

THE SHEKU BAYOH INQUIRY

INTERIM SUBMISSIONS FOR THE CHIEF CONSTABLE, POLICE SERVICE OF SCOTLAND

23 June 2023

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THE SHEKU BAYOH INQUIRY

INTERIM CLOSING SUBMISSIONS

on behalf of

**THE CHIEF CONSTABLE,
POLICE SERVICE OF SCOTLAND**

1. INTRODUCTION

1. These submissions are presented on behalf of Sir Iain Livingstone, QPM, the Chief Constable of the Police Service of Scotland ('Police Scotland'), who was appointed in August 2018 and had served as Interim Chief Constable since September 2017, who is a Core Participant in the Inquiry.
2. At this stage the Inquiry wishes to receive interim submissions in respect of the matters relating to the terms of reference which were the subject of the evidential hearings held in May/June 2022, November/December 2022, January, February and March 2023 and May 2023.¹
3. The Chief Constable has affirmed his support for the Inquiry. The Chief Constable has committed Police Scotland to support the Inquiry's aims and objectives with absolute candour.

¹ Guidance on Closing Submission 31 January 2023

4. At his direction, extensive resources have been applied and continue to be applied to assist in the provision of material to the Inquiry and ensure the fullest possible engagement with the Inquiry.
5. There has been an unprecedented level of disclosure of information by Police Scotland. There has been very substantial engagement by the Chief Constable to further the aims of the Inquiry and he continues to fulfil his commitment with absolute candour.
6. As this was a death in police custody, the procedures immediately put in place meant that the investigation, and all material available at that time, were placed in the hands of an independent body, namely the Police Investigations and Review Commissioner ('PIRC'). Police Scotland has, in the course of the Inquiry to date, received disclosure of material back from that organisation and the Crown via the Inquiry. In respect of statements from witnesses, other than those taken at the direction of PIRC at the material time, none were taken by Police Scotland as this was not permissible in terms of the statutory procedures in place. Apart from statements taken to inform position statements, which have been requested by the Inquiry on training matters, no statements have been taken on behalf of the Chief Constable regarding the events in question.
7. In his opening statement², the Chief Constable stated that his engagement with the facts would be such as is necessary to assist the Inquiry to have all relevant material before it. His agenda remains one of a determination to assist in the ascertainment of the facts with fairness, balance and candour. The Chief Constable reiterates that the families, the public and the Inquiry can be

² SBPI-00091

assured that all evidence is being reviewed and assessed as regards implications it may have for policing in Scotland and that action is being taken accordingly.

8. In the course of the Inquiry material has been disclosed back to Core Participants by the Inquiry. Not all evidence disclosed to the Inquiry by the Chief Constable has been disclosed back to Core Participants at this time. In line with the Guidance,³ reference in these submissions has only been made to material which has been disclosed by Police Scotland to the Inquiry and disclosed back to other Core Participants or material which has been disclosed by other Core Participants and disclosed back. The Chief Constable does not have access to material disclosed to the Inquiry from other Core Participants which has not been disclosed back or which is in the hands of other parties which has not been disclosed to the Core Participants by the Inquiry.
9. The Chief Constable has assisted the Inquiry by providing ten Position Statements to date⁴.
10. It is clearly in the public interest that all relevant matters are reviewed, addressed and weighed. It is in the furtherance of that public interest, in which the Chief Constable is acutely engaged, that these submissions are made. These submissions have been prepared and submitted without sight of the submissions of any other Core Participant or the submissions to be made by Senior Counsel to the Inquiry.
11. It is proposed to make submissions of general application as preliminary matters. Thereafter with the exception of race, which will be addressed first

³Guidance on Closing Submission 31 January 2023 – 3rd and 4th pages (unnumbered document)

⁴ Ruling of the Chair on Position Statements dated 3 February 2022

given its importance to the families, the communities served by Police Scotland and the Police Scotland community, these submissions will broadly follow the same order as the matters are listed in the Chair's Guidance on Submissions, in so far as appropriate.⁵ There is also reference therein to the List of Issues for Hearing 1.⁶ Submissions are not invited in respect of actions such as crime scene management, recovery of evidence or post incident management.

2. PRELIMINARY MATTERS

2.1 Role of the Chief Constable

12. The role of the Chief Constable is one in which, as head of the Police Service of Scotland, he has an obligation to review matters in terms of the maintenance of public confidence in the police. He must consider organisational responsibility and learning. The Chief Constable is also responsible in terms of the Police and Fire Service (Scotland) Reform Act 2012 ('the 2012 Act') for the maintenance of a properly disciplined police service. The Police Service of Scotland (Conduct) Regulations 2014 ('the 2014 Regulations') are promulgated under and in terms of the powers set out in sections 48 and 125 of the 2012 Act. In terms of those Regulations the Chief Constable must designate a Deputy Chief Constable to exercise functions under the 2014 Regulations.⁷ The Deputy Chief Constable so designated then exercises those functions exclusively of the Chief Constable. The designated Deputy Chief Constable is Mrs Fiona Taylor QPM.

⁵ Guidance on Closing Submission 31 January 2023 – 3rd and 4th pages (unnumbered document)

⁶ SBPI-00003 (it is understood that the list of issues should only be addressed up to and including number 6, the Victoria Hospital and, therefore does not include 'Items recovered at the Scene' including the recovery of knife)

⁷ Regulation 5 of the 2014 Regulations

13. It is important to note that, if there are reasons to suspect a criminal offence has been committed by an officer, then the matter must be referred to the Crown Office and Procurator Fiscal Service ('COPFS'), currently via a specialised unit.

14. The 2014 Regulations provide as follows:

“9.— Alleged offences

(1) If the deputy chief constable considers that it can reasonably be inferred that a constable may have committed a criminal offence, the deputy chief constable—

(a) must refer the matter to the appropriate prosecutor; and

(b) may suspend or postpone any proceedings under these Regulations until the appropriate prosecutor intimates that—

(i) criminal proceedings are not to be brought in respect of any matter mentioned in the misconduct allegation; or

(ii) any criminal proceedings which have been brought have been concluded.”

15. The Chief Constable must also comply with any lawful instructions given by the appropriate prosecutor in relation to the investigation of offences and or on the instructions of the Lord Advocate.⁸

16. Undertakings were sought by the Chair from the Solicitor General in respect of criminal proceedings and from the Deputy Chief Constable, Mrs Taylor, as regards disciplinary proceedings.⁹ There have been no undertakings given by the Solicitor General as regards the question of prosecution. There have been

⁸ Section 17(3)(a) and (b) of the 2012 Act

⁹ Ruling by the Chair on request for undertakings dated 1 March 2022

no undertakings given by Mrs Taylor as regards consideration of disciplinary matters.¹⁰

17. This means that there must be no interference by the Chief Constable with the discretion of those decision makers when exercising their respective roles. It would therefore not be appropriate for the Chief Constable to engage in matters in relation to the Chair's findings of responsibility or general accountability of individual officers. Each of the Core Participant officers have separate legal representation and it will be for their advisors to make such representation as appropriate.

18. The Chief Constable will confine himself to those matters which relate to organisational responsibility and, if appropriate, a submission of general considerations, as may apply. He will draw attention to facts, in so far as it is necessary to do so, in the interests of fairness and completeness. The Chief Constable is committed to supporting the Inquiry. Matters of credibility and reliability are for the Chair. The Chief Constable will address the evidence where it may be helpful, but only with a view to assisting the Chair in his determinations and without agenda or bias.

2.2. Standard of Proof

19. Section 2 of the Inquiries Act 2005 Act ('the 2005 Act'), specifically prohibits an Inquiry from determining civil or criminal liability, as follows:

"No determination of liability

¹⁰ Letter dated 25 March 2022 from Deputy Chief Constable Taylor QPM in her role as Deputy Chief Constable [designate] under the 2014 Regulations

- (1) An inquiry is not to rule on, and has no power to determine, any person's civil or criminal liability
- (2) But an inquiry panel is not to be inhibited in the discharge of its function by any likelihood of liability being inferred from the facts that it determines or recommendations that it makes."

20. The Chair will require to consider the standard of proof. The 2005 Act makes no express provision as to the standard of proof to be applied by an Inquiry when making findings of fact or recommendations. In civil proceedings, in Scotland and England, it is well settled that the standard of proof in civil proceedings is the balance of probabilities. In Scotland, this is clear from the well known case of *Mullan v Anderson*¹¹ ('*Mullan*'), a five bench decision.

21. In *Mullan*, Lord Morison stated the position clearly at paragraph 842, as follows:

"the well established principle that in civil cases the standard of proof required of a pursuer is that he prove his case on a balance of probabilities, and the suggestion that there exists in Scotland some standard intermediate between a balance of probabilities and beyond reasonable doubt has expressly been rejected in *Brown v Brown*, 1972 SLT at p 145, *Lamb v Lord Advocate*, 1976 SLT at pp 153 and 156, and *B v Kennedy*, 1987 SLT at p 768. My view that any civil case, including this one, must be determined on a balance of probabilities does not ignore the obvious fact that it is more difficult to prove, according to the required standard, an allegation of murder or serious crime, because it is inherently unlikely that a normal person will commit such a crime.

¹¹ 1993 SLT 835. For a detailed review of its application in police misconduct proceedings in respect of an allegation of rape see the judicial review brought by the Chief Constable of Fife in *Wilson, Petitioner* 2008 SCLR 598.

Certain English authorities cited, including the similar case of *Halford v Brookes*, appear to have proceeded on the basis that this difficulty is to be reflected in a variation of the normal standard of proof, but in my view there is no justification in Scotland for that approach, and if it were applied it might well lead to uncertainty in any case where an allegation of serious criminal or immoral conduct was made.”

22. Lord Prosser agreed at page 846:

“The only alternative to proof on a balance of probabilities is proof beyond reasonable doubt (*Brown v Brown*), and I can see nothing in authority or principle which suggests that the higher standard should be adopted in a civil action, simply because that higher standard would be required in proving the same facts in a criminal trial. Whichever standard of proof is being applied, the party upon whom the onus of proof is laid may succeed merely by proving quite bare circumstances. Or he may have to provide a vast wealth of detailed evidence. General assumptions may make the task easy, or they may make it close to impossible, on either standard. Lord Reid's observations in *McWilliams v Sir William Arrol & Co*, 1962 SLT at p 126, appear to me to show with great clarity the way in which general assumptions as to probabilities determine the magnitude or otherwise of a pursuer's task. Having regard to general probabilities, I do not doubt that a pursuer's task is one of some magnitude, if he seeks to prove that a murder has been committed, even on a balance of probabilities. On the other hand, if he can prove detailed facts and circumstances, leading to death, he might require little more, even to satisfy the higher standard of proof. Whichever standard has to be attained, one may have a long way to go, or a short way to go, once the basic facts are proved. I see no justification for departing from the ordinary civil standard of proof in

those cases where initially, because of the gravity of his allegations, a pursuer apparently has a long way to go. I would only add that I am not sure that Lord Neaves, in *Arnott*, at p 74, was really talking about higher standards of proof. It seems to me that he may merely have meant that in certain circumstances, a pursuer will have a long way to go before he can even establish his case on a balance of probabilities.”

