirm that my transmission is not an instruction to the officers to ‘stand off’ but merely a reminder for them to make a professional risk assessment of the circumstances facing them and report back in line with training”. [emphasis added]

Inspector Stewart was advising those attending that he would require further information before a decision could be reached on whether to deploy an ARV. This is consistent with his own evidence before the Inquiry, together with the understanding of the officers that heard the transmission and those who have been referred to it since. The understanding attached to the transmission by PC Walker and Mr. Paton accords with the understanding other officers had

of it. For example, APS Maxwell considered that feedback was only required if they felt it required an ARV at the time [Day 15, 8 June 2022, page 111, line 24 to page 112, line 6, "*Lord Bracadale: Just before you leave that....Lord Bracadale: Thank you*"].

87. As expressly noted by Inspector Stewart in his PIRC statement, this was **not** an instruction to the officers to 'stand off' but for them to make a professional risk assessment. Although PC Walker did not hear the transmission, this was the approach that he took in any event. His obligation "*was to protect life and to enforce the law, which is we turned up, assessed the situation and tried to deal with it*" [Day 6, 19 May 2022, page 81, line 24 to page 82, line 2, "*No, I would say.....tried to deal with it*"]. There is no reasonable basis to conclude that the decision to 'engage' Mr. Bayoh without providing feedback to Inspector Stewart was a violation of an order.

88. In his Inquiry Statement (SBPI-00084), on page 11, para. 24, Inspector Stewart expressed the view that he expected the attending officers would provide a commentary as they were approaching the locus and saw Mr. Bayoh [*"In terms of what that would have meant....they obviously dealt with the subject"*]. Such a commentary would not have been possible as Inspector Stewart was 'blocking the airwaves' during the critical point of PC Walker and Mr. Paton arriving at the locus [SBPI-00083, page 3, para. 6, "*So that that group....at the one time but many people can listen*"].

89. Further, PC Walker and Mr. Paton were approaching the *locus* from Hendry Road without knowing where Mr. Bayoh was. They turned onto Hayfield Road at which they point they were confronted with Mr. Bayoh who matched the description of who they were looking for. As noted by Mr. Graves (SBPI-00190, para. 47), once PC Walker and Mr. Paton arrived at the scene, even if additional

information had been fed back resulting in the declaration of a firearms incident by Inspector Stewart, it was *“very difficult for them to then fully withdraw from the scene without putting members of the public in danger”*.

90. At the point where they had located Mr. Bayoh, there was no new information that required to be passed to ACR which would have added to what had already been broadcast [Day 6, 19 May 2022, page 83, lines 17 to 21, *“As soon as we...added to what was already broadcast”*]. When they located Mr. Bayoh, neither PC Walker nor Mr. Paton could see a knife, he was not striking cars, and he was not acting aggressively at this stage [Day 6, 19 May 2022, page 84, line 3 to 10, *“Q. And when you arrived.....A. Correct”*]. Following a further risk assessment, a decision was taken to engage with Mr. Bayoh. This decision was taken as PC Walker felt *“that we could deal with, take advantage of the fact he didn’t appear to be visibly in possession of the knife and get control of the male as soon as possible”* [Day 6, 19 May 2022 page 84, line 15 to 20].

91. The above factors were considered by PC Walker as he carried out a further risk assessment using the National Decision model [PS13182] on whether to engage with Mr. Bayoh or not. He further noted that:

“although there’s nobody present at the time when we arrived, there’s a row of houses on one side, there’s passing vehicles, I mean just – just because he wasn’t doing nothing there I don’t think it would reflect too well on the police if we just parked up and watched him and somebody came out of their house and he attacked that person whilst we were parked up watching that harm. It makes much more sense to take advantage of the fact that he doesn’t appear to be in possession of the knife at that point, approach him, try and communicate with him and then bring him into custody” [Day 6, 19 May 2022, page 85, line 16 to page 86, line 2].

92. As part of PC Walker's dynamic risk assessment, PC Walker noted:

"The male wasn't in possession of the knife, he appeared to be reasonably calm on the pavement, so we then assessed the threat and decided to go and speak with him" [Day 6, 16 May 2022, page 91, line 8 to 11].

93. He was, however, still a high-risk individual. PC Walker had no reason to doubt that he has had or still has possession of a knife. He considered whether Mr. Bayoh was acting aggressively. He was walking with purpose with "speed and determination". He was not, however, shouting. Mr. Bayoh did not "*appear to be overly angry with the world*" [Day 6, 19 May 2022, page 92, line 10 to 24, "*He is still a high risk individual.....he didn't appear to be overly angry with the world*"].

94. For PC Walker and Mr. Paton to not approach or engage with Mr. Bayoh, to not attend or meet at a rendezvous point at a safe distance, notwithstanding the lack of a fixed known location of Mr. Bayoh, would have been the wrong decision and put members of the public at an unacceptably high risk [SBPI-00190, para. 42 "*The risk to the public was.....members of the public*"].

95. Any suggestion that members of the public were not at risk, at least not until they entered the *locus*, ignores the nature of the *locus*. It ignores the residential nature of the buildings that surrounded the area. It ignores the fact that the area was frequented by dog walkers, for example Mr. Kevin Nelson (SBPI-00014, page 1, para. 3, "*I just ventured across.....opposite side of Hayfield Road*"). It ignores the fact that Hayfield Road was the main thoroughfare in Kirkcaldy and would be busy at that time of day given the proximity of the nearby hospital [Day 9, 25 May 2022, page 24, line 4 to 13, "*I know Hayfield Road's quite a busy road.....That I would consider kind of going to the locus*"; and Day 11, 27 May 2022, page 18, line

25 to page 19, line 11, *“Yes. Given that it’s 7 o’clock....but it’s not going to be free of public”*]. Reference is made to the evidence of PC Tomlinson regarding the potential risk to members of the public [Day 9, 25 May 2022, page 31, line 16 to page 32, line 12, *“So the risk to the public....doesn’t have the luxury of a stab vest”*]. The fact that members of the public could enter the *locus* quickly and be exposed to an unacceptable level of danger was illustrated by the evidence of Ms. Limbert. Ms. Limbert described entering the roundabout at Hayfield Road and being confronted by Mr. Bayoh, who had a knife, and who attempted to enter her vehicle [Day 5, 17 May 2022, page 56, line 21 to page 57 line 8 *“He was--to be honest, I can’t remember that, but he was well built, he was big, you know....He was almost approaching my car and touching the door handle, so I don’t know how far that would be, but from me to you probably”*]. She described being very frightened with Mr. Bayoh charging at her car [Day 5, 17 May 2022, page 58, line 9 to page 59, line 3, *“How did you feel at that point.....No, just that he was frightening and I could have --- I felt like, you know, I had to get away and that was what I did”*]. To suggest that officers should have not engaged, and watch Mr. Bayoh at a distance, would have placed members of the public, like Ms. Limbert, at an unacceptable level of risk. As noted by PC Walker *“you could wait until it becomes a risk and by that point it’s too late. That’s a dangerous game to play”* [Day 6, 19 May 2022, page 86, line 25 to page 87, line 2].

96. Based on the initial presentation of Mr. Bayoh, taking into account all of the intelligence and factors noted above, PC Walker concluded that there was *“No, nothing that would -- nothing that raised [their] concerns about approaching him at that point”* [Day 6, 19 May 2022, page 95, line 15 to 16].

97. This was the point when PC Walker and Mr. Paton decided to engage with Mr. Bayoh. When assessing this decision with the benefit of hindsight, Mr. Graves expressed the view that *“they did everything correctly, which was go to the scene,*

locate the individual and attempt to engage the individual" [SBPI-00190, para. 42]. To stand off and not engage would place members of the public at an unacceptable risk.

98. As noted by Mr. Graves, sometimes approaching an individual who may be in possession of a knife allows the officers the ability to prevent that knife from being accessed [SBPI-00190, para.57, "*in some circumstances, being....prevent that knife from being accessed*"].
99. With the perceived threat, based on the information and intelligence available, securing or controlling the subject prior to search would appear to have been both a prudent and appropriate choice of tactical option which would limit the risk to the officer by preventing him accessing any weapon. [COPFS-00024, page 27, para. b, "*With the perceived threat...being in possession of the weapon*"].
100. Prior to engaging with Mr. Bayoh, there was no indication that Mr. Bayoh was suffering from 'drug induced psychosis' as retrospectively diagnosed by Prof. Eddleston [COPFS-00038, para. 11, "*Clinical toxicologists would generally use the term 'drug induced psychosis'*"] or psychostimulant intoxication as diagnosed by Dr. Lipsedge [COPFS-00130, page 18, "*The rapid chances....are consistent with psychostimulant intoxication*"]. From what they could observe, there was no indication that Mr. Bayoh was displaying any symptoms that would fall into the bracket of ED/ABD as defined within their training. Notwithstanding any potential criticism of the training provided to the officers on recognising ED/ABD, Ms Limbert, an experienced and qualified medical professional, did not identify Mr. Bayoh's presentation as constituting a medical emergency. On 3 May 2015, Ms. Limbert was a staff nurse working in the emergency department at the Victoria Hospital in Kirkcaldy. She had worked there for 17 years [PIRC-00018, page 1, "*I am employed as....for 17 years*"].

After being confronted by Mr. Bayoh on Hayfield Road, Ms. Limbert did not consider Mr. Bayoh's presentation to be a medical emergency. Instead of calling 999 and requesting an ambulance, she contacted Police Scotland due to concerns to her own safety but also the safety of others. When informed of a standby for a cardiac arrest at Victoria Hospital, Ms. Limbert did not immediately consider that it was for Mr. Bayoh, but rather for someone else who may have been approached by him [PIRC-00017, page 2, "*I also wish to state....I had saw earlier carrying the knife*"]. Although Mr. Paton described Mr. Bayoh's 'eyes bulging out of his head', this is not a recognised symptom of ED. This, of itself, does not demonstrate that this was a medical emergency which necessitated a different approach. PC Walker's evidence that it was not possible to diagnose ED or psychiatric illness at a distance, without speaking to him, should be accepted [Day 6, 19 May 2022, page 129, line 2 to 4, "*Not initially....diagnose from 100/200 metres away*"]. To suggest that the attending officers would be better placed to identify a medical emergency compared to a qualified medical professional who was in close proximity to Mr. Bayoh does not stand up to logical scrutiny.

101. The decision to engage Mr. Bayoh was an option that was open to a reasonable officer in the circumstances known at the time for the reasons noted above.

Initial engagement

102. When Mr. Bayoh was located, Mr. Paton and PC Walker had reasonable grounds to believe or suspect that Mr. Bayoh was the person that they were looking for [SBPI-00190, para.71, "*I'm asked whether....able to deal with Mr. Bayoh in those circumstances*"].

103. As Mr. Graves noted:

“If you suspect an individual is in possession of a knife, you’re more likely to approach that individual and detain them and control them prior to search. You’re not going to increase the risk to yourself by standing back and saying, “Excuse me, sir, we think you might have a knife,” and allow them the ability to draw that weapon and then possibly use it on you. I’ve dealt with similar situations where you’ve got reasonable grounds to suspect an individual is in possession of a knife, you will go in, you will detain them and restrain them and then search them for the weapon that you believe that they’re in possession of”.
[SBPI-00190, para. 72]

104. Mr. Paton exited the vehicle first followed by PC Walker. A decision was taken by PC Walker to have his PAVA spray in hand [Day 6, 19 May 2022, page 96, line 24 to 25, “Q. You have still....A. Yes”; and PIRC-00264, page 5, “I placed the handbrake....about 8 feet away”].

105. Incapacitants or irritant sprays are known to reduce the capacity of most individuals to offer resistance or violence to officers, without unnecessarily prolonging discomfort. They are designed to incapacitate violent and aggressive individuals who could not otherwise be restrained without the risk to the officer [COPFS-00024, page 14, para. a, “Incapacitants or irritant....without risk to the officers”].

106. In the absence of Taser, a dog or officers with protection equipment (shields etc) the use of an incapacitant/irritant spray when faced with a person believed to be in possession of a knife is a sound tactical option. They are designed to be operated at a distance therefore increasing the gap between the

subject and officer [COPFS-00024, page 27, para. d, *"In the absence of....emphasis on attacking the officers"*].

107. PC Walker considered that incapacitant spray could be held in his hand down by his side so that it would not immediately be visible [Day 6, 19 May 2022, page 97, line 7 to 16, *"I think we obviously....not immediately in the shown position"*]. The decision of PC Walker to hold his PAVA Spray in hand was reasonable and proportionate standing the corroborated reports of Mr. Bayoh being in possession of a knife that was not visible at the time.

108. Mr. Paton initially engaged Mr. Bayoh at a distance. When engaging with individuals, officers are trained to use 'tactical communication'. This may also include seeking 'verbal dominance' in conjunction with drawing a baton or an incapacitant spray.

109. Mr. Paton told the Inquiry that he initially gave Mr. Bayoh a firm command. His recollection was that this command was *"Stop, get down on the ground"*. Mr. Bayoh did not respond to the command and continued to walk towards Mr. Paton [Day 20, 21 June 2022, page 34, line 12 to 20, *"Stop, get down on the ground....Not a thing"*].

110. Mr. Paton described Mr. Bayoh as having *"bulging eyes and sort of staring through me"* [Day 20, 21 June 2022, page 34, line 22]. Mr. Paton emphasised his CS Spray with a straight arm and made a further firm command. His recollection was that he stated, *"Get yourself down on the fucking ground"*, which was ignored, and Mr. Bayoh continued to advance towards him. According to Mr. Paton, it was at this point discharged his CS spray towards Mr. Bayoh [Day 20, 21 June 2022, page 35, line 20 to page 36, line 14, *"Put my – emphasised my.....A. CS."*].

111. The account of Mr. Paton is corroborated by witnesses, including civilian witnesses. PC Walker described Mr. Bayoh as being on the pavement with Mr. Paton in front of him [Day 6, 19 May 2022, page 139, lines 4 to 7, *"No, I think Mr. Bayoh....position that blue dot"*]. Mr Paton gave him verbal commands, but there was a lack of communication from Mr. Bayoh. There was no engagement and he continued to walk towards Mr. Paton [Day 6, 19 May 2022, page 144, line 19 to 24, *"Basically got out....fact that we were there"*]. Both Mr. Paton and Mr. Bayoh were dynamically moving along the pavement on Hayfield Road towards Hendry Road [Day 6, 19 May 2022, page 145, line 11 to 13, *"Yes. They were both....relative to each other."*]. PC Walker describes Mr. Paton as standing in the defensive pose with his CS spray drawn [Day 6, 19 May 2022, page 145, line 18 to 21, *"Q. Were you aware....stay where he was and..."*]. PC Walker describes Mr. Bayoh as continually walking towards Mr. Paton with Mr. Paton back stepping whilst trying to engage with Mr. Bayoh. PC Walker considered Mr. Bayoh was closing down the gap towards Mr. Paton and Mr Paton was having to work to keep the reaction gap [Day 6, 19 May 2022, page 148, line 18 to page 149 to line 7 *"No. Mr Bayoh never stopped walking towards PC Paton.....was dynamically walking down the pavement at that distance from each other --sorry--from each other"*]. PC Walker notes that when Mr. Bayoh was approximately 10 feet from Mr. Paton, Mr. Paton deployed CS spray whilst standing in the spray drawn position [Day 6, 19 May 2022, page 150, line 18 to 25, *"Like I say....deploys the spray at that point"*]. The impression of PC Walker was that Mr. Bayoh was a threat to Mr. Paton. He had this impression as he reasonably believed that Mr. Bayoh was in possession of a knife which was potentially concealed on him and that he was constantly walking towards him [Day 6, 19 May 2022, page 152, line 10 to 18, *"Yes, that's what I'm saying by constantly walking towards him.....constantly trying to close down by walking towards him"*].

112. Mr. Kevin Nelson described a police officer as *"pointing with his left hand and indicating with the baton to the ground....I saw him do this at least twice...I could hear that words were being said but I couldn't make out what they were"* [PIRC-00019, page 2]. Mr. Bayoh was described as ignoring these commands and continuing to walk towards the police officer closing the reactionary gap [Ibid]. Mr. Nelson recalled hearing the male officer shouting at Mr. Bayoh, but the only words he could make out were *"get down"* [Ibid]. It is submitted that the police officer he was describing in his evidence was Mr. Paton.

113. From the perspective of PC Walker, Mr. Bayoh did not react to Mr Paton's CS spray, although it is unclear to what extent the CS spray reached Mr. Bayoh as a result of the wind [Day 6, 19 May 2022, page 156, line 9 to 12, *"he had no reaction...east to west"*]. PC Walker noted that Mr. Paton *"ducked away and crouched down towards the van with his hand to his face"* [SBPI-00039, para. 34]. At this point, Mr. Bayoh continued to walk towards Mr. Paton where he was crouched down [Day 6, 19 May 2022. page 158 line 4 to 8, *"Q. What did Mr. Bayoh do.....A. Yes, yes."*].

114. PC Walker issued a verbal command to Mr. Bayoh, which Mr. Bayoh responded to. Mr. Bayoh turned around and started walking towards PC Walker [Day 6, 19 May 2022, page 158 line 19 to page 159, line 4, *"Q. I would like to....walking towards myself."*]. PC Walker issued a further verbal command which he recalls was *"Drop any weapons that you've got"*. This reply was ignored by Mr. Bayoh, and he continued to walk towards PC Walker closing down the reaction gap [Day 6, 19 May 2022, page 159, lines 8 to 11, *"I told him to stay....kept walking straight towards me."*].

115. At this stage, the perceived threat posed by Mr. Bayoh was significant. PC Walker considered that there were numerous credible witnesses stating that

Mr. Bayoh was in possession of a large knife, he was not engaging with either Mr. Paton or PC Walker, and he was rapidly closing the gap on PC Walker [Day 6, 19 May 2022, page 160, line 7 to 14, *"we have numerous credible witnesses.....closing the gap on me rapidly so the spray was deployed"*]. PC Walker was concerned for his own personal safety at this time [Day 6, 19 May 2022, page 160, line 15 to 19, *"Q. Were you afraid.....A. Yes."*]. Mr. Bayoh is described as having an *"open-eyed stare...it was quite an imposing sort of intense stare"* [Day 6, 19 May 2022, page 162, lines 4 to 8, *"No, just an open-eyed....intense stare"*]. As Mr. Bayoh is approaching PC Walker, PC Walker moved backwards in an attempt to retain the reaction gap [Day 6, 19 May 2022, page 164, line 4 to 13, *"Again, like PC Paton....quicker than I can make the gap"*].

116. It was not possible for PC Walker to create a larger reaction gap. Mr. Bayoh was approaching him quickly in a manner which was faster than PC Walker was able to walk backwards [Day 6, 19 May 2022, page 164, line 20 to page 165, line 1, *"But I have still got to step backwards from him.....always quicker than going backwards"*]. To suggest that PC Walker turn around to create further distance exposed him to an unacceptably high level of risk.

117. PC Walker's attention was reasonably focussed solely on Mr. Bayoh during this time given the immediate risk to his safety [Day 6, 19 May 2022, page 167, lines 21 to page 168, line 3, *"Like I said, it was officer safety at that point....there's other priorities at that time"*].

118. Mr. Bayoh continued to advance towards PC Walker, ignoring his clear verbal commands, at which point PC Walker made the tactical decision to deploy his PAVA spray due to the imminent risk to himself [Day 6, 19 May 2022, page 176, line 16 to 18, *"The spray needs to be deployed, there's an imminent risk to myself, the spray is being deployed at that point"*]. The purpose of deploying

the spray was to incapacitate Mr. Bayoh [Day 6, 19 May 2022, page 176, line 4 to 9, *"No. I mean the idea of spraying....there you would always spray somebody"*].

119. The PAVA liquid struck Mr. Bayoh's face and eyes, but he had no reaction [Day 6, 19 May 2022, page 185, line 18 to 24, *"Like I said earlier....away off his hand"*]. Mr. Bayoh wiped his face and flicked it into the air [Day 6, 19 May 2022, page 184, line 7 to 17, *"And then at which point.....PC Paton was at position 2 and—"*]. PC Walker began to experience the effects of the PAVA in his eyes which resulted in him instinctively turning away [Ibid]. The PAVA resulted in him closing his eyes and bringing his hands up to his face [Day 6, 19 May 2022, page 186, line 24 to page 187, line 5, *"It immediately makes you close.....you don't have control over"*]. He sought to get himself to a place of safety [Day 6, 19 May 2022, page 186, line 18 to 21, *"I would probably say my reaction at that point was survival....get myself to a place of safety"*]. At the point he was able to open his eyes, he had his back to his police van towards the rear wheel next to Mr. Paton [Day 6, 19 May 2022, page 188, lines 7 to 10, *"That's reasonable, yes....PC Paton was off to my left"*].

120. It had been suggested that during the initial engagement with Mr. Bayoh, both Mr. Paton and PC Walker ought to have updated the ACR. It is submitted that to update ACR standing the danger that they faced would not have been appropriate, safe or possible given the short amount of time between initial contact and deployment of a tactical option [SBPI-00190, para. 68 and 69, *"I am asked what tactical options....I don't think there either the opportunity or ability for them to shift their focus from Mr. Bayoh to considering [sic] updating the control room"*]. There was an immediate threat to life, and it would not have been safe to transmit [Day 9, 25 May 2022, page 42, line 8 to 11, *"Not throughout the incident....either to defend myself or use equipment"*], particularly when Mr. Bayoh was quickly closing the reactionary gap to both Mr. Paton and PC Walker. Once

they had engaged with Mr. Bayoh, it is unlikely that they would consider transmitting feedback because all of their attention needed to be on Mr. Bayoh to observe what he is doing and how he is responding to the verbal commands [Day 27, 28 November 2022, page 3, line 18 to 23, *“However, once they engage....they’re responding to those verbal commands”*].

121. The use of incapacitant spray at this time was a tactical option that was open to a reasonable officer. At the stage where the incapacitant spray was deployed, Mr. Bayoh was demonstrating level 2, bordering on level 3 offender behaviour [SBPI-00190, para. 65, *“I’m asked to categorise.....non-complaint behaviour”*]. As noted by Mr. Graves, Officer Safety Training operates on the plus-one process, so the level of the officer response can be one above the actual level of resistance or perceived level of resistance [Ibid, para. 67,, *“I’m asked what level of response is appropriate....how they should account for their actions”*]. Tactical communication had not worked, the officers were therefore entitled to use a level 3 response which includes ‘control skills’ [Ibid]. Control skills could include physical control skills or using incapacitant or an irritant to try and control them [Ibid]. Continuing tactical communication or making a tactical choice to deal with Mr. Bayoh at a distance, possibly with an irritant spray, whilst maintaining the reactionary gap, was the best tactical option at that stage [SBPI-00190, para. 68, *“I am asked what tactical options would be open.....the Acting Police Sergeant”*]. The tactical option used by the officers on their arrival at the scene was a reasonable one in the circumstances [SBPI-00190, para. 70, *“The tactical option used by the officers on their arrival at the scene was a reasonable one in the circumstances....attacking a member of the public or something like that”*].

Arrival of Ms Short and PC Tomlinson

Risk assessment of Ms. Short

122. Ms. Short travelled to the scene with PC Tomlinson. Whilst travelling to the locus, Ms. Short carried out a risk assessment. She considered the information that she was receiving on the police radio and was considering the possible action she would take upon arrival at the scene [SBPI-00041, para. 4, *"I have been asked what....the threat for myself"*]. The manner in which she carried out her risk assessment is noted at paras. 7 to 9 of her signed Rule 8 response (SBPI-00041, *"In terms of the training I received....impact upon my view"*).