23. A line of child welfare cases in England had suggested that the standard of proof may vary depending on the seriousness of the alleged misconduct or the consequences thereof. Confusion appeared to have arisen from the opinion of Lord Nicholls in *In re H (Minors) (Sexual Abuse: Standard of Proof)*¹² on the approach to inherent probabilities when he explained this in relation to the standard of proof:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the

¹² [1996] AC 563 at 586

seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

24. This was clarified in the House of Lords in *Re B (Children) (Care Proceedings: Standard of Proof) CAFCASS intervening*¹³(‘*Re B (Children)*’) in which it was authoritatively determined that there is only one civil standard of proof applicable in cases of consideration of child protection or child welfare.¹⁴ Baroness Hale, with whom Lord Hoffman, agreed cited with approval Dame Elizabeth Butler-Sloss P in *In re U (A Child) (Department for Education and Skills intervening)*¹⁵ describing her as restoring clarity and certainty when she stated the following at pages 143-144:

“We understand that in many applications for care orders counsel are now submitting that the correct approach to the standard of proof is to treat the distinction between criminal and civil standards as ‘largely illusory’. In our judgment this approach is mistaken. The standard of proof to be applied in Children Act 1989 cases is the balance of probabilities and the approach to these difficult cases was laid down by Lord Nicholls in *In re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563*. That test has not been varied nor adjusted by the dicta

¹³ [2009] 1 AC 11

¹⁴ See Baroness Hale at paragraphs 67-69 and Lord Hoffman at paragraphs 12 and 13.

¹⁵ [2005] Fam 134

of Lord Bingham of Cornhill CJ or Lord Steyn who were considering applications made under a different statute. There would appear to be no good reason to leap across a division, on the one hand, between crime and preventative measures taken to restrain defendants for the benefit of the community and, on the other hand, wholly different considerations of child protection and child welfare nor to apply the reasoning in *McCann's case* [2003] 1 AC 787 to public, or indeed to private, law cases concerning children. The strict rules of evidence applicable in a criminal trial which is adversarial in nature is to be contrasted with the partly inquisitorial approach of the court dealing with children cases in which the rules of evidence are considerably relaxed. In our judgment therefore the principles set out by Lord Nicholls should continue to be followed by the judiciary trying family cases and by magistrates sitting in the family proceedings courts."

25. Neither the seriousness of the allegation nor its consequences should make any difference to the standard of proof when determining the facts. The approach to matters such as allegations of a criminal nature were to be dealt with by common sense. Lord Hoffman explained this at paragraph 15, as follows:

"Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to

have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator."

26. Baroness Hale at paragraph 72 said the following:

"As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog."

27. However, whilst in civil proceedings the standard of proof required is on the balance of probabilities, it is submitted that, where the issues under consideration are in the realms of criminal accountability or otherwise significant, it would be necessary to look carefully at the weight and compellability of the evidence on those particular matters. This does not alter

the standard but means, as per Lord Morison in *Mullan*, that it *may* take more evidence to prove a more serious allegation to the requisite standard.

28. The assessment of whether proceedings are civil or in fact *quasi* criminal can be determined by reference to the outcome of those proceedings in terms of punishment, see for example the recent decision in *Iain Livingstone QPM, Chief Constable of Police Service of Scotland v X*¹⁶ As expressed by Lord Justice Clerk Ross in *Mullan*, there may be criminal connotations but not criminal consequences.¹⁷ In the case of a public inquiry, having regard to the terms of section 2 of the 2005 Act, it is clear that the Chair has no power to impose any finding of criminal responsibility. The proceedings are unquestionably civil.
29. The speech of Lord Hoffman in (*Re B (Children)*) is, of course, predicated by a description of the context in which there requires to be a proof of a fact in issue in certain legal proceedings and there is no room for a finding that something *might* have happened.¹⁸ He described the law as operating a binary system in which the only values are zero and one and a fact either happened or it did not. A public inquiry is not an adversarial proceeding whereby a party bears a burden of proof, the failure of which to discharge means that a fact is treated as not having been established. In an Inquiry, there is a necessity to consider possibilities when recommendations are being made.
30. The Chair is therefore invited to take what has been described as the '*variable and flexible*' approach and to make such findings to such standards as are appropriate based on the evidence before him and the purpose for which they are made. This was the approach taken in the following inquiries: The *Baha*

¹⁶ Judgement of Sheriff A.W. Noble [2023] SC EDIN

¹⁷ At paragraph 840

¹⁸ At paragraph 2

Mousa Inquiry (adapted from *the Shipman Inquiry*), the *Al Sweady Inquiry 2014*, the *Anthony Grainger Inquiry* and the *Grenfell Tower Inquiry*. Attention is drawn in particular to the *Al Sweady Inquiry* and the approach of the Rt. Hon. Sir Michael Fallon. He found assistance from the *flexible and variable* approach taken by Sir William Gage in the *Baha Mousa Inquiry* as follows:

“1.171. In my view the “flexible and variable” approach is an entirely appropriate one that allows for appropriate findings of fact to be made with varying degrees of certainty. I have therefore also decided to adopt a *“flexible and variable”* approach to the findings of fact made in this Report. This has enabled me to make findings, to whatever degree of certainty I have felt able, on each of the issues that I have determined. In this way I have made findings of fact to both the civil and criminal standards of proof.

1.172 When making findings to the civil standard of proof, I have borne in mind that matters of a serious nature will generally require evidence of sufficient weight to enable me properly to make a finding on the balance of probabilities. This is not to impose a higher standard of proof, or to elevate the standard in any way, but rather to reflect the principle that a matter of greater gravity than the norm is likely to require more cogent evidence for an appropriate finding of fact to be made on the balance of probabilities.

1.173 I have it very much in mind that it is important that any findings that I do make are readily and easily understood. I have also considered that it is in the interests of all witnesses open to criticism that they are aware of the nature and extent to which I have made my findings. Thus, I have sought in the Report to explain both the evidence that I have relied upon in reaching any conclusion and the standard to which I

have determined the matter to be proved by reference to the language that I have used.

1.174 I have adopted the civil standard of proof, namely the balance of probabilities, as the basic starting point for the findings that I have made. Thus, all the findings of fact in this Report are made to the civil standard of proof, unless the language I have used clearly indicates otherwise. Thus, in a significant number of instances I have been able to decide the issue in question to such a degree of certainty that I am sure that it was so. Where I have made a finding to such a level of certainty, I have either stated in the Report that *"I am sure"* or that *"I am certain"* or *"I have no doubt"* of the finding in question. In such a case, I have made the finding to the criminal standard of proof. However, expressions such as *"I am satisfied"* *"I accept"*, *"It is likely"*, *"I believe"*, *"It seems"*, *"I agree"*, *"I have come to the conclusion that"* or *"this suggests"* – whether or not qualified by an adverb such as *"completely"* or *"entirely"* – are all expressions used in connection with a finding that has been made to the civil standard of proof. Expressions such as *"I suspect"* will not be a finding of fact as such, but will indicate my state of mind about the issue being considered at the time."

2.3 Recommendations

31. It is understood that recommendations are outwith the scope of these interim submissions. The Chief Constable will wish to engage with the issue of recommendations in detail. As has been stated previously, many improvements have been implemented in Police Scotland in the ten years since its creation in 2013. The review and improvement of all aspects of the policing service delivered by Police Scotland continues and has continued

during the course of this Inquiry. This will be the subject of further evidence, position statements and final submissions.

2.4 Expert Evidence

32. The Inquiry has had the benefit of expert evidence on various matters. The clear preference has been for the Inquiry to instruct and obtain that evidence and for Senior Counsel to the Inquiry to lead that evidence as she deemed appropriate.¹⁹ Submissions will be made regarding that expert evidence, where appropriate, with the aim of providing assistance to the Chair.

33. When reviewing the expert evidence, it will be necessary to review the qualification of the expert to provide opinion evidence on the particular matter, the material provided to that expert and the accuracy of the hypotheses upon which that evidence has been based. A witness opinion on a summary of evidence or a scenario is only valid if that evidence or scenario is accurate. Otherwise, it is of negligible value.

34. It is, of course, entirely a matter for the Chair as to what expert evidence he requires or what expert evidence he accepts. The purpose of such evidence is to assist a decision maker as a factor for consideration along with the whole other evidence in the case. Expert witnesses give only evidence and cannot usurp the function of the court.²⁰

¹⁹ See the letter from Police Scotland to the Inquiry dated 5 September 2022 and the Inquiry's response dated 10 October 2022

²⁰Per Lord President in *Davie v The Lord Provost, Magistrates and Councillors of the City of Edinburgh* 1953 S.C. 34²⁰

35. The Supreme Court in *Cordia v Kennedy*²¹ provided helpful guidance on the role and considerations of the requirements of an expert witness. This includes the following:

1. whether the proposed skilled evidence will assist the court in its task;
2. whether the witness has the necessary knowledge and experience;
3. whether the witness is impartial in his or her presentation and assessment of the evidence; and
4. whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

2.5 Hindsight

36. It is submitted that the decisions and actions of individuals should be looked at, in fairness, in the context of what could or should have been known to them on 3 May 2015 and hindsight is not a part of that.

37. It is therefore important to consider the actions of the officers on 3 May 2015 in the context of their individual training at the material time. There is to be a hearing on training from 14 November to 8 December 2023. Their actions should be viewed in terms of what was known to them and their perceptions at the material time.