Arrival

123. Ms Short arrived at the scene along with PC Tomlinson at approximately 07:20:40. She observed both PC Walker and Mr. Paton out of their van, with their incapacitant sprays in their hands, and issuing verbal commands to Mr. Bayoh [SBPI-00041, paras. 5, *"When I did arrive...genuine and serious threat"* and 10, *"I have been asked what I did when....the real terror came across me"*; and Day 8, 24 May 2022, page 42, lines 1 to 4, *"I could see him shouting....that's what I remember"*].

124. Ms. Short noted that there was no response from Mr. Bayoh to these commands and that he started to walk towards them [Day 8, 24 May 2022, page 45, line 1 to 3, *"There was just no verbal response whatsoever and then he started to walk towards them"*]. She further noted that *"he was standing with his arms by his side, fists clenched and then he moved towards them"* [Day 8, 24 May 2022, page 50, line 6 to 8].

125. Ms. Short noted that both Mr. Paton and PC Walker deployed their incapacitant sprays towards Mr. Bayoh and that it had no effect on him at all. She describes Mr. Bayoh *"wiping the spray away from his eyes like water"* [SBPI-

00041, para. 10, *"I have been asked what I did....real terror came across me"*; and Day 8, 24 May 2022, page 51, line 4 to 11 *"my next memory....it was just water, yes."*].

126. PC Tomlinson noted that upon his arrival, PC Walker was on foot and standing on a footpath. Directly in front of PC Walker was Mr. Bayoh. He witnessed PC Walker using both hands to cover his face as Mr. Bayoh was in front of him [SBPI-00043, para. 11, *"On my arrival...towards the Gallachers public house"*; and Day 9, 25 May 2022, page 52, line 10 to 12, *"When I got out...hands to his face"*]. Mr. Bayoh thereafter started to walk away from PC Walker and PC Tomlinson began to walk in a parallel direction whilst issuing verbal commands [SBPI-00041, para 12, *"From my current recollections....failure to comply with commands"*]. Mr. Bayoh was not responding to PC Tomlinson's commands at this time [Day 9, 25 May 2022, page 57, line 14 to 22, *"He wasn't like....understood what I was saying"*; and page 62, lines 14 and 15, *"Q. When you shouted....I didn't get a reaction"*]. Ms. Short described Mr. Bayoh as being *"in a world of his own....it was like he wasn't hearing us"* [Day 8, 24 May 2022, page 55, lines 4 to 7].

127. PC Tomlinson considered that without engagement from Mr. Bayoh he was unable to make an assessment of his mental health or if he was under the influence of drink or drugs [SBPI-00041, para. 15, *"On my arrival at the...were very high"*]. In terms of risk, PC Tomlinson considered that by not engaging with the officers in any way and his purposeful movement, together with the potential possession of a knife, meant that the situation was very high risk [ibid].

128. After PC Tomlinson discharged his CS spray, Mr. Bayoh turned and faced him and Ms. Short [Day 9, 25 May 2022, page 73, lines 4 to 12, *"Q. Was there any reaction....had his attention at least"*]. By this time, Ms. Short had drawn

her baton and issued verbal commands to Mr. Bayoh [Day 8, 24 May 2022, page 63, lines 7 to 12, "Q. *"I rested the baton....A. Yes."*]. Mr. Bayoh ran from his position towards PC Tomlinson but veered off towards Ms. Short [Day 9, 25 May 2022, page 75, line 19 to page 76, line 8, "*he basically ran....basically running after PC Short"*].

129. Ms. Short described Mr. Bayoh moving towards her closing the gap quickly [Day 8, 24 May 2022, page 64, line 17 to page 65, line 7, "*Well, when he turned round....the reason we were called there"*]. As Mr Bayoh approached her, Ms. Short describes her "*instinct kick[ing] in and [she] was running away from him"* [Day 8, 24 May 2022, page 66, lines 22 to 23]. Ms. Short described being "*completely overcome with fear"* and remembered her "*whole body shaking when he was shuffling towards me"* [Day 8, 24 May 2022, page 70, lines 7 to 11, "*At the time...like a boxer would as well"*]. Ms. Short described running away and feeling an "*almighty blow to the back of [her] head, just at [her] ear"* [Day 8, 24 May 2022, page 71, lines 8 to 9].

130. PC Tomlinson witnessed Mr. Bayoh strike Ms. Short with his fist to the back of her head. This action caused her to fall forward onto the road [Day 9, 25 May 2022, page 77, line 15 to 19, "*What I saw was Mr. Bayoh strike PC Short....fell forward onto the road"*]. PC Tomlinson described the force used by Mr. Bayoh as being "*a lot"* citing the fact it knocked her off balance and meant she fell forward to the ground [Day 9, 25 May 2022, page 78, line 7 to 10, "*From where I was standing....require a lot of force."*].

131. In a precognition provided to the Crown, Mr. Nelson noted:

"at that point it was like something triggered a switch in the guy. He ran into the middle of the road and lunged and swung a punch at the

female officer's head. He caught her with the punch and tried again but missed as she had stumbled to the side"

[COPFS-00055, page 3]

132. In his statement to the Inquiry, Mr. Nelson noted that Mr. Bayoh *"swinging his arms and making a punching motion directed towards the female officers head"*. Mr. Nelson saw the first blow land and the policewoman stumbling back and to the side from the force of the blow. [SBPI-00014, page 3, para. 6, *"By that point....I can't really remember that part"*].

133. Mr Daniel Robinson, who was a passenger in a passing vehicle, described the altercation between Mr. Bayoh and Ms. Short as follows:

"The black guy went to the female officer and picked her up and slammed her down on the floor. The female officer was screaming, through fear or pain, I don't know, just screaming" (PIRC-00117, page 2)

134. Mr. Sean Mullen, who was driving a passing vehicle, described Mr. Bayoh as pushing *"a police wifey"* resulting in her falling over (COPFS-00057).

135. After recovering from being incapacitated by his own PAVA spray, PC Walker noted Mr. Bayoh appearing in his line of vision coming from behind the police van chasing after Ms. Short [Day 6, 19 May 2022, page 188, line 25 to page 189, line 2, *"At that point...chasing after PC Short"*]. This was the first time PC Walker had seen Ms. Short. She was running away from Mr. Bayoh, and he was chasing after her [SBPI-000039, para. 46, *"The first I saw PC Short....pushed her to the upper part of her body"*]. PC Walker looked towards Mr. Paton and asked him to provide him with his baton [Day 6, 19 May 2022, page 193, line 11, *"Long enough to say "Alan, give me your baton""]*].

136. PC Walker next noted seeing Ms. Short falling to the ground. He formed the opinion that she had been pushed to the upper part of her body [SBPI-00039, para 46, "*The first I saw PC Short....pushed her to the upper part of her body*"]. PC Walker described Ms. Short's both feet being off the ground [Day 6, 19 May 2022, page 194, line 23, "*Both feet were off the ground*"].

137. It is submitted that the evidence acquired by the Inquiry confirms that Mr. Bayoh assaulted Ms. Nicole Short by striking her to the back of the head.

Did Mr. Bayoh stamp on Ms. Short?

Witnesses

138. As a preliminary observation, on one view this question is of little moment: by this time, Mr Bayoh has on the incontestable evidence assaulted a much smaller, female police officer, who has been brought to the ground. He absolutely needs to be restrained at this point: there is no safe alternative. However, it is recognised that the evidence that there was a stamp means that the Inquiry needs to consider whether or not this happened.

139. After witnessing Mr. Bayoh chasing Ms. Short, PC Walker obtained Mr. Paton's baton [Day 6, 19 May 2022, page 196, line 9 to 12, "*A couple of seconds...2 or 3 seconds*"]. After obtaining the baton, he noted that Ms. Short was lying face down in the prone position on the road. Mr. Bayoh was on the opposite side of Ms. Short, standing at right angles to her and facing towards PC Walker. He had a clear and unobstructed view of Mr. Bayoh and saw him with his right leg in a high raised position. Mr. Bayoh had his arms raised up at right angles to his body and brought his right foot down in a full force stamp down onto her lower back, the kidney area [SBPI-00039, para. 47, "*I turned back to PC Paton....onto her lower back, the kidney area.*"].

140. Once Ms. Short was on the ground, PC Tomlinson described her trying to push herself up, but Mr. Bayoh then stamping on her back [Day 9, 25 May 2022, page 80, lines 3 to 6, "*When Mr Bayoh.....I thought he'd killed her*"]. He described Mr. Bayoh stamping on her again [Day 9, 25 May 2022, page 80, line 12, "*He stamped on her again*"]. PC Tomlinson described the area that Mr. Bayoh stamped on as being somewhere below the word "Police" on Ms. Short's body armour [Day 9, 25 May 2022, page 82, lines 8 to 16, "*Like the centre....the large flat section of her back*"].
141. Both PC Tomlinson and PC Walker had a clear and unobstructed view of Mr. Bayoh stamping on Ms. Short's lower back. They described a similar mechanism of the stamp. PC Walker described the area of the stamp as being in the 'kidney area' and he identified the area to the Inquiry [Day 7, 20 May 2022, page 10, line 21 to page 11, line 4, "*Can you explain to me....Yes, so (indicating)*"]. This area is consistent with the mark left on Ms. Short's high visibility vest (PIRC-01176, pages 48 and 50).
142. With regard to Mr. Nelson, it is submitted that in this regard he was an unreliable witness. Mr. Nelson, who is the sole witness to suggest that the stamp did not occur, did not have a clear unobstructed view. He could not see how she fell because of the hedge and the parked vehicles on the road [Day 12, 31 May 2022, page 33, line 1 to 3, "*No, I couldn't see how she fell because of the hedge and the cars.*"]. He confirmed that he could not see her on the ground [Day 12, 31 May 2022, page 33, line 12 to 13, "*Q. So you couldn't see....A. No.*"]. The video reconstruction of the *locus* shows very clearly that he simply could not have seen anything below shoulder level.

143. The entire basis for his conclusion that the stamp did not occur was that Mr. Bayoh was moving away from her [Day 12, 31 May 2022, page 45, lines 10 to 17, "*Q. Why do you say that....Q. Thank you very much*"; and SBPI-00014, para. 12, "*I'm told my statement....I couldn't see the pavement from where I was at the window, but that's where he appears to be from his position*"].
144. As demonstrated with the reconstruction, his view was obstructed by a hedge and cars that were parked [SBPI-00169, page 37, photograph (c)]. He was not able to see the ground and, therefore, would not be able to state with any degree of certainty where Ms. Short landed after being struck by Mr. Bayoh. Further, he noted that after he left his window, "*Sheku had moved away from the female police officer and would have been maybe a step away from the pavement*" [Day 12, 31 May 2022, page 49, line 1 and 3]. He thereafter noted that this was "*where [he] would imagine [Mr Bayoh] would have been*" [Day 12, 31 May 2022, page 49, lines 8 to 11, "*In terms of where....moving to the -to my left*"]. He confirmed that he couldn't see his feet at that point due to his obstructed view [Day 12, 31 May 2022, page 49, line 14 and 15, "*Q. so you couldn't see his feet at that point? A. No*"].
145. Further, Mr. Nelson did not witness the entirety of the interaction between Mr. Bayoh and the officers. After seeing Mr. Bayoh strike Ms. Short, he left his viewpoint to go outside. The journey was estimated to take around 10 seconds (COPFS-00055, page 3, "*at this point...and get outside*")
146. Both PC Tomlinson and PC Walker described the stamping mechanism with Mr. Bayoh raising his arms towards his head. Mr. Nelson described Mr. Bayoh as 'swinging his arms' in a similar fashion. It is submitted that what Mr. Nelson was actually describing was the 'stamping mechanism' described by PCs Walker and Tomlinson and he was mistaken in relation to the respective positions of Ms. Short and Mr. Bayoh on Hayfield Road.

147. The best evidence of the events in this regard is found in the airwave transmissions between the officers. There is reference to a stamp on Ms. Short by Mr. Bayoh at 07:24:28 via an airwave transmission from APS Scott Maxwell. During the Airwaves transmission, APS Maxwell is noted to say: *“Although there’s no visible injuries to PC Short she’s eh... been stomped to the body a few times etcetera...ehm...and struck to the head...”* (SBPI-00047). This is a contemporaneous reference to a stamp on Ms. Short. Standing the dynamic and stressful nature of events at the time this transmission was made, it is close to impossible that there was any collusion or fabrication, as has been suggested. Further, at this point in time, there was no indication that Mr. Bayoh’s condition would deteriorate during the restraint which only occurred at 07:25:17 when Mr. Bayoh became unconscious. There was no ‘motivation’ on the police officers to fabricate a further assault by Mr. Bayoh at 07:24:28 to try and justify their use of force after the event. At the point in time of the airwave transmission from APS Scott Maxwell, there was no reason to think that the situation would result in a fatality, or indeed that this was anything other than a routine arrest – albeit in highly stressful and potentially dangerous circumstances. There is thus absolutely no reason why APS Maxwell would have said what he can clearly be heard to have said, other than his having been told in the immediate aftermath that there was a stamp. There is equally no reason why APS Maxwell would have been told this if it did not happen, as at that point there simply would have been no reason whatsoever to lie.

Forensics - Medical

148. When considering the evidence of both Dr Anderson and Dr Crawford, their evidence in so far as they were invited to comment on the same issues, was consistent with each other. Neither expert, on a proper reading of their

reports, statements to the Inquiry, or their oral evidence, changed their view nor did they opine that the injuries sustained were inconsistent with a stamp to Ms. Short's back.

149. Counsel to the Inquiry stated to Dr Crawford "*so we should understand then that you disagree with Mr Anderson to the extent that you consider that the contusions to the right side of the torso may have been caused, or may be consistent with a stamping injury*" [Day 17, 10 June 2022, page 20, line 17 to 20]. This was an inaccurate summation of Dr Anderson's evidence. Any suggestion that either expert formed the view that the injuries sustained by Ms. Short were inconsistent with a stamp to the back from Mr. Bayoh is wrong and should be rejected.

150. Neither expert was of the view that Ms. Short had suffered "life threatening" or "serious injury" [Day 16, 9 June 2022, page 132, line 9 to 13, "*It's fair to say....A. Yes, I do*"; and Day 16, 9 June 2022, page 161, line 5 to 7, "*In my opinion....not serious or life threatening*"]. There was no contradiction or change in position from either expert in this regard.

151. During the examination of Ms. Short on 21 May 2015, Dr Anderson noted that Ms Short had suffered contusions to the right side of her torso, particularly over her lower right rib cage, consistent with having been caused by blunt injury [PIRC-01405, page 9, "*The injury at that site would be entirely consistent with having been caused by a blunt injury*"]. This would be consistent with a stamp from Mr. Bayoh in the areas identified by PCs Tomlinson and Walker.

152. Dr Anderson was shown two demonstrations of the stamp on Ms. Short from both PC Walker and PC Tomlinson. On the basis of the demonstrations,

and solely on the basis of the demonstrations, he opined that he would expect to see visible signs of injury to her body (Day 16, 9 June 2022, page 122, line 4 to 06, *“would you have expected...Yes.”*). He explained that he would have expected *“external evidence of bruising, scuff marks – although that would be mitigated by the fact she had been wearing a protective vest”* [Day 16, 9 June 2022, page 122, line 19 to 21]. He noted that he would be *“relying on my colleagues who had three or four times the opportunity to assess Nicole at the hospital”* [Day 16, 9 June 2022, page 123, line 3 to 7, *“I’m relying on my...as was demonstrated”*]. Dr Anderson was, however, critical of the care initially provided to Ms. Short by those colleagues (Day 16, 9 June 2022, page 128, lines 4 to 19, *“Yes, you will probably...were very significant”*).

153. As to the demonstrations, Dr Anderson did not express any view on the limitations, or the reliability of the demonstrations performed by PCs Walker and Tomlinson. He did not comment upon, or identify, any variables that would have been relevant. He did not consider the effectiveness of the stamp. He did not consider the footwear that Mr. Bayoh had been wearing or properly explore the impact of Ms. Short’s protective vest in any detail.

154. In any event, the demonstrations from PCs Walker and Tomlinson are not definitive. They were the subjective interpretations of two witnesses, commenting on the degree of force used by Mr. Bayoh on a third party, in highly stressful, dynamic, and fast-moving circumstances. Further, the incident took place approximately seven years ago. The comments expressed above at paras. 20 to 22 on witness’ evidence following the passage of time is particularly pertinent.

155. Dr Anderson, in response to whether it was possible that the level of the stamp was less than the force that had been demonstrated, noted that this could

have resulted in no or very little bruising [Day 16, 9 June 2022, page 129, line 13, *"It could have."*]. Accordingly, Dr Anderson did not express the view that the injuries sustained by Ms. Short were inconsistent with a stamp to the back.

156. Dr Crawford was clear in his evidence that the absence of physical injury is not inconsistent with a stamp to the back of Ms. Short. Dr Crawford said: *"patients who can have an apparent stamp like that but not sustain a serious injury or a life threatening injury"* [Day 18, 10 June 2022, page 17, line 8 to 10]. Dr Crawford noted that in the presence of a history of being stamped on, the type of injury reported would be consistent with a stamp [Day 18, 10 June 2022, page 21, line 2 to line 23, *"I feel you're trying to lead me down a path....she was wearing protective gear and there are other factors that could affect the severity of the injuries that occurred as a result of a mechanism like that"*]. He further noted that Ms. Short was wearing a protective vest and clothing that would have afforded protection in terms of some of the severity of the injury [SBPI-00117, page 7, para. 26, *"However the caveat...evidence of injury to her body"*].

157. He further stated:

"I disagree to the extent that -- I do agree to the extent that she didn't have any signs of a serious injury having been sustained, but I -- my concern is that you could not exclude a stamp injury based on that alone, because there is no other -- you know, there are -- there doesn't appear to be another explanation offered for that injury and -- or other injuries that she may have sustained (Day 17, 10 June 2022, page 18, line 15 to 22)

158. There was physical injury that would be consistent with a stamp to Ms. Short's back. Dr Crawford expressed the view the tenderness reported by Dr

Anderson during his examination of Ms. Short on 21 May 2015 would be consistent with having been stamped on the back. He stated that:

"I would say tenderness over the right lower rib cage is consistent with having been caused by blunt injury and I would say that could be – in my view – consistent with that blunt injury being a stamp or a blow to the lower right chest..... could be consistent, or would also be consistent with a stamp to the right lower chest injuring the ribs and this is 21 May, which is a couple of weeks after the incident I think, thereabouts, and, you know, so there's definitely -- to me that's evidence of an injury there and that would be consistent with a stamp" (Day 17, 10 June 2022, page 17, line 3 to 18).

159. Accordingly, the medical evidence is consistent with a stamp to Ms Short's back and does not exclude it as a possibility.

Forensics – Paul Ryder

160. Mr. Paul Ryder was instructed to provide a report on footwear comparison to the mark located on Ms. Short's high visibility vest. At para. 32 of his report [SBPI-00171], he concluded:

"Given the nature of the marks it is also my view that I'm not able to exclude the possibility that either of the submitted pairs of footwear could have contributed to this deposited material in some way but that contribution is so indistinct that it is not recognisable as having been made by an item of footwear."

161. He confirmed this position in his evidence to the Inquiry [Day 32, 8 December 2022, page 62, lines 2 to page 63 line 12, "It means that...found with

one of those"]. Mr. Ryder also noted that if there had been a stamp, he would have expected deposits from the shoe to have been present on the vest [Day 32, 8 December 2022, page 63, line 25 to page 64, line 6, "*In terms of that...they were in contact with it*"]. It is submitted that his evidence is consistent with Mr. Bayoh having stamped on Ms. Short's back on the basis that it cannot be excluded.

Forensics – Prof. Lorna Dawson

162. Professor Lorna Dawson was instructed to examine a number of items for the presence of soil, to analyse any soil found to be present and to prepare a report (SBPI-00182). Within her report, she concluded that there was support for the soil deposit recovered from Ms. Short's high visibility vest having originated from the soil recovered from Mr. Bayoh's footwear (Ibid, page 6, "*My overall conclusion...with the soil recovered from the boots worn by Mr. Sheku bayoh (GAY016 right boot (Gay016/Area 2)) and (Gay017 left boot (Gay017/Area1))*"). She was able to exclude PC Walker's boots as being the source of soil recovered from Ms. Short's high visibility vest. In her oral evidence, she confirmed that the soil recovered from areas 1 and 3 of Ms. Short's vest was consistent with having come from Mr. Bayoh's boots [Day 31, 6 December 2022, page 125, line 13 to page 126, line 23, "*Q. I want to ask you just.....A. That's correct*"]. Prof. Dawson subsequently confirmed that the floor of the hospital or police office are extremely unlikely sources of the soil recovered from Area 3 of Ms. Short's vest [SBPI-00241, page 2, "*However, the soil recovered from....from Area 3 of PC Short's vest*"]. In addition, she expressed the view that:

"to achieve transfer onto and into the fabric on Area 3 of the vest, and to persist over the time from contact in 2015 to recovery in 2022, a casual action such as

placing the vest on the floor on top of any soil is very unlikely to result in transfer and persistence of soil. Transfer of soil particles may not occur through direct contact alone. Some amount of force is needed to guarantee soil transference. It would have required an element of force for soil to transfer and persist into the yellow material of PC Short's vest. The soil that was recovered from the yellow fabric of PC Short's vest Area 3 required pressure to enable transfer onto the sticky SEM stub, used to sample and analyse the soil from the vest..... Nevertheless, in my opinion, it is extremely unlikely that the soil trace recovered from Area 3 on the vest was as a result of secondary transfer from soil from the floor of the hospital or police offices to PC Short's vest."

[SBPI-00241, pages 2 and 3].

163. Standing the inherently unlikelihood that that soil was deposited via a secondary transfer, and the extent of force required to deposit the soil on Ms. Short's high visibility vest, and the support that the soil originated from Mr. Bayoh's boots, it is submitted that this supports the proposition that the stamp did occur.

Conclusion

164. Accordingly, it is submitted that the evidence demonstrates that it was more likely than not that Mr. Bayoh stamped on Ms. Short's back, namely due to: (1) mark on Ms. Short's high visibility vest; (2) the clear unobstructed views of PCs Walker and Tomlinson; (3) the consistency in PCs Walker and Tomlinson's account of the mechanism of the stamp; (4) the contemporaneous reference to 'stamp' on the airwaves prior to Mr. Bayoh's deterioration; (5) the unreliability of Mr. Nelson's evidence standing his obstructed view of the incident; (6) the medical evidence which is consistent with a blunt force injury to Ms. Short's back; (7) the footprint analysis that confirms markings in the

area consistent with the alleged stamp which does not exclude it; and (8) the soil analysis which supports the proposition that the soil recovered is consistent with having come from Mr. Bayoh's boots, secondary transfer is unlikely, and that primary transfer would have required an element of force.

Mr. Bayoh being brought to the ground

165. As has already been noted, irrespective of the precise way in which Mr Bayoh carried out the assault on Ms. Short, it remained appropriate, proportionate, and lawful to physically restrain Mr. Bayoh on the ground. At the point he was brought to the ground, he was already a suspect in a crime, namely the possession of an offensive weapon, and he had already violently assaulted Ms. Short.