38. However, when reviewing decisions in a different context, for the purpose of recommendations, it is accepted that, in considering what could have been done differently, '*...the use of hindsight is a powerful tool to ensure that lessons are learned.*'²²

²¹ [2016] UKSC 16

²² Manchester Arena Inquiry, Vol 1, page 189 A3.6

2.6. Previous Statements of witnesses - delay – general observations

39. In a number of instances witnesses have provided several statements, some *de recenti* and some for the purposes of the Inquiry. It will be important to consider what has been adopted and what has not, to ascertain the most reliable evidence of a particular witness.
40. Witnesses have been asked to give evidence seven or eight years after the event. The Chair will have to resolve the position as to the respective reliability of recollections as between 2015 and many years later. In some cases, witnesses have adopted or corrected their original statements, but in other cases, where there are several statements, the status of the earlier statements is less clear.
41. There has been some legal discussion of this issue of delay in the courts in England. The matter has been clarified most recently in *Martin v Kogan*²³. This was necessary because it required to deal with what Leggatt J had stated in *Gestmin v Credit Suisse*²⁴, a commercial case, when he commented on the fallacy of personal recollections of witnesses eight years after the event. His opinion was that a judge should place little reliance on witness recollections and should base factual findings on inferences from documentary evidence. This was addressed in *CXB v North West Anglia NHS Trust*²⁵ by HHJ Gore QC (sitting as Deputy High Court judge) who disagreed with that proposition. In his own review of the case law, he did not find support for the opinion of Leggatt J as being a matter of legal principle. HHJ Gore QC, considered the underlying questions to be whether, when the evidence is viewed as a whole,

²³ [2020] E.C.D.R 3

²⁴ [2020] 1 C.L.C 428

²⁵ [2019] EWHC 2053 (QB)

there is material that justifies the conclusion that the [clinical] record is unreliable or incorrect or whether, when the evidence is viewed as a whole, there is material that justifies the conclusion that the witness evidence to the contrary is unreliable or incorrect. His view on those questions was expressed as follows:

“That is the issue which is for the court to decide viewing the documentary and testamentary evidence forensically and not simply by subjective criteria such as demeanour of live witnesses. “

42. The Court of Appeal in *Martin v Kogan*, described it as a serious error to see the comments by LJ Leggatt as an "admonition" against placing any reliance at all on the recollections of witnesses.²⁶ The Court of Appeal essentially approved the approach of HH Gore QC:

“First, as has very recently been noted by HH Judge Gore QC in *CXB v North West Anglia NHS Trust* [2019] EWHC 2053 (QB), *Gestmin* is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the **need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed**. Earlier statements of this kind are discussed by Lord Bingham in his well-known essay *The Judge as Juror: The Judicial Determination of Factual Issues* (from *The Business of Judging*, Oxford 2000). But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact

²⁶ At paragraph 88

based upon *all* of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence." [emphasis added]

43. In this Inquiry, the Chair has before him a wealth of documentary and oral evidence. In some cases, caution will undoubtedly be required and these instances will no doubt be drawn to his attention by Core Participants as relevant to them. The Chief Constable has identified in these interim submissions only such matters which arise as can appropriately be addressed by the Chief Constable having regard to his role and remit.

2.7. Privilege against self-incrimination

44. Post incident management ('PIM') has been the subject of evidential hearings. This covers matters such as conferral and the fact that officers declined to provide statements. There is much to consider in terms of the PIM procedure, and the extent of the duty to provide statements and completion of use of force forms. This is not the subject of these submissions. However, what is important, for the issues under consideration at this stage, is that it seems tolerably clear on the evidence that each of the officers involved in the restraint had received legal advice to the effect that operational statements should not be provided on the basis of the privilege against self-incrimination. Whether or not this was in fact correct at the time, given the evidence that their status was one of witnesses, the fact is that the legal advice was accepted. Leaving aside the merits of the procedure and the circumstances in which this arose, it is the position of the Chief Constable that the officers were entitled to follow that advice. A police officer is in the same position as any individual as regards the protection against self-incrimination. No adverse inference

should, in fairness, be drawn against the Core Participants for following legal advice. The officers were placed in the position they were as a result of the policies, processes and understandings of others in an unprecedented situation. The full circumstances in which the advice was given, the basis of the advice and the PIM process and systems in place then and now will all be the subject of detailed review in later submissions.

3. POLICING

45. The fundamental core principle of policing by consent (articulated by the Commissioner of Police for the Metropolis, Sir Robert Peel, in 1829), is that *'...the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.'*

46. Effective policing is enabled and enhanced by the trust and confidence of the public. The main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland (per the policing principles at section 32 of the 2012 Act.) That is, of course, of **all** persons, localities and communities.

47. The Chief Constable, as leader of Police Scotland, has a duty under section 17 of the 2012 Act, to further all policing purposes. The police service should seek to achieve that in a way that is accessible to and engaged with local communities in a way that promotes measures to **prevent crime, harm and disorder**.

48. Each and every officer in Police Scotland holds the office of Constable and has an obligation to discharge the duties of that office. It is important for the

public to be aware that from 1 April 2013, in order for appointment as a police officer to take effect, it has been essential that a declaration is made before a Sheriff, a Summary Sheriff (from 1 April 2016) or Justice of the Peace. Their declaration, or the 'oath of office', in terms of Section 10 of the Police and Fire Reform (Scotland) Act 2012 is this:

“...[they] solemnly, sincerely and truly declare and affirm that [they] will faithfully discharge the duties of the office of constable with **fairness, integrity, diligence and impartiality**, and that [they] will **uphold fundamental human rights and accord equal respect to all people, according to law.**” [emphasis added]

49. Each of the officers on duty on 3 May 2015 and thereafter had either taken that oath or were deemed to have done so.

50. Police officers therefore have a **positive** duty to act. They are required to always act in the public interest. They require at times to arrest people even if there is not an immediate threat of risk and harm. They require to bring individuals suspected of the commission of an offence into custody for lawful processing. Police officers have a positive duty to keep the public safe.

4. POLICE SCOTLAND AS AT 3 MAY 2015

51. Before turning to review the evidence in the chapters, it is necessary to address the context in which the events of 3 May 2015 took place in terms of the creation of the national Police Service of Scotland and the transition from legacy forces to the national service of Police Scotland which was an ongoing process.

52. The Police Service of Scotland ('Police Scotland') was created by statute, namely the 2012 Act. It came into being on 1 April 2013. It has now been 10 years since its inception. The Chief Constable reported to the Scottish Police Authority ('SPA') on 23 March 2023 that following transition, Police Scotland is now an organisation with shared values and high levels of operational competence. The service improvements achieved in 10 years of transformation are unprecedented across the United Kingdom public sector. Police Scotland delivers effective, integrated, consistent and better value policing for the public.

53. However, on 3 May 2015, Police Scotland was still very much in a transitional period following the amalgamation of the eight police services, known as legacy forces, on 1 April 2013. All the legacy force systems and procedures had to be assimilated into the new complex organisation. Each of the eight forces had, not only different procedures and guidance from each other, but also internally inconsistent procedures and documentation. This was compounded by the fact that there was a considerable volatility in the availability of officers as officers either retired, resigned or changed roles at the point of unification. The action of transition itself was potentially disruptive to the continuing provision of policing in the legacy force areas. A primary focus had to be to maintain policing services and public safety in the first instance before moving to standardisation and improvement.

54. Procedures for the handling of calls to the police were already undergoing review from early 2014 to have all legacy force call handling integrated into a national model. A Contact Assessment Model ('CAM') now in place, allows Police Scotland to make a more enhanced assessment regarding the needs of the caller (public and partners) based on an assessment of **Threat, Harm, Risk, Investigative opportunity, Vulnerability, and third party Engagement**

(‘THRIVE’) to identify and direct the most appropriate and proportionate policing response at first point of contact. This enhanced assessment of the caller’s needs and any associated risks, improves decision making regarding the dispatch of officers and permits a greater resolution of non-urgent matters at the first point of contact.

55. The transition from the separate legacy force structure to a national police service is also relevant to issues such as the training of police officers and the processes to be followed. On 1 April 2013, responsibility for the Officer²⁷ Safety Training (‘OST’) programme was adopted by Leadership, Training and Development (‘LTD’). For the transition to Police Scotland, some areas of business had a reform work stream. These included Public Order and Firearms Training for compelling operational reasons. OST did not have its own reform work stream to review and standardise the programme. There had been no national review since the inception of Police Scotland.²⁸

56. It became apparent that many areas of OST required to be reviewed to mitigate risk to personnel and the organisation, to introduce an effective and standardised training programme and to maintain the organisation’s focus of *‘keeping people safe’*. Consequently, at the Operational Training Unit Tasking and Coordinating Group of 19th November 2014, authorisation was given to undertake a full national review of OST provision. The review was carried out by Inspector James Young, commencing on 1 December 2014 and concluding on 1 March 2015, with the report being produced in April 2015.²⁹

²⁷ OST now denotes **Operational** Safety Training but, when used in relation to 2015, denotes **Officer** Safety Training

²⁸ See page 5 of the National Officer Safety Training Review and Evaluation Report, April 2015 PS11533 and SBPI-00153, James Young, paragraphs 21-24

²⁹ This is the National Officer Safety Training Review and Evaluation Report, April 2015 PS11533

57. Inspector Young made 28 recommendations following his review. All were approved for implementation. This resulted in significant changes to training from 1 January 2016. Improvements continue and will be addressed at later hearings. Police Scotland runs an international training academy with delegates from enforcement services from other jurisdictions. This will be explored in further evidence on training.

58. The responsibility for the training of and deployment of the officers to the incident lies with Police Scotland. It is only proper and fair that the actions of officers are judged in the context of their training. The knowledge of an individual officer on a particular day is a culmination of all their training including, for OST, their initial training and refresher training.

59. Detailed position statements have been provided to the Inquiry on training based on information ingathered in so far as possible. Further evidence will be heard at the hearing on training. If the officers acted in accordance with their training, it is crucial to consider the adequacy of that training as against standards at the material time. This will be assessed at a later hearing and will be the subject of further submissions.

5. SUBMISSIONS ON RELEVANT MATTERS

5.1 RACE

60. The Chair's Guidance states that there will be a hearing specifically on the issue of race. The Chair encouraged Core Participants to make submissions at this stage in respect of evidence within the ambit of the current closing submissions that might have a bearing on that part of the Terms of Reference

of the Inquiry relating to the issue of race. There will be an opportunity to further develop such submissions after the hearing on race.

61. The Chief Constable welcomes the opportunity to address this issue at this time but intends to develop this further as part of the preparation for the hearing on race and in submissions after that hearing.

62. In his opening statement, on 11 May last year, the Chief Constable focussed on the issue of racism and policing in Scotland. He did this as it is vital to do so to maintain and enhance public confidence in the police. He committed Police Scotland to being anti-racist. Since that opening statement, significant work has continued and programmes have been adopted to further the anti-racist strategy and ensure that there is no place for racism in Police Scotland and that racism is addressed and challenged at every stage and at every level.

63. In making that commitment, he had thought carefully about the actions which need to be taken in order for an organisation to be anti-racist. It means developing policies, structures and systems followed by actions to deconstruct racism and address issues of power, justice and inequality.

64. Being an anti-racist organisation includes a requirement to address and challenge the existence and workings of racism at personal, cultural and institutional levels. It is an intentional approach and includes a challenge to all contributing forms of racism including historic causes and systemic failures. It requires a **collective effort** to be **permanently** proactive and **accountable** for the prevention of discrimination, the advancement of equality opportunities and fostering good relations.

65. The Chief Constable considered that it was essential that the Police Service

examined these issues to a standard which the public have a right to expect. Such an examination had to be **mature, candid, humble, reflective, relentless, robust and fearless.**

66. A public body such as the Police Service has a legal duty as well as an ethical and moral imperative to have regard to the issue of institutional racism, be on guard for it, guard against it and address it. This can only happen if there is a clear understanding of what it is, what it means for an organisation and the consequences of failure to address it openly and transparently. The meaning of Institutional Racism was given by Sir William Macpherson in the Stephen Lawrence Inquiry in 1999. It is:

“The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”

67. The Macpherson report emphasised the particular need for police organisations to be aware of the manner in which they communicate and interact with members of communities having regard to their specific needs.

68. The Chief Constable required to address this issue in a way that the public would expect of a responsible organisation which derives its legitimacy from public trust and confidence. He regarded it as incompatible with his legal, moral and ethical responsibilities to do otherwise than recognise that institutional racism exists in policing, that members of communities report issues with their interactions with police officers and that lessons need to be

learned in this regard to improve communication and focus on individual needs of members of all communities.