166. Ms. Joanne Caffrey considered that the strike to Ms. Short's head resulted in Mr. Bayoh's profiled offender behaviour being categorised as Level 6 [Day 29, 1 December 2022, page 26, line 24 to page 28, line 2, "*thinking again of the categories...I would consider that a level 6*"]. This was "serious/aggravated assaultive resistance" which is the highest level of offender behaviour [Day 29, 1 December 2022, page 28, line 3 to 9, "*And if we could have level 6....A. Yes*"]. This, in accordance with their training, allowed the officers to utilise a level 5 response, namely "deadly or lethal force" [Day 29, 1 December 2022, page 28, line 19 to page 29, line 1, "*So let's look at 4.7...A. Yes, up to that, yes*"].

167. After witnessing Mr. Bayoh stamp on Ms. Short, PC Tomlinson approached Mr. Bayoh with his baton and struck Mr. Bayoh to the head area [Day 9, 25 May 2022, page 87, line 10, "*so I struck him in the head area*"]. PC

Tomlinson and Mr. Bayoh were in close proximity at which point PC Walker brought Mr. Bayoh to the ground with what has been described as “a bear hug” [Day 9, 25 May 2022, page 101, line 21 to page 102, line 4, “*And the next thing.....travelled some distance from where Nicole was*”].

168. PC Walker described that he was going to go in with a heavy baton strike, but opted against that and wanted to get him on the ground to get some sort of control, so he dropped the baton and proceeded with a ‘shoulder charge’ [Day 7, 20 May 2022, page 15, lines 3 to 10, “*Initially the....proceeded with the shoulder charge*”]. He described that “*getting somebody onto the ground and getting handcuffs is better than trying to have a stand up fight with batons*” [Day 7, 20 May 2022, page 15, line 19 to 24 “*I mean personally.....if they’re being violent*”].

169. The decision, and the method used, to bring Mr. Bayoh to the ground by PC Walker was an option open to a reasonable officer. The use of force used was reasonable and proportionate in the circumstances [SBPI-00181, para. 17.9.5, page 199, “*If PC Walker’s account is correct...if other tactics are available*”; para. 17.10.1, page 200, “*as above, neither....can justify their decision*”; and SBPI-00190, para. 92, “*I’m asked to categorise...restrain an individual against.*”; and para. 98, “*I’m asked about the method....slightly easier and safer environment*”]

Restraint

170. Ms. Short played no role in the restraint of Mr. Bayoh.

171. The earliest starting point of the restraint was at 07:21:13 with Mr. Bayoh being unconscious but breathing at 07:25:17 [SBPI-00046]. Accordingly, the maximum period of restraint was 4 minutes and 4 seconds. It was a highly dynamic restraint with Mr. Bayoh violently struggling which reportedly

involved Mr Bayoh managing to perform a press up whilst officers were trying to restrain him.

172. During the restraint, the officers did not recall Mr. Bayoh communicating with them. In PIRC-00043 at page 2, Ms. Ashley Wyse noted that *“when the man was on the ground, I heard him screaming. It was a horrible sound. It sent chills through me. I heard the man shout to the police to get off him. They never moved from him at that point”*. In PIRC-00044, page 2, Ms. Wyse recalled that the man kept making roaring noises and shouted something similar to *“get off me”*. In COPFS-00047 at page 3, Ms Wyse commented that she could hear *“mumbling and shouting but [she] couldn’t hear what was being said because [her] window was closed. [She] wouldn’t want to guess what was said”*. At para. 17 of Ms. Wyse’s Inquiry statement [SBPI-00132], she does not recall hearing shouting from Mr. Bayoh [*“I’m told that.....at the same time it all happened so fast”*]. When viewing the Snapchat footage Ms. Wyse recorded [PIRC-03371, PIRC-03370, PIRC-03369, and PIRC-03368] it is possible to hear ambient sound. No roaring or screaming from Mr. Bayoh can be heard on the videos that have been recorded. It is submitted that Ms. Wyse was mistaken in relation to hearing Mr. Bayoh shouting during the restraint. It is a matter for the Chair to consider whether the alleged shouting was a reference to the verbal commands from Mr. Paton and PC Walker to Mr. Bayoh and the screaming was that of Ms. Short which is spoken to by Mr. Robinson.

173. Following the bear hug/shoulder charge, both PC Walker and Mr. Bayoh fell onto the pavement. In a statement prepared shortly after the incident [PIRC-00265], PC Walker describes the initial restraint once both he and Mr. Bayoh were on the ground in the following terms:

“I have also fallen at this time landing to side of the male dropping the baton. I immediately reached over the male in an attempt to gain control of him. At this point he had thrown several punches at me and I punched him to the left side of his head twice with my right fist. The male has then raised his right hand to strike me and I have been able to grab his arm, pull it over his body, turning his torso on to left side pinning his left arm under him. I have placed my weight on the male to stop the male from breaking free whilst holding on to his right arm. I am aware at this time of PC Paton arriving to my left and placing a baton over the males left bicep to afford some control over the male. I am also aware of PC Tomlinson being to my right assisting with restraining the male.”

(PIRC00265, page 4)

174. In the statement provided to PIRC on 4 July 2015 [PIRC-00264], PC Walker described the initial restraint as follows:

“When I got onto the pavement I was on my knees, while he was on his back. I made attempt to get over of the top of his shoulders and hands to get him under control. As I did this he raised his shoulders and tried to punch me with his right hand. He tried this two or three times, I’m unsure whether these connected properly but I was still in a bit of pain in my eyes. He may have connected with my stab vest which affords you a lot of protection and I may not have been aware of punches connecting.

As I leant over I then struck him a couple of times with a clenched fist in my right hand somewhere around his left cheekbone area. He continued to struggle and lashed out with his arms. He also tried to punch me again. I still couldn’t manage to get proper control of him at that time. I think PC Short was still on the ground at this time, or certainly I wasn’t aware of her getting up.

Eventually I got him (deceased) to the position where I had hold of his right wrist, which forced his arm across his body. I put pressure from my chest into his right shoulder, pushing him onto his left side. My body was in a crouched position over him with my knees on the pavement against his back so he couldn't turn back towards me to lash out.

At this point PC Tomlinson came in from the right hand side and PC Paton came into my view from my left hand side near [Mr. Bayoh's] head".

(PIRC-00264, page 7)

175. In his evidence to the Inquiry, PC Walker described Mr. Bayoh initially being flat on his back [Day 7, 20 May 2022, page 20, line 3 to 4 "Q. Was that flat on his back? A. Yes"]. Following an exchange of punches, PC Walker managed to get hold of Mr. Bayoh's right arm, which he forced across Mr. Bayoh's body towards his left arm to bring Mr. Bayoh's hands together. This brought Mr. Bayoh from being on his back to being on his side [Day 7, 20 May 2022, page 26, line 20 to 25, "Q. How long did he....to on his side"]. PC Walker remained on his knees, whilst leaning over Mr. Bayoh, and applied sufficient pressure to keep Mr. Bayoh's hands together on the ground [Day 7, 20 May 2022, page 29, line 14 to 22, "Q. Did you remain on....was on his shoulder"]. Any weight applied by PC Walker was to Mr. Bayoh's shoulder and his hands [Day 7, 20 May 2022, page 30, line 6 to 8, "Shoulder and his hands...so I could reach that far"]. It was during this time that PC Walker attempted to place handcuffs on him, but the process enabled Mr. Bayoh to struggle free [Day 7, 20 May 2022, page 33, line 21 to page 34, line 1, "at one point I managed....free"]. When applying handcuffs, PC Walker was initially able to secure them on Mr. Bayoh's right wrist. PC Walker and Mr. Paton attempted to handcuff Mr. Bayoh to the rear by forcing Mr. Bayoh's left arm from underneath his body which they were not able to do so [Day 7, 20 May 2022, page 35, line 23 to page 36, line 5, "I can't mind if.....No,

he was still on his side"]. They considered it safer to handcuff Mr. Bayoh to the front [Day 7, 20 May 2022, page 38, line 19 to 21, *"That's what we...him to the front"*]. It is submitted that the majority of PC Walker's weight was on Mr. Bayoh's hands as pressure was being applied to try and place handcuffs on him.

176. PC Walker was focussed on Mr. Bayoh's upper body and was not, therefore, aware of the steps being taken by other officers behind him [Day 7, 20 May 2022, page 40, line 13 to 14, *"You don't know what's...A. No"*]. PC Walker was aware of PC Paton attempting to use his baton to bring Mr. Bayoh's left arm out from underneath his body for the purposes of handcuffing him to the rear [Day 7, 20 May 2022, page 34, line 13 to page 35, line 8, *"Were you still on....to apply handcuffs"*].

177. PC Walker was aware of PC Smith arriving and informed him that CS spray would not be effective [Day 7, 20 May 2022, page 40, line 19 to page 41, line 15, *"Q. But you're aware of PC Alan....Back in its holder at that point"*]. PC Walker was not aware what further involvement PC Smith had in the restraint. PC Walker gave evidence that once Mr. Bayoh was secured, he stopped reaching across Mr. Bayoh. It was at this point that PC Walker was aware that the other officers had arrived [Day 7, 20 May 2022, page 42 line 9 to 12, *"Once I was happy that he was cuffed and secured...was — had arrived"*].

178. At 07:21:38, PC Smith transmitted *"male secure on the ground"* [SBPI-00047]. In his evidence to the Inquiry, he confirmed that at the point he made the transmission he was not at the restraint but moving towards it. He confirmed that the transmission was *"not entirely accurate"* which was apparent when he got to the restraint [Day 11, 27 May 2022, page 78, line 21 to 23, *"As I've got there that's become clear that's not entirely accurate and the male was*

still struggling with them"]. Handcuffs were applied at approximately 07:22:24, but Mr. Bayoh was still struggling [SBPI-00047, *"Update male in cuffs still struggling"*]. At 07:23:13, DS Davidson notes that Mr. Bayoh was on the ground but *'we're gonna need more control with leg restraints'* which suggests that Mr. Bayoh was still actively struggling at this point. At 07:25:17, PC Smith reports that Mr. Bayoh appeared to be unconscious but breathing [SBPI-00047]. It is more likely than not that Mr. Bayoh became secured at some point between 07:23:13 and 07:25:17. Accordingly, PC Walker stopped reaching across Mr. Bayoh between 07:23:13 and 07:25:17.

179. Mr. Bayoh was not 'fully prone' during the restraint. Although witnesses have suggested that Mr. Bayoh was 'prone', what is considered to be 'prone' was not explored in detail with witnesses. In any event, it would be difficult to determine whether that was 'fully prone' or 'partially prone'. PC Walker understood that being 'prone' is to be flat on your front with their hands handcuffed behind them, when the full body weight is on the chest and abdomen [Day 7, 20 May 2022, page 32, line 23 to page 33, line 2, *"Prone position for me....abdomen area"*].

180. As highlighted by PC Walker, Mr. Bayoh was handcuffed to the front which confirms that Mr. Bayoh's arms and hands were always underneath him to the side [Day 7, 20 May 2022, page 32, line 12 to 20, *"Like I was saying, there's a difference between on his front and prone....everybody sees a situation differently and they will report it differently"*]. Mr Bayoh was still struggling when the handcuffs were applied [see airwave transmission at 07:22:24 in SBPI-00047] and before he was unconscious. Had Mr. Bayoh been in the fully prone position whilst struggling, he could not have been handcuffed in the manner that he was.