69. On 25 May 2023 the Chief Constable reported the following to the Scottish Police Authority:

“...it is right for me, the right thing for me to do as Chief Constable, to clearly state that institutional racism, sexism, misogyny and discrimination exist. Police Scotland is institutionally racist and discriminatory. Publicly acknowledging these institutional issues exist is essential to our absolute commitment to championing equality and becoming an anti-racist Service. It is also critical to our determination to lead wider change in society.”

70. The Chief Constable had also reflected on the position of Police Scotland as regards this Inquiry and it is important that this is addressed in these submissions. There are two separate issues:

1. Whether or not the actions of the **individual** officers on 3 May 2015 were influenced by race or perceived race?, and
2. Whether, as at 3 May 2015, there were systemic failures at that time which could be assessed as a collective failure of **the organisation** to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin?

71. The first issue must, in fairness and having regard to the Terms of Reference of the Inquiry, be determined by the Chair. Nothing that was said in his submission to the SPA about the organisation should be taken as any comment on whether the actions of any individual officer, whose actions are

being examined by this Inquiry, was influenced by race or perceived race, particularly those who are Core Participants. **The position of any individual officer whose actions are being considered by the Chair in this Inquiry should not be adversely affected by the acknowledgement made by the Chief Constable in respect of the organisation.**

72. In his statement to the SPA, the Chief Constable made clear the distinction between individual officers and the collective responsibility of the organisation as follows:

“Does institutional discrimination mean our police officers and police staff are racist and sexist? **No. It absolutely does not.** I have great confidence in the character and values of our people. I am proud of Police Scotland and I am proud of my colleagues, proud of my officers and staff... It is an institutional issue which I take responsibility for.”
[emphasis added]

73. The second issue which is a question for the police service **as an organisation**, however, was a matter which, as part of the anti-racist strategy, needed to be addressed by the Chief Constable.

74. The Chief Constable made a commitment to listen to the experience of the families of Mr Bayoh and members of the community. Having heard the evidence to date, he was satisfied that a proper and fair assessment of the organisational learning and awareness as at 3 May 2015, in the recently formed Police Service of Scotland, was such that there was a systemic issue. This was seen in the evidence of the families of Mr Bayoh, the evidence that some diversity training did not appear to have been retained and, importantly, in the fact that there appeared to be a lack of awareness of some

officers of the importance of not treating everyone the same. That approach to equality fails to address cultural needs, sensitivities and concerns of individuals. That is an institutional matter. It means that it is a failing of the organisation and not individual officers.

75. Acknowledging institutional racism means recognising that discrimination, rooted in racism, is not to be seen as isolated individual acts because discrimination is often possible because of institutional failures. Discrimination is institutional when institutions are not doing enough or are not doing well at preventing discrimination and promoting equality.

76. For this reason, the Chief Constable acknowledged, without reservation, that Police Scotland would come within the definition of institutional racism set out by Sir William Macpherson. This acknowledgement was essential to ensure that Police Scotland adheres to its core value of anti-racism. Any omission to recognise this would wholly undermine the aims of Police Scotland to be anti-racist. Such a refusal would lack credibility. Arrogant, defensive, semantic or ill-informed denial of the existence of institutional racism only obstructs progress and serves no legitimate purpose. If a body does not acknowledge institutional racism, how can it work towards becoming anti-racist?

77. The understanding of the manifestations of racism and its impact on communities which came from the Stephen Lawrence Inquiry, conducted by Sir William Macpherson, needs to be heeded continually and acted upon. The Macpherson report has informed and improved policy processes in Scottish policing over the last 24 years. The public sector race equality duty under the Equality Act 2010 arose from the Macpherson report. The aims of that duty are described by the Equality and Human Rights Commission as being to;

eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. The Commission also explains that having due regard for advancing equality involves:

- “Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.”

78. It is clear from the 2010 Act that meeting different needs involves tackling prejudice and promoting understanding between people from different groups. Compliance with the public sector duty may involve treating some people more favourably than others.

79. Accordingly, what was introduced was the statutory obligation to positively promote equality and not simply avoid discrimination. An emphasis was placed on the obligations of organisations. As advised by the Equality and Human Rights Commission, the general equality duty therefore requires equality considerations to be reflected in the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review.

80. Post Macpherson, following the publication of Her Majesty’s Inspectorate of Constabulary in Scotland (‘HMICS’) Thematic Inspection Report ‘Race

Relations in Scotland-Without Prejudice' in 2000,³⁰ processes were set in place in policing in Scotland. Their purpose was to seek to overcome and mitigate discrimination which can occur consciously, unconsciously or unwittingly. It resulted in progressive measures and is embedded in all the training in Police Scotland. For example, **SEMPER Scotland**, the primary staff association which exists to support and represent all minority and ethnic officers and staff within Police Scotland was created following the Scottish discussion of the Macpherson report. Critical Incident Management guidance was created following on from the Macpherson report. Training and awareness was instituted. Police Scotland continues to strive for improvement.

81. Whilst significant positive changes were undoubtedly made within Scottish policing, racism still exists in society and in policing. The imperative to address this continues. This is particularly so around focus on the needs of individual communities to ensure they are not adversely affected by policies and procedures. Learning has to be seen in outcomes.

82. It is important to be aware of the intersectionality of all forms of discrimination. One person can suffer discrimination for more than one reason, for example, they can be exposed to racism and sexism or racism and homophobia or racism and disability discrimination. The Chief Constable's recognition of institutional discrimination is not confined to racism. There is a clear understanding that there is a need to be aware of, and to address, the intersectional effect of discrimination. The Chief Constable gave the SPA an unequivocal commitment to the recognition of intersectionality when looking

³⁰ Followed by the HMICS report '**Pride and Prejudice- A Review of Police Race Relations in Scotland'**, 2003

at the needs and sensitivities of individual members of communities served by Police Scotland.

83. To be an anti-racist organisation, there has to be a recognition that addressing the question of institutional racism is a dynamic process. Police Scotland as an organisation has become better informed about racism, the causes of racism and what an organisation needs to do to be anti-racist. Racism in our culture is as a result of slavery and colonial power. It is necessary to deconstruct this and bring about truly transformative change. Addressing institutional racism acknowledges history, power and existing privilege.
84. The term institutional racism, addressed properly, in an informed way, is therefore a guiding principle. It is a commitment to the duty not to lose sight of what is required for an organisation to work towards anti-racism in order for those who have experienced racism to begin to have experiences that are more positive - for them to feel confident that those experiences of racism, that had not previously been addressed, will not be repeated.
85. Yet, it seemed that an acknowledgement by an institution that it is institutionally racist could at times be sensational and denote only failure and shame. This appears to have resulted in organisations being reluctant to engage properly with the question of the existence of institutional racism and being fearful of it. The Chief Constable acknowledged, frankly, his own initial reluctance when he made his statement to the SPA:

“Institutional racism, sexism and institutional discrimination have become iconic terms in the vital battle to tackle injustice. Police officers and staff, including police leaders, can be conflicted both in acknowledging their existence and in using such terms, fearing it

would unfairly condemn dedicated and honourable colleagues or that it means no progress has been made since the 1990s. Truly, I recognise that conflict, I understand that conflict because I have experienced that conflict myself over a number of years. ...So I know and have shared the reservations and concerns about acknowledging that institutional discrimination exists in policing.”

86. There is, however, considerable power in accepting the existence of institutional racism, as properly understood, because only then can one assess how real change can be effected throughout the organisation for it to be truly anti-racist. The Chief Constable was acutely aware that, given the essential role policing has in society, he had and has a duty to lead, uphold and inspire change that improves the experiences and lives of the public served by the police in Scotland. Addressing the issue is a fundamental requirement of the equality duty. Not to value the meaning and importance of institutional racism is to be under-informed of the social construct and the world in which we live.

87. The acknowledgement by those informed of its purpose and intent, including people affected by discrimination, has been welcomed within policing and across society. Support for the Chief Constable’s position was articulated by SEMPER Scotland, the association which exists to support and represent all minority ethnic police employees on issues of equality in race, as follows:

“We stand with OUR Chief Constable in his courageous acknowledgement of institutional racism within Police Scotland. We recognise that work

needs to be done to create a truly equitable society and will support efforts towards that goal.”³¹

88. The Chair of the SPA, as noted, the body which holds the Chief Constable to account for the policing of Scotland, in support of the Chief Constable’s statement, said the following :

“Acknowledging that the processes, attitudes and behaviours of an organisation are discriminatory... however unconsciously that may be is the crucial next step for effective organisational development. Police Scotland have put an enormous amount of work in to the strategies and process to drive a positive and anti-discriminatory culture. The Authority is confident that this marks that moment for policing – one that moves the focus from continually describing problems within Police Scotland to ‘what and how we change’... The Authority is grateful to the Chief Constable, his senior team and Police Service of Scotland as a whole. It takes a very advanced degree of realism, self-reflection, strength, effort and courage to reach this point... There is a rock solid base for this announcement.”³²

89. The Vice Chair of the Independent Reference Group, Chris Creggan, also addressed the SPA meeting and said the following regarding the Chief Constable’s acknowledgement³³ :

“...I think that it matters because we do believe Police Scotland’s intention and commitment has integrity and substance. It’s a judgement that’s been made by the service itself and I think that’s

³¹ SEMPER Scotland tweet <https://twitter.com/SEMPERscotland/status/1661705811263905793>

³² Scottish Police Authority website <https://www.spa.police.uk/news/spa-chair-s-response-to-chief-constable-s-statement-on-culture-in-police-scotland/>

³³ Transcribed from the broadcast of the SPA meeting on 25 May 2023

hugely important and I think it's a huge strength. I think it's really important that rather than coming from outwith from any independent group or other pressure group. This is an acknowledgement that has been made by the service itself and is owned by the service itself. I think that is part of the watershed moment. I think that's part of the way in which the impediment to change has been removed.....I can be absolutely confident that, as with members of the authority this morning, the members of the independent review group will, I am sure, hugely welcome the statement that you have made this morning. I think it is a watershed moment, I think it is historic in that sense and I think critically what it does is remove unnecessary ambiguity- we have seen how that can play out elsewhere and it becomes a distraction- it becomes an impediment to change and I think the way that you set out this morning and the discussion that followed about the sense of this acknowledgement, not a condemnation but an acknowledgement being an accelerator, a catalyst potentially, a motivator for change and for acceleration in this area is critical..."

90. Leaders from across the political spectrum have also expressed support. First Minister Humza Yousaf MSP said the following:

"I welcome the chief constable's statement. As he himself has said, now that the acknowledgement has been made, it is so important that we see action to dismantle those barriers. I say once again that I take my responsibility as First Minister seriously and that I rededicate myself to doing everything that I can to dismantle the barriers of institutional racism, misogyny, bigotry and discrimination where they exist here in

the Scottish Government and to doing all that I can do right across society in that regard.”³⁴

91. Scottish Labour leader Anas Sarwar MSP said he believed the Chief Constable’s statement had progressed discussions about institutional discrimination.

“But we cannot pretend that institutional racism, sexism, misogyny and discrimination does not exist in many of our public organisations, and the first step to addressing that is to acknowledge it. That is what Sir Iain has done. Should it have happened sooner? Undoubtedly. Has a large part of his statement been lost in the firestorm that has followed? Of course. But what the outgoing chief constable has done is to start an open discussion about structural change.”³⁵

92. The firestorm described by Anas Sarwar MSP is exactly the response which has made organisations reluctant to engage properly with the definition and leaders concerned to address it with the candour required. They risk personal attacks such as have been made on the Chief Constable. It is vital that there is a shared responsibility in understanding the meaning of the definition and why there has to be acknowledgement of discrimination where it exists if there is any hope of a society which is fair for all communities.

93. The Chief Constable recognised that the acceptance of that term without discernment could lead to every individual member of the organisation

³⁴ Office Report, First Minister’s Question Time <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-25-05-2023?meeting=15330&iob=130742>

³⁵ June 2023 edition, 1919 Magazine <https://1919magazine.co.uk/june2023/>

feeling labelled as racist (by those who misunderstand or misinterpret the definition). That is categorically not what is being said or accepted. As the Chief Constable explained to the SPA, he understood that there was a risk that the acknowledgement could result in officers being accused of being racist because *'the Chief Constable told us that'*. He was aware that officers and staff would have to deal with that misrepresentation. For this reason he wanted to be clear in his message to officers. All officers have been given explanations as to what the acknowledgment of institutional discrimination means and that it is not the same as saying all officers and staff are racist. It is a candid recognition that the organisation needs to do more in respect of education, policies and practice to ensure that everyone gets the service that is their right. The Chief Constable is calling on all officers and staff to reflect on their perceptions and understanding. An extensive communications programme has been undertaken to facilitate understanding, listen to concerns and encourage engagement. This comprises a toolkit on the intranet which includes videos and information on frequently asked questions about institutional racism, the full details of the acknowledgement by the Chief Constable and what this means for Police Scotland. The communications strategy is covered in more detail from paragraphs 120. Leaders have been tasked with communicating with officers and staff to address what this means for individual officers. Changes in behaviours are already taking place with an observed confidence in challenging unacceptable behaviour in others.

94. The definition of institutional racism is a powerful tool and a standard with which to work. It shows clearly what needs to be changed in an organisation. It is the duty of the organisation to establish that this is a position of strength, maturity, forward thinking and not a failure or indictment of every member. It is not a label to be applied in a pejorative way. It is a recognition of **systemic** issues in order for them to be addressed. It is a commitment to constant regard

and review to enable the organisation to hold themselves to the standards required by the Macpherson report and the Equality Act duties as well as the Scottish specific duties under the regulations.

95. Police Scotland was the first UK police service to introduce a code of ethics. This will now be enshrined in statute.³⁶ All officers require to take a statutory oath of office which includes a pledge to discharge their duties with fairness, integrity, diligence and impartiality, to uphold fundamental human rights and to accord equal respect to all people. It is therefore right that the Police Service of Scotland continues to lead the way and has taken this essential step to being an anti-racist service.

96. The Chief Constable has been part of the leadership team since 2012, prior to the creation of the Police Service of Scotland. He is accountable for the organisation. The work which has been undertaken to address issues of racism and discrimination in Police Scotland was undertaken before the start of this Public Inquiry. The acknowledgement of institutional racism at the SPA meeting was possible because of the reflective approach taken by the organisation under his leadership which has led to more knowledge and understanding.

97. The power to address racism in policing is vested in every officer of Police Scotland. It cannot always be left to those who have suffered racism to bear the burden of trying to effect change, no matter how willingly they have carried it for so long. That burden has to be shared. It is a collective responsibility of every one of us. In accepting that institutional racism exists in the organisation in which he has served and which he has commanded,

³⁶ <https://www.parliament.scot/bills-and-laws/bills/police-ethics-conduct-and-scrutiny-scotland-bill>

the Chief Constable chose a new way – one that is more productive and effective. He chose transformative change. The acknowledgement was one which it was proper for him as Chief Constable to make – under his command, with his informed understanding and following his commitment to effect change. It will allow successors to the office of Chief Constable of Police Scotland to continue on a clear path for the organisation to achieve a new level of performance for all the communities it serves and for it to be anti-racist.

98. The public will no doubt be concerned as to what the acknowledgment means for Scottish policing in 2023 and for the future. Police Scotland has taken the Macpherson definition and used it as **a blue print for action**. The programmes of awareness regarding unchallenged conscious or unconscious bias are ongoing. The aim of these is to further the anti-racist strategy and the anti-discrimination strategy at all levels. The organisation is already addressing processes, attitudes and behaviours which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping. It does this based on expert advice from independent advisers who have lived experience.
99. The issue of racism was already being addressed through evidence-based actions – effective leadership, campaigns, empathy building, positive narratives, awareness building, legal action and peer support. The acknowledgment of the institutional nature of discrimination was part of the strategy to address racism. What has been described as the ‘rotten apple’ approach does not address the fundamental root problem of the environment in which such individuals have been permitted to act. As stated in his opening statement - each member of the organisation needs to think and act in accordance with the shared core value of being anti-racist.

100. One of the actions is the **Policing Together (Equality, Diversity and Inclusion) Strategy** which the Chief Constable introduced in September 2022 when he stated the aim of that Strategy, which is to build a society where everyone can thrive and flourish and collectively build a country where everyone knows they are safe and secure.
101. The **Policing Together Strategy** outlines the action Police Scotland is taking to champion equality and inclusion so that it tackles sexism and misogyny and becomes an anti-racist organisation. Providing everyone with a fair, just and effective policing response is the moral responsibility and legal duty of the Police Service.
102. Deputy Chief Constable Fiona Taylor QPM, has provided leadership to build and maintain a values based organisation and to drive improvements demonstrating how policing in Scotland reflects, represents and serves all communities. The Chief Constable has created a new dedicated Assistant Chief Constable role to oversee the **Policing Together Strategy** with bespoke organisational resources. Assistant Chief Constable David Duncan has been appointed to lead work in the implementation of the **Policing Together Strategy**. This is to give effect to the Chief Constable's commitment to Police Scotland being an anti-racist and anti-discriminatory service that champions equality with a culture which reflects its values of integrity, fairness, respect and commitment to upholding human rights.
103. Policing Together is a dynamic, integrated, coherent, long term programme, the purpose of which is to embed throughout every part of Police Scotland the fulfilment of that commitment and for the organisation to move towards anti-racism and anti-discrimination. It addresses what is needed in terms of ethos, commitment and action.

104. There are four pillars which will underpin the work of the Policing Together programme going forward. These do not stand alone and are used collectively and interactively on an evolving basis. They are: ³⁷

- (1) Leadership
- (2) Training
- (3) Communication
- (4) Prevention.

(1) Leadership

105. Meaningful and sustainable change will require persistent focus and leadership. Police Scotland will recruit and promote people who share Police Scotland's Values and Behaviours and give officers and the staff the tools and skills they need to lead cultural change. Cultural change is the responsibility of every member of the organisation and will be driven by leaders across the organisation.

106. The executive of Police Scotland has called upon all its leaders to live, lead, support and embed high standards, equality training and a focus on Values by taking action which includes:

- Building and maintaining professional standards and boundaries;
- Publication of anonymised details of gross misconduct outcomes;
- Equality and Diversity training; and
- Communications campaign calling on Police Scotland officers and staff to know and live our Values.

³⁷ See helpful diagram in Appendix

107. People entrusted with positions of leadership must lead the desired culture change. The public have a right to expect that any officer or member of staff employed by the Police Service in Scotland will be held to a high standard. Otherwise, the Police Service cannot rightly ask them to have confidence in the Service.
108. **Your Leadership Matters** ('YLM') is a programme designed to enhance leadership behaviours, providing the skills and tools necessary to build teams which deliver effective policing for all the communities served by Police Scotland. It is underpinned by the Police Scotland Competency and Values Framework and high levels of operational competence. It will empower leaders to lead inclusively and proactively to create a more diverse and inclusive working environment - one in which every team member knows they are valued and can thrive and reach their potential.
109. The three leadership behaviours defined as part of the programme are:
- Lead and Learn Inclusively;
 - Have the Courage to do the Right Thing; and
 - Collaborate for Growth.
110. The programme is in the process of being implemented across the organisation to all who hold line management responsibilities and it will continue indefinitely.

(2) Training

111. This seeks to address racism, misogyny and all forms of discrimination within policing in Scotland. Police Scotland recognises that the majority of officers and staff act in accordance with Police Scotland's Values and Standards every day. Police Scotland is aware that to continue to deliver

excellent service in an ever changing world, there is more the organisation can learn about through continuous professional development.

112. Training delivery for **Policing Together** has the depth of support available for colleagues at different stages in their career, ensuring all officers and staff have guidance on how they can role model and lead on the changes required, ultimately delivering the commitments made in the **Policing Together** strategy. All training is aligned to the **Policing Together Strategy**.
113. A programme of work is ongoing to ensure that the Probationer Training Programme, Tutor Constable training and the Staff Induction are aligned to the organisation's Values and the Policing Together strategic commitments. All Equality Diversity and Inclusion ('EDI') content will be quality assured to ensure that these key learning products remain fit for purpose.
114. In order to reach every member of an organisation such as a police service as quickly as possible, initially, from a logistical perspective, e-learning was mandated for every police officer and member of staff. The EDI e-learning module was developed and then launched in November 2022. As at 13 June this year, the compliance rate was high with 21,191 having completed and only 6% still to complete. This has been evaluated and has received a positive qualitative assessment. This module is now part of the mandatory training calendar, meaning that each year all officers and staff will have the opportunity to refresh their knowledge and re-set expectations aligned to Police Scotland's Values and Standards of Professional Behaviour. The module was developed using the real life experience of officers and staff and sets out the legal, moral and ethical considerations for everyone within

policing in Scotland. By doing so, the training is more relatable and gives the user the opportunity to consider the experiences of others.

115. In recognition of the value of face to face training, now that the e-learning package has been delivered, this can be actioned. The next phase of this training will be face to face sessions for all supervisory officers and staff. In addition, '**Empower Hours**' will be used to provide facilitated sessions providing time and space to explore privilege, bias, EDI myths as well as techniques and approaches to become positive challengers of all forms of discrimination.
116. Workshops around '**Valuing Difference and Inclusion**' have been delivered to inform colleagues and prevent discriminatory practices but also give colleagues more confidence to challenge discriminatory practices and behaviours.
117. The learning and behaviour change specialist Elev-8 continue to work with Police Scotland to deliver the '**Transforming Climate through Inclusion**' learning programme for Senior Leadership Teams. The content of this learning programme complements the key messages within the '**Your Leadership Matters**' programme.
118. Work is currently under way to establish a one day **Policing Together** training event for all officers and staff as the final phase of the CPD/EDI learning programme.
119. In addition to the aforementioned work, the '**Inclusion Moments**' (**IM**) toolkit was created by a Police Scotland officer, embraced by, and has also been adopted by the College of Policing and City of London police. The

package helps guide, promote and aid discussion around different aspects of EDI and provides a platform to have 'challenging' conversations that people often find difficult.