181. Once Mr. Bayoh was under full restraint, he was rolled onto his back [Day 7, 20 May 2022, page 40, line 8 to 10, "*Probably once we had him...that had been applied*"].
182. The position of PC Walker and Mr. Bayoh is broadly corroborated by the other police witnesses. Further, PC Walker's position is broadly corroborated by Mr. Nelson. Mr. Nelson had left his property and was now standing at his gate and had a clear unobstructed view. In a statement to PIRC, Mr. Nelson describes PC Walker as "*kneeling on the ground with the weight of his upper body by use of his arms to the black male's shoulder/back of neck area*" (PIRC-00019, page 3).
183. PC Kayleigh Good initial viewpoint of the restraint was from a distance. She described Mr. Bayoh as "*lying chest down, head raised, arms up and legs flaying around*" [Day 12, 31 May 2022, page 154, lines 15 to 24, "*In your Inquiry....A. Yes*"]. It is unclear on what basis Mr. Bayoh would have been able to have his "arms up" if he was "fully prone". She described PC Walker as having an arm outstretched going to the other side of Mr. Bayoh's body [Day 12, 31 May 2022, page 158, line 19 to 20, "*An arm outstretched going to....A. Yeah.*"]. She formed the view that PC Walker was only using the top half of his body in applying force and that he was not "*flat on him*" [Day 12, 31 May 2022, page 159, line 6 to 12, "*Okay. Could you say....I don't think he was flat on him*"]. Standing the position of PC Walker, PC Good would not have been in a position to determine if Mr. Bayoh's left arm was underneath him.
184. In a statement provided to PIRC, PC Tomlinson originally described Mr. Bayoh as being 'face down' [PIRC-00263, page 4, "*The man was face down*"]. It is submitted that PC Tomlinson first noted the position of Mr. Bayoh after PC Walker had obtained control of Mr. Bayoh right arm and had brought it over

towards Mr. Bayoh's left. The description of Mr. Bayoh being 'face down' lacks precision, but it is submitted that it would nonetheless be consistent with the description of Mr. Bayoh's body position when PC Walker is seeking to secure both hands together when Mr. Bayoh would have been tilted over towards his front.

185. In his evidence to the Inquiry, PC Tomlinson described how during the restraint his focus was on Mr. Bayoh's legs, so did not notice what his upper body was doing. Whilst straddling Mr. Bayoh's legs, he noted an opportunity to "take control of a wrist". At that point, when PC Tomlinson glanced up, Mr. Bayoh was not in what he would describe as a 'prone position' [Day 10, 26 May 2022, page 24, line 7 to 16, "*my initial focus was on Mr Bayoh's legs.....he's been in like a press-up style position*"]. PC Tomlinson recalls that he was still moving at the point where he had been placed on to his side [Day 10, 26 May 2022, page 45, line 15 to 17, "*Q. Had he stopped moving prior to being moved onto his side? A. No, I don't think so.*"].

186. PC Smith stated that when he arrived, Mr. Bayoh was lying on his left side. PC Smith described Mr. Bayoh as being 'tilted over to his front' and that he was not sure Mr. Bayoh was 'completely prone' [PIRC-00278, page 8, "*Once the restraint were applied...it was not a long period of time*"]. In his evidence to the Inquiry, PC Smith describes that Mr. Bayoh "*was lying mostly on his front but slightly over to his side*" [Day 11, 27 May 2022, page 134, line 12 to 14]. PC Smith recalls that within a minute of Mr. Bayoh being moved onto his side, he appeared to be unconscious [Day 11, 27 May 2022, page 138, line 21 to 25, "*When you say quite shortly....back to look at him*"].

187. APS Maxwell stated that when he arrived Mr Bayoh was lying on the ground on his "*left side*" [Day 15, 8 June 2022, page 51, line 25 to page 52, line 3,

"All I can say...Yes, yes."]. They were applying pressure to restrain him, but it was not full body pressure because they were anchored from the knees [Day 15, 8 June 2022, page 59, line 14 to page 60, line 2, *"As I said when I first...I can still effect pressure gently and then if I have to, I can go straight onto them"*]. APS Maxwell recalls that at the time he arrived, Mr. Bayoh was on his left and actively resisting [Day 15, 8 June 2022, page 54, line 11 to 23, *"It was more of a containment...and the restraints"*].

188. Mr. Christopher Fenton, who was a psychiatric nurse with experience in restraint, witnessed a part of Mr. Bayoh's restraint. He expressed the view that what he did see did not appear to be overly excessive [PIRC-00251, page 3, *"I regularly have to restrain patients at my work in volatile situations...as being overly excessive"*].

189. Although there is a dispute on what position Mr. Bayoh was in throughout the restraint, even if he was in the prone position, it is recognised that a suspect being in prone position may sometimes be necessary, but that it should be for short a time as possible [SBPI-00181, page 181, para. 17.1.19.2, *"Prone position should be for as short a time as possible"*; and 17.1.19.6, *"The detainee is removed from prone/supine as soon as possible into a side position"*]. Further, the process of restraining often requires the upper body to be held down, sometimes by an officer's own bodyweight [SBPI-00181, para. 17.1.50.4, *"The process of restraining...officer's own bodyweight"*]. As noted by Ms. Caffrey, the tactical options open to the officers involved in the restraint included obtaining rapid control of the person, and this commonly involves initial prone position [SBPI-00181, para. 18.5.1, *"The tactical options include obtaining a rapid control of the person, and this commonly involves initial prone position, as it is the most efficient for controlling a person"*].

190. The restraint was a dynamic struggle which can occur in the control and restraint process. The body position of Mr. Bayoh likely changed, and he was not held in any one position for any degree of time which is very common during restraints [COPFS-00024, page 38, para. (f), *"In relation to all...was constant or prolonged"*; and SBPI-00190, para. 99]. He was likely in a number of positions whilst on the floor when the officers have attempted to restrain him [SBPI-00190, para. 99]. It was only appropriate to release the pressure on Mr. Bayoh once it was safe and practicable to do so [SBPI-00190, para. 103, *"Some experts may disagree...can be achieved and safely maintained"*].

191. Considering the level of resistance and extreme strength of Mr. Bayoh, the time taken to control and eventually restrain Mr. Bayoh was reasonable and not excessive [COPFS-00024, page 38, para. e, *"Considering the level...unreasonable or excessive"*].

First aid

192. Shortly after being secured and turned onto his back, PCs Walker and Smith, and Mr Paton noted that Mr. Bayoh was unconscious. This was around 07:25:17 [SBPI-00047] with an ambulance being requested at the same time. Mr. Bayoh was placed into the recovery position which was appropriate for someone who had become unconscious [Day 11, 27 May 2022, page 150, line 20 to 25, *"There's two points....You wouldn't leave them lying on their back"*]. PC Smith confirmed that Mr. Bayoh was still breathing and thereafter he monitored his breathing closely [Day 11, 27 May 2022 page 141, lines 10 to 24, *"Once I established he was breathing...I had taken on that role"*; and PIRC-00278, page 9, para. 7 to 9, *"When I went down to the male....an ambulance was requested"*]. After Mr. Bayoh was noted to be unconscious, PC Smith *"fully concentrated on the male at this point"* and *"continued to observe him for about 3 minutes"* [PIRC-00278, page

10, para. 2]. A few minutes later, PC Smith became concerned that Mr. Bayoh had stopped breathing. PC Smith suggested that this was perhaps 3 or 4 minutes after Mr. Bayoh become unconscious [Day 11, 27 May 2022, page 142, line 13 to page 143, line 1, *"Thank you. And then paragraph 44....Maybe 3 or 4 minutes"*]. This was at approximately 07:29:30 [SBPI-00047] which is when the ACR were advised by APS Maxwell that Mr. Bayoh was no longer breathing. APS Maxwell confirmed that this transmission would have been made within seconds of this being confirmed [Day 15, 8 June 2022, page 30, line 2 to 5, *"Yes. Well, it has taken....so within seconds"*]

193. Immediately upon confirmation from PC Smith that Mr. Bayoh was no longer breathing, PC Walker commenced CPR [Day 11, 27 May 2022, page 150, line 7 to 11, *"I immediately said we....A. Yes"*]. It was not possible to place a one-way valve in Mr. Bayoh's mouth to enable rescue breaths to be provided [Day 11, 27 May 2022, page 158, line 2 to 10, *"So what we were trying...their mouth into yours"*]. The apparent difficulty was that Mr. Bayoh's mouth was clenched shut to the point where fingers were placed into his mouth to try and open it. [Day 11, 27 May 2022, page 159, lines 8 to 16, *"Initially trying to get into....seem to be happening"*].

194. During the CPR, PC Walker considered that he heard a sound similar to a fracture of a rib [Day 7, 20 May 2022, page 84, line 24 to page 85, line 4, *"And you have said that you heard....A. No."*]. Chest compressions were continued by PC Walker and Mr. Paton [SBPI-00039, para.71, *"I continued chest compressions...other officers involved in the resuscitation"*]. At approximately 07:34:08, an ambulance arrived at the locus at which point paramedics took over the care of Mr. Bayoh. CPR continued until the ambulance arrived with paramedics taking over [Day 15, 8 June 2022, page 164, line 11 to 13, *"No, just the police....took over and that's it"*].

195. As highlighted by a number of officers, when somebody is unconscious or apparently unconscious, the risk posed is not necessarily diminished. A person may either be feigning being unconscious or may suddenly recover and pose a further risk [Day 11, 27 May 2022, page 154, line 17 to page 155, line 1, "*Because somebody is unconscious....medical issue*"; and Day 15, 8 June 2022, page 19, line 25 to page 20, line 21, "*At the time it just happened....anyone once you're in control*"]. Accordingly, whilst Mr. Bayoh was unconscious, it remained appropriate, reasonable and proportionate to retain handcuffs and leg restraints on Mr. Bayoh.

196. At the point where Mr. Bayoh was no longer breathing, the priority was to commence CPR and attempt rescue breaths. The restraints did not impact upon the officer's ability to perform chest compressions [Day 15, 8 June 2022, page 36, line 13 to 17, "*At the time I believe....getting the rescue compressions in*"]. In statement taken on 15 June 2015 [PIRC-00119], Dr Pickering, who was involved in the care provided to Mr Bayoh at Victoria Hospital, noted on page 1: "*The male was lying on his back and was handcuffed. He did have a large chest and his arms were positioned lower on his stomach. **This would not have impeded in any way attempts to perform CPR as this requires work on the sternum***" [emphasis added]. Although Dr Pickering sought to suggest that this was a reference to the restraints having been removed quickly in hospital, it is submitted that is incongruous with the wording used which specifically refers to the placement of the arms and the fact chest compressions would occur in the sternum area.

197. As noted by Mr. Graves, when running through the initial doctors' ABC's for first aid, the officers did everything that they should be doing: (1) they've completed an assessment of his responsiveness; (2) they've decided that the person's unresponsive; (3) they've checked for breathing; (4) they've

started CPR; and (5) they've attempted rescue breaths [SBPI-00190, para. 115, "*But in relation to....which was administering CPR*"].

Attendance at hospital

198. Mr. Bayoh was taken to Victoria Infirmary by ambulance and arrived at approximately 07:45am. Various attempts were made to resuscitate Mr. Bayoh which included *inter alia* use of a THUMPER/LUCAS pneumatic machine. The THUMPER/LUCAS machine could not be positioned appropriately and was abandoned [PIRC-00096, page 2, "*attempts were initially made to...so commenced manual CPR*"; and PIRC-00257, page 2, "*At some point we had tried to use....we stopped and continued CPR*"]. Dr Hall noted that the reason they were unable to fit the machine was because Mr. Bayoh was very muscular [PIRC-00248, page 2, "*We were absolutely sure from....was very muscular*"]. After unsuccessful resuscitation attempts, Mr. Bayoh's life was pronounced extinct at 09:04am.

Cause of death

199. It is not possible to state, from a pathology point of view, what the definitive mechanism of death was. The majority of the experts agree that the cause of death was multifactorial.

External injuries

200. There is no evidence of any physical injuries that caused, or contributed towards, Mr. Bayoh's death [PIRC-01445, page 15, "*In terms of injury to the body....that would account for death here*"]. The majority of the injuries are consistent with Mr. Bayoh having been restrained. Some of the injuries are more likely, on a balance of probabilities, to have been as a result of the restraint

(bruising around wrists) and some are more likely due to attempts to resuscitate Mr. Bayoh [Day 53, 9 May 2023, page 88, line 17 to page 89 line 14, *"I would say so....as to what you are seeing internally"*]. Further, it is likely that Mr. Bayoh sustained injuries during the prior altercation with Mr. Saeed. It is not, however, possible to differentiate them. They were, in any event, described as being minor and superficial and did not contribute towards his death.