(3) **Communication** –

120. Policing Together is supported by a co-ordinated campaign of internal and external communications. This is an organisation-wide behaviour change campaign which, over time, will positively impact on organisational culture. A dedicated intranet area was activated on 21 March 2022, coinciding with the United Nations International Day for the Elimination of Racial Discrimination and with a first person article by the Chief Constable published by the Guardian³⁸, as a platform to draw together Policing Together communications and resources.

121. The Policing Together site has been built to provide officers and staff using it with a more modern experience. It is more accessible than typical intranet sites developed in the past by the service and is mobile-friendly, meaning the layout of the site changes to suit the size of screen on which it is being accessed. The site includes external Police Scotland marketing campaigns. Key strands of Policing Together communications include:

- a 'Cultural Calendar' to recognising significant milestones across diverse communities;
- a focus on each of the ten Standards of Professional Behaviour (which are set out in legislation) over a 12 month period;

³⁸ The Guardian <https://www.theguardian.com/commentisfree/2022/mar/21/policing-scotland-radically-reformed-all-uk-forces-learn>

- an internal marketing campaign calling on the workforce to know and live Police Scotland's Values; information about Equality, Diversity and Inclusion training;
- anonymised outcomes of gross misconduct hearings where officers were either dismissed or resigned prior to a hearing as an initiative by Police Scotland;³⁹
- relevant statements including the message from Deputy Chief Constable, Mrs Taylor's to officers and staff following Baroness Louise Casey's review into the standards of behaviour and internal culture of the Metropolitan Police Service outlining Police Scotland's proactive work in this area;
- The external and internal campaign '**Don't Feed Hate**'⁴⁰ hosted on the Policing Together platform, April-June 2023, seeks to engage with white men aged 18-30 in Scotland who form the group at the highest risk of committing hate crime, but which has the most opportunity for behaviour change;
- alignment of Policing Together with the Sex Equality and Tackling Misogyny ('SETM') messaging which is part of Police Scotland's approach to tackling violence against women and girls; and
- a communications plan developed to publicise and support a joint anti-racist event with staff association SEMPER.

122. The intent of the platform is to build an internal communication destination where officers and staff can self-serve information and resources, with some strands of work, such as Standards of Professional Behaviour and

³⁹ This action is also part of the Police (Ethics, Conduct and Scrutiny(Scotland) Bill. <https://www.parliament.scot/bills-and-laws/bills/police-ethics-conduct-and-scrutiny-scotland-bill>

⁴⁰ Don't Feed Hate Police Scotland website <https://www.scotland.police.uk/advice-and-information/hate-crime/hate-monster-campaign/>

the gross misconduct outcomes, performing well compared to other internal communications.

123. The Policing Together intranet area published the Chief Constable's public statement on institutional discrimination. This was also to support a direct email from the Chief Constable to all officers and staff and included questions and answers. The intranet area was later utilised to share responses from staff associations and the Chair of Independent Review Group. Along with an emailed toolkit with these resources, the communications around the Chief Constable's statement have had very strong engagement. As of 15 June, the emailed toolkit of information and question and answers on institutional discrimination had been downloaded on over 15,000 occasions and the institutional discrimination page on the Policing Together intranet area had been accessed on over 14,000 occasions. This is an unprecedented level of engagement.

(4) **Prevention**

124. The way police officers conduct themselves, both on and off duty, is fundamental to maintaining public confidence and essential to policing by consent.

125. At the heart of Policing Together is the organisation's code of ethics and values of integrity, fairness, respect and a commitment to upholding human rights. From this, the organisation derives a direct link to values-based policing, which reflects and represents all communities and is vital for public confidence and consent, from which policing draws its legitimacy.

126. The **Preventions & Professionalism Programme** includes a governance structure with tactical and operational leads, driving prevention

and awareness activities intended to influence positive cultures, whilst empowering officers and staff to appropriately challenge and report harmful behaviours. It also highlights the key role that leaders and bystanders play in robustly and proportionately addressing concerns at the earliest opportunity, and the support available to do this. A holistic review is ongoing into the Service's grievance policy, process and associated support tools. This deliverable is titled '**Creating a Positive Workplace**'.

127. A lived experience survey '**Raising a Workplace Issue**' was undertaken in 2022 with the findings being used to inform considerations for policy, process, training and, importantly, culture; as well as the necessary conversations that are appropriate and supportive for colleagues. Some of this work has formed the basis of the training and awareness products that will be launched shortly under the 'grievance' module for managers as part of **Your Leadership Matters**.

128. A number of training tools are currently available. The Police Scotland '**How To**' learning platform has an array of training material including those which focus on creating a positive workplace and equality, diversity and inclusion.

129. These strategies are not projects to be announced with fanfare and which will have a finish date – they require continuing commitment to further the aim for Police Scotland to be anti-discriminatory and anti-racist and an organisation which will review, reflect, learn and change as required. Since the statement of the Chief Constable to the SPA, in May 2023, action has accelerated. With further understanding has come an even more focussed drive to purposeful action.

130. In May last year the Chief Constable reinforced the very clear message that, if you hold racist or discriminatory views, you are not welcome in policing. The process for vetting at the recruitment stage has been reviewed and re-vetting is being carried out on a systematic basis.
131. The recognition by him of the existence of institutional racism is intended to be a message of confidence in an organisation that is determined to be **an anti-racist service** and which is not afraid to face difficult questions. It is right that this comes from a body with responsibilities for the safety and wellbeing of all communities.
132. To the communities most affected, it is one of reassurance that this is not an empty statement to be made and then forgotten. It is not said just for today or for political expediency. It was not imposed on the Police Service. It is the organisation's reflective purposeful statement and commitment. There will be no final point in the organisation's own assessment of itself against the Macpherson definition and nor should there be. Racism is as a result of power imbalance. As history has shown, this can re-emerge. It is therefore continuing robust, rigorous commitment which is required. This is an integral part of the core value of being anti -racist.
133. To members of Police Scotland, it is also a message from their Chief Constable of confidence in all those who adhere to the core values daily including that of anti-racism and who are proud to do so – those who embody, individually and collectively, the respect for the human rights of others and fulfil their statutory obligation of protecting communities and keeping them safe. He is aware that police officers and staff do incredible things to keep all communities safe, demonstrating professionalism and these shared values.

He encourages every officer to keep doing so and to show the true meaning of **Policing Together** for the benefit of all communities.

134. A great strength of Police Scotland is that officers and staff are drawn from different backgrounds and experiences. What unites them is a shared and non-negotiable set of values - integrity, fairness, respect and a commitment to upholding human rights. Only by working together will the organisation fulfil its aims. This recognition of the systemic issues which bring the organisation within the definition of institutional racism will undoubtedly have seemed to be a blow for all those dedicated police officers and staff who give up so much of themselves and their personal lives in their vocation to help others. It is not intended to be. This acknowledgment demonstrates the professional confidence of the organisation and is made with awareness and understanding of why it is necessary to make it in order to progress to be anti-racist. It is truly a sign of real progress, effective change and the Chief Constable's belief in those professional hard-working officers and staff, of whom the Chief Constable is proud to serve alongside and to command. Under continued strong leadership, they are the ones who will ensure that Police Scotland is a police service in which the public can have full trust and confidence.

135. Police Scotland will **ensure continued scrutiny** of the effectiveness of the strategies as a crucial part of the perpetual commitment to anti-racism, the **collective effort** to be **permanently** proactive and **accountable** for the prevention of discrimination and the advancement of equality opportunities and fostering of good relations. This is what is required to fulfil the equality duty and the legal and moral duty under the oath of office of every police constable in Scotland. In furtherance of this commitment, Police Scotland will be aided and informed by external independent critical groups

such as the Independent Reference Group and the Professional Reference Group.

136. Police Scotland is observing, closely, the evidence elicited by the Inquiry to inform organisational learning and to review the efficacy of equality, diversity and inclusion training. This will be addressed in further evidence and submissions.

137. The issue of language and stereotyping is a matter to which Police Scotland is paying scrupulous attention. It is only once a statement has been uploaded to the Inquiry website or a witness has given evidence that the organisation can take action without breaching the Inquiry's restriction order. In some cases, this has resulted in delay between the making of the statement and action. However, the public can be reassured that appropriate and proportionate action either has, or will, be taken as soon as permissible. The analysis of the use of language by all witnesses and the issue of racial stereotyping will be the subject of full submissions following the hearing on race. The Chief Constable welcomes the continued exploration of race by the Inquiry and in particular, at that hearing.

5.2 BACKGROUND EVENTS DURING THE NIGHT OF 02/03 MAY 2015

138. The main source of this evidence is Mr Bayoh's friend, Zahid Saeed. Whilst he seemed to have considerable difficulty giving oral evidence on 13 May 2022, he had provided previous statements. The first was provided to police officers on 3 May 2015.⁴¹ In that statement he described the events of the night. Both he and Mr Bayoh attended at Mr Bayoh's sister's house where

⁴¹ PIRC 00032

he was happy and joyful. They had arranged to go to Martyn Dick's house at 0400 to watch a boxing match. Prior to that he was fine but '*getting a bit more drunk*' and not making much sense to him.⁴² They arrived at Martyn Dick's house at 0400hours. Mr Bayoh '*had a mood change*' but '*nothing too drastic*'. However, he then described Mr Bayoh as '*jumping in to conversations*', '*making no sense*' and accusing those present of '*...taking the piss out of him*'. He was getting '*quite confrontational*' and '*...nothing seemed to level him*' and '*nothing anybody said seemed to have any effect on his mood*'. Mr Bayoh then left the house alone at 0530hrs. The movements of Mr Bayoh are unknown.

139. Mr Saeed next met him on the path of Mr Bayoh's house and was told to go away. He entered the house with him. He tried to speak to him but '*quick as a flash he would change moods again*'. He accused Mr Saeed of being CID and fake. This period was 40 minutes. Mr Bayoh then pulled a clear plastic money bag with white coloured paste and purple tables from his sock. He planned to flush them down the toilet but Mr Saeed said he would do that for him. Mr Bayoh then clenched his fists and looked at Mr Saeed quite menacingly, such that he feared for his safety. Mr Saeed then describes an assault by Mr Bayoh who punched Mr Saeed in the back of the head a few times as he tried to run away. Mr Saeed chased after him and threw a wooden washing line pole at him, which missed. Mr Bayoh got on top of Mr Saeed and punched him '*about 10-15 times to his head face and body*'. Mr Saeed 'phoned Mr Dick to collect him as he was frightened. There was a concern that Mr Bayoh would attack Collette and he texted her at 0731 hours to warn her. Mr Saeed returned to his own home changed and flushed the package which '*maybe contained drugs*' down the toilet of his own house.

⁴² This is to be seen in the context of the findings of an absence of alcohol in the blood around the time of Mr Bayoh's death

140. In his Inquiry Statement,⁴³ taken on 22 March 2022, he stated that he had in fact left Mr Bayoh's house *'for an hour and half to see a friend'*. This was about 1.30/2am and he returned after 3am. He was concerned about Mr Bayoh's behaviour at Martin Dick's house as he was *'agitated'* and *'acting a bit out of character'*. He stated that Mr Bayoh *'switched back again to himself'* after accusing Mr Saeed of being CID but later *'switched again'* and was *'physically different, his body language was different ...he had a look in his eye and 'I did not feel safe at this point.'* He said Mr Bayoh kept *'switching back and forwards, it was like and instant, within five seconds.'* This was worse than a previous episode Mr Bayoh had earlier in 2015.

141. In his oral evidence, when asked about the signing of that Statement in terms of the truth of it, he prevaricated and indicated he had signed it in a rush.⁴⁴ His replies were mainly *'I cannot remember'* and the Chair may wish to consider this in contrast with the detail given in that Statement taken only months earlier. This is an example of a situation in which the Chair will need to determine what part(s) of Mr Saeed's written evidence is/ are reliable. The Chair also has the evidence of Martyn Dick and Kirsty McLeod to consider.

142. The fight or assault involving Mr Saeed and Mr Bayoh was witnessed by Naomi Rhodes,⁴⁵ who was living in Arran Crescent in May 2015 and knew Mr. Bayoh, who stayed about three doors down from her. As a result of the fight with or assault on Mr Saeed, he was taken to the Victoria Hospital by DCs McGregor and Telford and examined by Rachel Anderson, an A & E registrar at that time, who found he had mild head injury symptoms.⁴⁶ Dr.

⁴³ SBPI- 00071

⁴⁴ Day4:1.19 at 12 and 13

⁴⁵ Day 4:52 and statement SBPI-00070

⁴⁶ PIRC 00257

Gillian Norrie was also asked to examine Mr Saeed.⁴⁷ ⁴⁸Dr. Norrie recorded what Mr. Saeed had told her about his interaction with Mr. Bayoh and noted his injuries.⁴⁹

143. The Chair will wish to consider all the evidence of Mr Bayoh's condition and behaviour during the night. He may wish to consider this in the context of the evidence of Professor Maurice Lipsedge regarding the sudden nature of the changes in behaviour (who also said that reactions to drugs can get worse with further exposure as discussed). The Chair may wish to consider whether this is relevant when assessing how Mr Bayoh may have appeared to attending officers at the relevant stages when reviewing the actions they took or should have taken.

144. An important matter for the Chair to consider in this Chapter, is that there is an omission in terms of the review to date of the events during the night of 2 March 2015. In the STORM record disclosed by the Inquiry, PS00232 at 10.13.02 on 3 May 2015, there is an entry with reference to a witness who approached SD19, PC Gary Woods, to report that he saw a vehicle come along the rear of the property at Arran Crescent and 2 males with heavy build/bouncer type build enter the back door of Arran Crescent last night. At 5.30am he saw the back door lying ajar. The description of the males does not match that of either Mr Bayoh or Mr Saeed. This evidence is relevant to the events of 2 – 3 May 2015. It is not known what interaction these individuals had with Mr Bayoh and or Mr Saeed or what took place in Mr Bayoh's home during their time there. A statement was obtained by Police Scotland at the material time from the witness, provided to PIRC and disclosed to the Inquiry. Mr

⁴⁷ PIRC 01319

⁴⁸ Day 16:80

⁴⁹ Day 16:85

Saeed makes no reference to this in any Statement he has given. This is notwithstanding that he and Mr Bayoh are likely to have been in Arran Crescent at the time the two individuals entered the property. Albeit Mr Saeed later suggested that he was absent for one and a half hours. Interestingly, when his Inquiry Statement was taken, he was asked by the Inquiry if anyone else was there at Arran Crescent between 10pm and 1.30am. He stated that *'he was there the whole time and no one ever entered the house'*.⁵⁰ This is on the face of it inconsistent with the independent witness report as recorded on the STORM record and calls at the very least for further inquiry.

5.3 MOVEMENTS AND BEHAVIOUR OF SHEKU BAYOH IN THE MORNING OF 3 MAY, REPORTS BY MEMBERS OF THE PUBLIC

5.3.1 Preliminary comments on use of ALI

145. The Inquiry has utilised this technology to a significant extent in the leading of evidence. Caution is urged against placing too much reliance on the audio/visual digital reconstruction⁵¹ ('the reconstruction') and the associated spreadsheet at the decision stage.⁵² There are clear limitations to both and caveats were given by Mr. DeGiovanni from the outset. Importantly, the timeline is a mixture of objective and subjective evidence which the Inquiry will no doubt bear in mind when considering the evidence of witnesses.

⁵⁰ SBPI 00071 paragraph 10

⁵¹ SBPI-00149 and SBPI- 00169

⁵² SBPI-00047

146. It was highlighted that the location of people on the reconstruction can only be considered as indicative and to assist in understanding the general movement and location of people at specific times.⁵³
147. The Automatic Resource Location System ('ARLS') can only assist with showing indicative movement of vehicles from one position to another not an exact position or location. It does not have a level of accuracy that can assist with how long a person or a vehicle was in that position.⁵⁴ Several vehicles on 3 May 2015 did not have ARLS working effectively and some personal radios had no data at the start of the incident. As such, the ARLS data cannot give a complete picture of every officer. It gives the most complete picture it can provide on the evidence available to ALI.⁵⁵
148. The timeline and spreadsheet are not reflective of all the evidence given to the Inquiry in statements, transmissions and transcripts of calls.
149. The reconstruction and associated spreadsheet⁵⁶ are not accurate to the degree which was sought to be established by the questioning. There is about a second lapse in some instances. It is not accurate to a degree of a fraction of a second. In a collapsing timeframe, there is a limit as to how helpful this is to the viewer.
150. If there is an overlap on the reconstruction and spreadsheet where audio and visual overlap, a decision has to be made as to which came first. This is particularly acute when PC Walker and Ex PC Paton attend the scene as the first response officers. The Inquiry have access to the actual calls.

⁵³ SBPI-00187;12 and SBPI-00187 Answer 32 Day 33:99-100

⁵⁴ Day 3:50

⁵⁵ Day 3:52 and Day 33: 94 (13-24)

⁵⁶ SBPI-00047

151. The van driven by PC Walker and Ex PC Paton was incorrectly placed on the original timeline. This was ultimately rectified by PC Walker. However, the position of the van remained incorrect throughout the hearings. The Chair will require to consider whether or not this has affected the evidence of other witnesses.
152. In relation to the Snapchat footage, it is of note that the slowing down, as spoken to by Mr DeGiovanni,⁵⁷ will lead to the impression that actions are more deliberate than if the footage was viewed in real time.
153. The following additional observations are made to highlight areas in the spreadsheet which are incorrect or where additions could usefully be made to assist the Inquiry.
154. Where Con 2 is marked on the PIRC transcript⁵⁸ and the spreadsheet⁵⁹, it is important to note that there is evidence that this was not in fact a Controller speaking. The person speaking was the Communications officer in East Overview ('EOV'), Michelle Hutchison⁶⁰. In her Inquiry Statement, she observes that the entry at the top of page 5 of the PIRC transcript is incorrect. She did in fact say '*From Overview, we are organising an ARV. Standby*'. This also applies to the entry at 07:19:23 on the spreadsheet.⁶¹

⁵⁷ Day 33:6

⁵⁸ PIRC 01399 top of page 5

⁵⁹ SBPI-00047

⁶⁰ SPBI-00202 paragraphs 76 to 78

⁶¹ SBPI-00047 page 2 at 07:19:23

155. The timing of the broadcast regarding the estimated time of arrival for the ambulance is incorrect. It is recorded as being made at 07:32:25, whereas the transmission appears to have been made by the operator at 07:32:37.⁶²

156. The content and timings of calls made by Police Scotland to the Scottish Ambulance Service ('SAS')⁶³ are not heard in the reconstruction or recorded on the spreadsheet. One of the issues for the Inquiry to consider is post restraint care. The Inquiry have been provided with recordings of the calls made by Police Scotland to the SAS. Police Scotland has offered to provide the transcripts of those calls if these should be of assistance. That offer is renewed. It may be of assistance to the Inquiry to have a comprehensive picture of the calls that were made from Police Scotland to the SAS and the timing those calls were made. To assist the Inquiry a table has been prepared under paragraph 157 to show the times when STORM was updated to reflect calls made to the SAS.⁶⁴ It should be noted that STORM is likely to have been updated after the call to SAS was made.

157. Sergeant Steven Bisset has identified himself as SUPV-E03 in his Inquiry statement.⁶⁵ This must be incorrect as Victoria Anthony identifies herself as desk SUPV-E03 due to the fact that her collar number is identified next to the desk name.⁶⁶

⁶³ SBPI-00047

⁶⁴ PS00232 STORM log and clearer copy in PS00048

⁶⁵ SBPI-00193 paragraph 22

⁶⁶ SBPI-00207 paragraph 21

Time of entry in STORM	Name and role/rank of individual who made entry	Desk name	Detail
07:26:18	Victoria Anthony Police Staff supervisor	SUPV-EO3	Ambulance contacted requiring two ambulances for officer and accused ⁶⁷
07:26:37	Sergeant Bissett	SUPV-E02	4345 SAS contacted and 2 ambulances attending ⁶⁸
07:29:09	Victoria Anthony ⁶⁹	SUPV-EO3	SAS updated regarding new location
07:29:52	PC Jeff Whelan	OVIEW-E06 RAID OFFICER ⁷⁰	EOV ambulance made aware of change of new locus, now attending Hayfield Road
07:31:10		OVIEW-E06	EOV ambulance now updated with the suspects current condition, and requested to attend asap

⁶⁷ Statement of Victoria Anthony SBPI 00207 paragraph 23

⁶⁸ SBPI 00207 paragraph 23

⁶⁹ SBPI 00207 paragraph 27

⁷⁰ SBPI-00207 paragraph 30

07:31:26	Victoria Anthony	SUPV- EO3	Ambulance updated that the casualty is no longer breathing and cpr is being carried.
07:32:40	Victoria Anthony ⁷¹	SUPV- EO3	ETA for ambulance 2 minutes
07:40:05	Victoria Anthony ⁷²	SUPV- EO3	ETA for second Ambulance 5 minutes
07:41:29	Victoria Anthony ⁷³	SUPV- EO3	Second Ambulance stood down

158. There is evidence from the witnesses regarding their interaction with Mr Bayoh. The technology and placing of their positions by live adjustment was only as a tool to assist the witnesses. It is still a matter for the Chair to consider the witness evidence. It is respectfully submitted that Mr De Giovanni's position is absolutely correct. It will be for the Chair to review the evidence of witnesses and not the placement by Mr Di Giovanni. It is clear that ALI cannot help with the events during the restraint at all.