201. There were a number of superficial abrasions noted on Mr. Bayoh's left arm [Day 53, 9 May 2022, page 101, line 2 to page 53, line 11, *"The upper arm is from.....A. Yes"*]. Although there were superficial abrasions on Mr. Bayoh's right arm, the number noted on the left would support the proposition that he was predominantly on his lefthand side during the course of the restraint. This supports the position of PC Walker when describing the body position of Mr. Bayoh during the course of the restraint.

Internal injuries

202. With the exception of Dr Karch [PIRC-02526(a)], no other expert considered that Mr. Bayoh suffered from an underlying cardiac abnormality which would have contributed towards his death. In the absence of the histopathology slides that were taken of the heart being examined by an independent cardiac specialist instructed by the Inquiry to resolve the differing opinion, it is a matter for the Chair to determine which opinion should be accepted.

203. The post-mortem noted a fractured first rib. An isolated first rib fracture is considered to be rare. It is unlikely, although not impossible, for it to have been caused by the CPR administered by the officers at the scene. It is again unlikely, but not impossible, for the LUCAS/THUMPER machine to have

caused the fracture, particularly when medical professionals initially placed the LUCAS/THUMPER incorrectly and were unable to fit it properly despite numerous attempts [see SBPI-00296, para.51, *“Mr. Bayoh was put on to a ‘thumper’.....during the resuscitation in the hospital”*].

204. Prof. Anthony Freemont is the foremost expert in bone pathology in the United Kingdom [WIT-00015]. Although a number of the medical experts sought to indicate that Prof. Freemont is not able to comment upon the mechanism of the first rib fracture due to not being a forensic pathologist, it is unclear on what basis this criticism is made. Standing the extent of his qualifications in relation to pathology, and specifically his expertise in osteoarticular pathology, it is submitted that he has sufficient, if not greater, expertise to comment upon bone fractures. Further, standing the concession of the witnesses called that they would defer to Prof. Freemont in relation to his comments on the fracture, any criticism of him is unfounded.

205. Prof. Freemont expressed the view that the first rib fracture occurred in life. Further, he expressed the view that it occurred within 6 hours of death, but not less than 2 hours of death. The basis of his conclusion on the fracture occurring not less than 2 hours before death was the presence of osteocyte necrosis [COPFS-00037, page 7, line 180 to 185, *“the timing of this phenomenon.....at least 2 hours before death”*].

206. Mr. Bayoh’s life was pronounced extinct at 09:04 am. Based on what is supported by the medical literature and his own experience, Prof. Freemont’s view was that the fracture occurred at some point before 07:04 am. The initial contact with Mr. Bayoh and the police occurred at 07:21am. Accordingly, the fracture was caused prior to his interaction with the police and would not have been caused by the restraint or the manner in which Mr. Bayoh was taken to

the ground by PC Walker. If that is correct, it is not possible to rely upon the fracture as being evidence of the amount of force used during the course of the restraint. The comments from Dr Cary and Dr Bleetman concerning whether the amount of force required to fracture the first rib would be sufficient to cause asphyxia should be viewed in that context.

207. Prof. Freemont's Inquiry statement [SBPI-00310] would indicate that he was questioned on whether the fracture could have happened closer to the point of death under reference to fractures in infants and the use of nandrolone. In response, he indicated that there is some evidence to suggest that osteocyte necrosis may be present within one hour of death when considering infants, but that there was no evidence of osteocyte necrosis being present within one hour of death when considering adults [SBPI-00310, para. 82, "*there are, however, certain cases...data sets I describe above*"]. Further, he indicated that nandrolone may impact upon the formation of osteocyte necrosis, but that there was no scientific evidence to support that conclusion [SBPI-00310, para. 92, "*There are no data in the literature...changes on their own suggest*"]. Taking into account these points, he expressed the view that there was the potential that osteocyte necrosis could be present closer to one hour before death. This was, however, a matter of speculation and is unsupported by the medical literature. In any event, he remained of the view that the fracture was more likely to have been caused during the altercation with Mr. Saeed [SBPI-00310, para. 118, "*If there is nothing of relevance...made aging the fracture more complex*"].

208. Standing the concerns over Mr. Saeed's evidence referred to above, it is submitted that the fracture of Mr. Bayoh's first rib occurred during the altercation with Mr. Saeed.

209. In terms of the sound heard by PC Walker whilst performing CPR, it is likely that he was either mistaken or it was the movement of a previously fractured rib which was noted as a possibility by Prof. Freemont at line 125 of his original report [COPFS-00036, *“Moving a previously fractured rib such as in CPR could well lead to a sound”*].

Toxicology

210. Toxicology results confirmed the presence of MDA, MDMA and Alpha-PVP. For the Alpha-PVP, the concentrations noted was 70mcg/L. This concentration falls into the range of fatal alpha-PVP concentrations [SBPI-00317, para. 85, *“Looking at paragraph 10....usually taken more than one drug”*].

211. The side effects of alpha-PVP includes: (1) tachycardia; (2) agitation; (3) delirium and hallucinations; and (4) intense paranoia [SBPI-00317, paras 78 to 82, *“At paragraph 12.2.....is that you can't process instructions”*]. Based on the reported behaviour of Mr. Bayoh, he would appear to have developed the majority, if not all, of the above noted side effects. According to Prof. Eddleston, the intense paranoia often results in quite violent and aggressive behaviour. He noted that the patient can start fighting against whatever they come across and when like this, they cannot process instructions [SBPI-00317, para. 82, *“Intense paranoia...you can't process instructions”*]. Based on the reports that Mr. Bayoh was attacking cars seemingly at random, it is submitted that Mr. Bayoh was likely presenting with the intense paranoia referred to by Prof Eddleston above.

212. Alpha-PVP intoxication can cause disorganisation, delusional thinking, hallucinations, and in some patients, intense paranoia associated with violent aggression [COPFS-00038, para. 12, *“alpha-PVPV is a relatively new...with violent aggression”*]. Prof. Eddleston diagnosed, after considering the entirety of the

circumstances and the toxicology, that Mr. Bayoh was suffering from drug induced psychosis. He expressed the view that it was highly likely that the Alpha-PVP was primarily responsible for the drug-induced psychosis [SBPI-00317, paras. 121 and 122, *"I am referred to paragraph 15...concentrations found in Mr. Bayoh's blood samples"*].

213. In terms of MDMA, it commonly causes tachycardia and high blood pressure. Cardiomyopathy can occur with chronic use and cardiac arrests do occur, although they are rare.

214. Dr Lipsedge referred to the similar but less severe episode referred to at para. 37 above as being relevant. This is because it may result in the brain becoming sensitised to the drugs and causing the individual to be more vulnerable and having a more severe reaction [Day 55, 11 May 2022, page 28, line 6 to 13, *"it's important to mention....likely to have a more extreme reaction"*].

215. Prof. Eddleston expressed the view that alpha-PVP may have made a material contribution to Mr. Bayoh's death as it caused psychosis which led to him being unable to understand instructions and would also have increased his heart rate [SBPI-00317, para.141, *"I understand that the Chair....on the balance of probabilities, it's unlikely"*].

216. Dr Lipsedge prepared a retrospective psychiatric diagnosis [COPFS-00130]. He concluded under reference to the rapid changes in Mr. Bayoh's mental state as being consistent with psychostimulant intoxication. Psychostimulant psychosis evolves from a period of increasing restlessness, suspiciousness and ideas of reference. The patient misinterprets everyday events or conversations in a delusional fashion, believing that people are plotting against him or are about to attack him. The patient may act on these

beliefs with extremely violent behaviour [COPFS-00130, page 18, *“The rapid changes....the patient may act on these beliefs with extremely violent behaviour”*].

217. Dr Lipsedge did note that the most severe forms of ABD are seen by emergency physicians [Day 55, 11 May 2023, page 51, line 13 to 23, *“This may sound a bit semantic.....those are people who quite rightly should be in the A&E departments of hospitals”*]. Dr Bleetman, a consultant in emergency medicine, noted that *“for a person in his state, you cannot talk them down”* and that in the situation involving Mr. Bayoh, it is unlikely to have been successful [SBPI-00296, paras 45 and 46, *“In the next paragraph the notes state.....it is unlikely it would have been successful”*].

218. Dr Bleetman expressed the view that a person displaying the constellation of symptoms consistent with ED/ABD can be *“very loud, very violent, very unwell, and there’s no reasoning with them and de-escalation techniques are unlikely to be effective once a person has reached this level of agitation”* [SBPI-00296, para. 26]. He further noted that: *“to deal with the higher end threat, you need physical control (safe restraint) and then to rapidly go down the medical route. You need to get on top of the physiology that is threatening their lives. They need to be cooled, the acidosis corrected, fluids given, the oxygen deficit corrected among other physiological derangements that are often present in acute behavioural disturbance”* [SBPI-00296, para. 31].

219. Dr Bleetman noted that *“without the availability of taser or medical staff to administer rapid tranquilization, police officers will have to physically restrain these individuals with manual force or body weight. Pain compliance techniques will often fail to terminate the struggle”* [COPFS-00028, page 40]. Accordingly, even if the situation had been identified as a medical emergency, it is likely that the

attending officers would have been required to physically restrain Mr. Bayoh in any event to allow appropriate medical treatment to be administered.

220. It is submitted that the conclusions of Prof. Eddleston, Dr Lipsedge and Dr Bleetman are consistent with each other and demonstrate a clear and dangerous situation that was prompted by the consumption of illicit drugs, namely alpha-PVP.

Sickle Cell

221. In relation to sickle cell, the Inquiry heard evidence from Prof. Lucas. Prof. Lucas previously expressed the view that Mr. Bayoh's sickle cell trait did contribute to his death [COPFS-00084, page 2, "*From my review of the gross...did contribute to the death of BAYOH*"]. Accordingly, in his original report, he expressed the view that the cause of death should be:

"1a. sudden cardio-pulmonary failure

1b. sickle cell trait, recreational drug use, struggle against restraint"

[page 3]

222. In his Inquiry statement, he expressed the view Mr. Bayoh had some aspects of the Acute Chest Syndrome which is why he considered sickle cell contributed towards the death [SBPI-00314, para. 18, "*It obviously happens.....There's no absolutes here*"]. He did, however, express the view that his opinion has changed slightly in that he no longer considered it the main cause of death, but rather a contributor [Ibid]. Instead he expressed the view that it was a "*small extra factor...[which] may well have shortened his life expectancy by a*

couple of minutes given the stresses he was under at the time” [SBPI-00314, para. 25, “Reflection on my reporting...given the stresses he was under at the time”]. He nonetheless considered that it made a material contribution [Ibid, para. 38, “I am asked whether, in my view, sickle cell trait made a material contributed [sic] to Sheku Bayoh’s death. Yes, but a small amount”].

223. The explanation provided for why his view has changed on the importance of sickle cell trait should be considered. He expressed the view that he ‘did not have the complete story’ [Day 58, 23 May 2023 page 79, line 1 to 5, *“Remember, I didn’t have the complete story...sicking did have a role here”*]. He did not, however, highlight in detail what additional information he has been provided. He indicated that at the time of preparing his report in 2018, his understanding is that the restraint had been appropriate and in accordance with their training. It is not clear how this is consistent with his email comments that say *“the police officers involved should not be prosecuted assuming they approached and restrained BAYOT [sic] in the normal approved fashion, appropriate for the perceived risk”* [COPFS-03682, page 1]. This would disclose that he was not able to comment on such matters which presupposes a lack of conclusion on the appropriateness of the restraint. Further, the information provided to Prof. Lucas, which is detailed on page 1 of his report [COPFS-00084], included: (1) the original autopsy report; (2) the supplement dated Sept 2017 that confirmed Mr. Bayh had sickle cell trait; (3) the expert witness report from Dr E Soilleux and her supplementary report; and (4) the histology slides from the autopsy. These documents, in particular the autopsy report [PIRC-01445] and reports from Dr Soilleux [COPFS-00031 and COPFS-00039], narrates the circumstances surrounding the incident including *inter alia* the nature and manner of the restraint in significant detail. This information is what formed the basis of his conclusions in 2018.

224. His view now appears, however, to have changed. Prof. Lucas highlighted a change in societal attitude to deaths in police custody [Day 58, 23 May 2023, page 101, line 12 to 19, *“Two reasons....in black people”*] and the provision of further information as being the reason for his views changing. Any change in societal attitude to deaths in police custody is an irrelevant consideration when providing an expert view on the biology of sickle cell and its impact in the mechanism of death.

225. The further additional information provided to Prof. Lucas is unknown, but he noted that:

“they did what they had, I assume, been trained to do, and yet dispute that suddenly he was dead. That was the version I had at the time. I learned rather later it wasn’t like that and that is what made me change my mind” [Day 58, 23 May 2023, page 63, line 25 to page 64, line 4]

226. The source of that information is not known. He highlighted being informally provided with extracts or summaries of other expert reports relating to the death of Mr. Bayoh. The identification of what reports or the nature of those conclusions were not identified. He further cited a conversation with Dr Nat Cary where further information was provided to him. He stated *“I think I have seen Nat Cary’s but actually I spoke to him because we met and he said--he knew what I had written, and he said, “it’s not so simple. There was an awful lot of restraint processes, and so on going on””* [Day 58, 23 May 2023, page 68, line 9 to 15]. The inference from Prof. Lucas is that the informal summaries provided to him came from Dr Cary. It is believed that the contact between Prof. Lucas and Dr Cary predated any contact Prof. Lucas had with the Inquiry [Day 58, 23 May 2023, page 132, line 11, *“It might well have been before actually”*].

227. Dr Cary is a pathologist who was instructed by the family of Mr. Bayoh. If Dr Cary is the party who provided Prof. Lucas extracted summaries, it is unclear on what basis he was doing so. Further, Dr Cary appears to have expressed a view on the manner and quality of restraint which has influenced the factual basis upon which Prof. Lucas has expressed his view. Standing the extent of the information that Prof. Lucas originally had in connection with the restraint, it is unclear what further information was shared by Dr Cary.

228. Dr Cary has no expertise to comment on the appropriateness or adequacy of restraint. The manner and quality of the restraint is a matter for the Chair. It is not a matter for Dr Cary. It was inappropriate and improper for an expert witness to seek to influence the underlying factual basis of a fellow experts' report, particularly when such matters fall outwith their area of expertise.

Restraint

229. It is submitted that there is no reliable evidence that Mr. Bayoh died as a result of mechanical or positional asphyxia. There is no evidence that Mr. Bayoh was unable to breathe during the course of the restraint. For example, there was no evidence of Mr. Bayoh reporting that he could not breathe. There is no evidence that Mr. Bayoh was 'breathless'. The only supportive pathological evidence which may indicate asphyxia were petechial haemorrhages. As noted by Dr Shearer, petechial haemorrhages can be caused by a number of factors. The commonest way that she would see them in her practice is in people who had been resuscitated [Day 53, 9 May 2023, page 56, line 25 to page 57, line 12, "*You can also see them in....commonly when we would see them as well*"]. Attempts were made to resuscitate Mr. Bayoh from approximately 07:29am to the point when his life was declared extinct at

09:04am. Accordingly, Mr. Bayoh was subject to a lengthy period of resuscitation which is considered the commonest way of a deceased person developing petechial haemorrhages. Dr Lawler expressed the view that he did *“not think that it can be concluded, even on the balance of probabilities, that the petechial haemorrhages are likely to have resulted from that compression”* [SBPI-00320, para. 51].

230. Dr John Parkes, who has expertise on restraint safety, highlighted that the length of restraint is an important factor [SBPI-00299, para. 54, *“Depending whether you take....much less likely and much less certain that that [sic] was the case”*]. In his report [COPFS-04192(a), page 5 of PDF] he noted that: *“Even where a person’s breathing is severely restricted by restraint and compression, the length of time for which they are unable to breathe must be long enough to cause harm before this could be seen as directly causing death”*. Based on the restraint lasting at most 4 minutes and 4 seconds, he formed the view that the restraint as the primary cause of death was less likely [Ibid]. The duration of the restraint was short compared with many other restraint related deaths [SBPI-00299, para. 55, *“I have been asked whether....if the duration of restraint was much longer then the conclusions could be more confident”*].

231. This was supported by Dr William Lawler who indicated that *“the longer the period of restraint, the more likely it is that problems might arise as a direct consequence of that restraint”* [SBPI-00320, para. 36.]. Dr Lawler further noted that:

“when you have got a relatively short period of time, and, where all evidence that I read and have seen, indicates that the whole business is fluid, there is still plenty of movement going on, and I think that any potential for restraint asphyxia is reduced. If Mr. Bayoh had been held down for several minutes – and

I mean several; minutes then that possibility of restraint asphyxia would have increased simply because he had been held down for that length of time. I think that the short duration is of importance in that sense” [SBPI-00320, para.038 to 39].

232. Dr Lawler expressed the view that positional asphyxia was very unlikely in this because of the period of restraint and its dynamic nature [SBPI-00320, para. 64, *“There may be an element of positional asphyxia...fixed position to develop significant positional asphyxia”*]. He further expressed the view that mechanical asphyxia was also unlikely due to the period of restraint. As noted at para. 68 and 69 of his statement [SBPI-00320]:

“We come back to that short time period as being important because cases where positional and/or mechanical asphyxia is/are thought to be of significance to the mechanism for death, are those where the individuals have been restraint for quite a long period of time and/or the position in which they have been held has interfered with their breathing.

None of that seems to have applied here, and we have got a relatively short period of time, which is why I come back to what I have previously stated. I do not think it can be concluded even on the balance of probabilities that the petechial haemorrhages have resulted from compression, whether it be positional or mechanical or both”

233. As Dr Cary emphasised during his evidence that the *‘struggle against restraint’* was an important component as it would result in a high oxygen consumption [Day 59, 24 May 2023, page 50, line 20 to page 51, line 4, *“Q. Thank you. We heard.....your high oxygen consumption”*]. Dr Cary did, however, speculate that the reason for the struggle was due to Mr. Bayoh *“not getting*

enough oxygen in” and further speculated that “lack of oxygen initially producing struggling against restraint” [Day 59, 24 May 2023, page 136, line 7 to line 15, “so lack of oxygen initially...will cause cardiac arrest”]. There is, however, no evidence to indicate that there was an initial lack of oxygen which prompted the struggle.

234. The paranoia described by Dr Lipsedge was highlighted as being a potential cause for struggling against restraint [Day 55, 11 May 2023, page 15, line 18 to page 16, line 3, *“This might be an opportunity....exert even more pressure”*; and page 82, line 5 to 14, *“Yes, indeed...his life might be in danger”*]. Prof. Eddleston noted that if a patient was truly psychotic then they will probably understand nothing [Day 56, 16 May 2023, page 95, line 14 to 15, *“Clearly if they’re truly psychotic they will probably understand nothing”*]. Prof Eddleston described the risk as being *“because he is not understanding what’s going on, he is fighting against the restraint and that restraint – that is going to go on until he is exhausted and that puts him at risk of not being able to breathe properly and his heart not working properly and he could die from it”* [Day 56, 16 May 2023, page 113, line 3 to 8].

235. Dr Parkes noted that *“the person experiencing psychosis may demonstrate a level of strength and determination in their aggression or resistance far greater than they would normally be capable of”* [COPFS-04192(a), page 9].

236. As noted by Prof. Eddleston, hypoxia and a fast heart rate may be sufficient to cause a cardiac arrest. If hypoxic from restraint or exertion due to struggling against restraint, then there is a risk of having a ventricular fibrillation or chaotic heart rhythm and dying [SBPI-00317, para.127, *“I was not asked to consider the effects of MDMA....chaotic heart rhythm and dying”*].

237. Prof. Eddleston commented that the longer the restraint goes on, if someone is violently fighting back against physical restraint, it will put them at risk of hypoxia, of low levels of oxygen in the blood, which will increase the risk of cardiac dysrhythmia or something called ventricular fibrillation occurring. In that case, unless that happens in a hospital that's very dangerous thing and will likely result in death. The emphasis from Prof. Eddleston is that physical restraint without the necessary drugs to tranquilise Mr. Bayoh meant that his prognosis was poor at the point the restraint started [Day 56, 16 My 2023, page 112, line 11 to 23, "We know that the longer...his prognosis was poor"].

238. This was supported by Dr Bleetman who noted:

"Failure to terminate the physiological derangements in an individual who does not feel pain or fatigue will allow the individual to continue to accrue an oxygen debt, worsen the acidosis and continue to overheat and dehydrate. All this on the background of drugs ingestion which by themselves, potentiate life-threatening arrhythmias even without the physiological derangements caused by the mania and extreme physical activity of the excited delirium state."
[COPFS-00028, page 63]

239. Further, Dr Bleetman noted at page 44 of his report [COPFS-00028] that:

"It is reasonable to assume that the actions of police officers are likely to have had a contributory role in the evolution of the deceased's collapse, and subsequent cardiac arrest by adding one more factor to an already lethal brew. In effect, the restraint precipitated the cardiovascular collapse that was already likely to have occurred"

240. In his statement to the Inquiry [SBPI-00296], Dr Bleetman noted that:

“when it gets to the level of agitation and the amount of time for which it had been going on, Sheku Bayoh was certainly physiologically deranged at the point of initial police contact, and his life was in danger. I am unable to quantify that, but his life was in danger at that point. Had there been no police contact, he would have likely continued being agitated to the point of collapse” [para. 74].

241. Accordingly, it is clear that the struggle against restraint is more likely due to the drug induced psychosis/psychostimulant intoxication compared to struggling to breathe as a result of positional or mechanical asphyxia. Further, there is a lack of evidence to support the proposition that there was positional or mechanical asphyxia. It is more likely that the act of struggling to exhaustion is the main reason why, if at all, Mr. Bayoh became hypoxic and proceeded to go into respiratory arrest.

Conclusion on cause of death

242. It is submitted that prior to Mr. Bayoh meeting the police on Hayfield Road, he was already physiologically in a severe and potentially life-threatening situation. For the avoidance of doubt, those we represent to not seek to suggest that an ABD/ED is a cause of death. Rather, it is submitted that they are umbrella terms used to describe a constellation of symptoms that may be triggered by a number of different issues. With the benefit of hindsight, it is apparent that Mr. Bayoh was suffering an ABD as a result of drug induced psychosis or psychostimulant intoxication. This fact was unknown to the attending officers. It is accepted that the restraint itself likely contributed towards Mr. Bayoh’s death, but not due to positional or mechanical asphyxia. Any suggestion to the contrary is speculative. The medical evidence does, however, provide support that Mr. Bayoh’s drug induced psychosis/psychostimulant intoxication prompted Mr. Bayoh to struggle

against restraint to the point of exhaustion. Standing the physiological stresses that Mr. Bayoh was under due to the consumption of MDMA and Alpha-PVP and his sickle cell trait, it is likely that the struggle against restraint materially contributed towards Mr. Bayoh's death.

Conclusion

243. This was a tragic incident that resulted in the death of Mr Bayoh. Whilst it is likely that the act of restraint contributed towards his death, it was not the main contributing factor. The consumption of illicit substances, namely alpha-PVP prompted a severe reaction. It resulted in drug induced psychosis/psychostimulant intoxication. This condition had a severe physiological impact on Mr. Bayoh and explains his aggressive and erratic behaviour on 3 May 2015. It was likely the drugs that prompted Mr. Bayoh to obtain a knife and travel through Kirkcaldy putting members of the public at a significant risk. The physiological condition of Mr. Bayoh was not known to the attending officers. Given the perceived risk to members of the public, the police were required to respond. They responded, however, without fear or favour and put themselves in harm's way to protect the public. They acted in accordance with their training and their use of force was both reasonable and proportionate.