5.3.2 Mr. Bayoh's demeanour

159. In addition to the evidence of the responding officers, the Inquiry has the evidence of civilian witnesses which might provide assistance in relation

⁷¹ SBPI 00207 paragraph 33

⁷² SBPI 00207 paragraph 35

⁷³ SBPI 00207 paragraph 36

to how Mr. Bayoh appeared to the objective bystander on the morning of 3 May 2015.

160. Neil Morgan was the only person other than Zahid Saeed, who had face to face interaction with Mr. Bayoh in person before his contact with the responding police officers. He did not feel threatened by Mr. Bayoh. He described him as not being himself and '*...he was gazey...he wasn't in a rage or anything like that...but you could tell if someone's been on something*'.⁷⁴ Pauline Morgan's impression of Mr. Bayoh was that he looked very angry and also frustrated.⁷⁵ David Grey observed that Mr. Bayoh looked '*spaced out on drink or drugs*'⁷⁶; that his eyes were '*very, very wide open*'. His impression as Mr. Bayoh walked towards him was that '*it was more like a march, like he was intent on going somewhere*'⁷⁷ and '*a man marching on a mission; he was going to get somebody*'⁷⁸ Linda Limbert described Mr. Bayoh as approaching her car quickly, '*flailing his hands wildly and acting in a very frightening and scary manner.*'⁷⁹ She felt very frightened.⁸⁰ Alan Pearson observed Mr. Bayoh hitting a taxi with his fist on the roof above the driver's door.⁸¹ However in his original statement⁸² he describes seeing Mr. Bayoh jog across the road towards a silver taxi and kick it or try to kick the side of the taxi with his foot. Although he indicated in evidence that he had not been scared, Mr. Pearson was obviously concerned enough to call the police. He also warned another driver that Mr. Bayoh had a knife in his hand.

⁷⁵ PIRC-00073 page 3 paragraphs 4 and 5 and SBPI-00080 28-29 and paragraphs 31 and 32

⁷⁶ PIRC 00073 and SBPI-00013 paragraph 9

⁷⁷ Day 4: 102 lines 3-10 and SBPI-00013 paragraph 5

⁷⁸ ⁷⁸ SBPI-00013 paragraph 5

⁷⁹ SBPI-00079 paragraphs 10 and 11

⁸⁰ Day 5: 57

⁸¹ Day 5:13 lines 1-11

⁸² PIRC-00066 lines 1-17

161. Harry Kolberg described Mr. Bayoh as walking straight at his car and as the car passed, thumping it and his son, Robson, telling him that he was chasing the car and had a knife in his hand.⁸³ After his first call to the police, he drove back down Hendry Road, turning left onto Hayfield road and observed Mr. Bayoh *'facing off vans, cars and various other vehicles'*⁸⁴ by deliberately standing in front of them.⁸⁵ Joyce Joyce described Mr. Bayoh as walking like he was on a mission and walking like a zombie. She felt really scared and fearful because he was walking towards Hayfield Road where lots of nurses walk after their shifts. She assumed he was on drugs because of his mannerisms and his fixed state.⁸⁶ She developed this in her Inquiry Statement by saying he was *'as high as a kite'* and that his eyes were glazed and staring.⁸⁷ Barbara Oliphant describes Mr. Bayoh as *'looking like he was on a mission, he was really power walking'*.⁸⁸ Geoff Levy's impression was that Mr. Bayoh looked quite menacing and full of bravado.⁸⁹ Andrew O'Connor⁹⁰ describes Mr. Bayoh running towards his car and doing a flying kick towards it and shouting. He describes Mr. Bayoh's stance as aggressive.

162. The Inquiry heard evidence from a consultant psychiatrist, Dr. Lipsedge, who thought the attack by Mr. Bayoh on Mr. Saeed was a very serious attack on his best friend who felt his own life was in danger. He explained that he would have expected Mr. Bayoh's attitude to fluctuate. He referred to Mr. Saeed talking about Mr. Bayoh's behaviour switching and use

⁸³ Day 4: 76-77

⁸⁴ Day 4: 13-21

⁸⁵ The timing on CCTV PIRC 01287 as it is shown alongside dashcam is different. It is 07:04:04 and real time is 07:14:56

⁸⁶ PIRC -00065 page 2 paragraphs 5-8

⁸⁷ SBPI-00069 paragraph 5

⁸⁸ PIRC-00085 page 2 paragraph 1

⁸⁹ PIRC -00198 page 2

⁹⁰ PIRC-00063

of the word '*switched*' and his body language becoming different.⁹¹ He distinguished the reasonable conversation with Mr. Morgan which was very different to the serious fight with his best friend and also Mr. Bayoh's misinterpretation of what going on around him and how he understood other people's intentions in the early hours of the morning.⁹² He talked about fluctuations in Mr. Bayoh's degree of confusion and how that fitted in with what Mr. Saeed said in his statement which, he said, certainly happens in a drug induced state. This contrasts with the calm conversation with Neil Morgan after the fight.⁹³

5.3.3 Descriptions of the knife in calls from the public

163. There is consistent evidence before the Inquiry that members of the public had the impression of Mr. Bayoh being in possession of what has been described as a large kitchen knife ranging between 6 and 12 inches in length.

164. Members of **the Morgan family** saw Mr. Bayoh holding a knife between around 0640am and 0700 on the morning of 3 May. In his Inquiry Statement **Neil Morgan** described the knife as being about *8 inches*.⁹⁴ During the course of his evidence to the Inquiry he described a big kitchen knife of about *6-8 inches* ⁹⁵ His wife, **Pauline Morgan**, did not give evidence. She did not have a clear view of the knife although she said in her Inquiry Statement that '*...it would have been bigger than a penknife because it had a solid, like, handle*'.⁹⁶ **Tegan Morgan**, their daughter,⁹⁷ describes a knife about *ten inches long* and

⁹¹ Day 55: 81 lines 2 to 18

⁹² Day 55: 78-79

⁹³ Day 55: 73-75

⁹⁴ SBPI-00024 paragraph 29

⁹⁵ Day 4: 41 lines 11 to 21 and label of a knife PIRC 00995

⁹⁶ SBPI-00080 paragraph 33

⁹⁷ PIRC-00124 page 2 at lines 18-20 and SBPI-00013 paragraph 4 line 15

looking like the biggest knife you would get in a set of kitchen knives. Her friend, **Amy Hutchison**, saw an angry looking man with a knife hitting the top of a car with the handle of the knife.⁹⁸ **Simon Rowe** saw Mr. Bayoh at around 0700 carrying a big kitchen knife of about '6 or 7 inches'.⁹⁹ At around 07:10 Mr. Bayoh approached **Linda Limbert's** car. She described him as holding a 'large knife' in his right hand¹⁰⁰ and, when she made a 999 call to the police at around 07:16 she described '...a huge, big knife.'¹⁰¹ **David Grey**, saw Mr. Bayoh holding what he described as a knife 'about 8 inches' long.¹⁰² When he gave evidence in person, he described it as perhaps 6 or 7 inches long.¹⁰³ **Alan Pearson** saw Mr. Bayoh holding a large kitchen knife.¹⁰⁴ In his second statement to the PIRC, he described it as 9 inches in length and about 2 inches thick.¹⁰⁵ When he gave evidence, he described it as being like a turkey carving knife and 'bigger than 6/7 inches.'¹⁰⁶ He made a 999 call although he was not given the opportunity to describe the knife. The call handler was the one who suggested that the knife was 9 inches as he was reading from another call that had come in.¹⁰⁷ **Harry Kolberg** also made two 999 calls to the police. In the first, he reports the knife that his son had seen Mr. Bayoh carrying.¹⁰⁸

165. Other witnesses who did not give evidence saw who we now know is Mr Bayoh with the knife. **Joyce Joyce** called the police and reported seeing a man with 'a 9 inch blade' in his hand.¹⁰⁹ She described it as 'a 10 inch knife' in

⁹⁸ PIRC-00131

⁹⁹ Day 5:36 lines 6-8 and lines 19-21 and page 39

¹⁰⁰ SBPI-00079 paragraph 9

¹⁰¹ PIRC -01387, SBPI-00079 paragraph 13; PS00006 and STORM log PS01413 and Day 5: 63 lines 1-6

¹⁰² Day 4: 43 lines 18 to 25

¹⁰³ Day 3: 104 lines 1-5

¹⁰⁴ PIRC 00066 page 2 line 21

¹⁰⁵ PIRC 00067 page 2 paragraph 10-

¹⁰⁶ Day 5:14 lines 12-25

¹⁰⁷ PIRC 01383, Day 5:18-29, PS00004

¹⁰⁸ PIRC 01385, Day 4:80 -82 PS00002 and PS00005

¹⁰⁹ PIRC-01388 pages 2-3 and PS00232

her original statement.¹¹⁰ **Robson Kolberg** described the knife as being about '6-8 inches' long.¹¹¹ **Susan Pearson** described a 'large kitchen knife'¹¹². **Diane Howie** described it 'as 7-8 inches'.¹¹³ **Lisa Bell**¹¹⁴ described the blade as about '7 inches'. She felt frightened and shocked at what she had seen.¹¹⁵ **Barbara Oliphant** describes the knife as being about '12 inches long'¹¹⁶ as does **Geoff Levy** who was travelling in the same van as David Grey. He also described it as being like 'a carving knife'¹¹⁷ and a 'big kitchen knife'.¹¹⁸ **Carol McCormick** also described a 'large kitchen knife' with the blade swinging although she assessed it as being about '6 inches' long.¹¹⁹

166. The descriptions of the knife were generally consistent with the knife which was ultimately recovered from the scene examined and photographed¹²⁰.

167. The Chair may consider that there is no doubt that Mr Bayoh was in possession of a knife prior to the police engagement with him. The reports of the knife in the foregoing paragraphs are remarkably consistent.

¹¹⁰ PIRC -00065

¹¹¹ PIRC-00015 page 2 line 8

¹¹² PIRC-00068 page 2 paragraph 2 and PIRC-00069 page 2 paragraph

¹¹³ PIRC-00111 page 2 paragraph 6

¹¹⁴ PIRC-00102 p 2 paragraph 3

¹¹⁵ PIRC-00102 page 2 paragraph 4

¹¹⁶ PIRC-00085 page 2 paragraph 1

¹¹⁷ PIRC-00198 page 2 line 8

¹¹⁸ SBPI-00222 paragraph 4

¹¹⁹ PIRC-00218 page 2

¹²⁰PS13559 image of knife at scene and PIRC 00995

5.4 COMMAND AND CONTROL - review of need for expert evidence

168. Any understanding of this incident or the operation of policing is required to be informed by a review of the procedures and systems of command and control (abbreviated to 'C3' to refer to Contact, Command and Control Division).
169. There has been much evidence about the operation of C3 from individual witnesses. Michelle Hutchison, the civilian communications officer who was working in East Overview ('EOV') on 3 May, provides useful evidence about the set up in EOV and the officers who worked with her in EOV and their respective roles.¹²¹ The Inquiry also has the evidence of Sergeant Scott Dalglish,¹²² Scott Masterton and Inspector Stewart.
170. The Chair and the Assessors have been invited to visit the Area Control Room ('ACR') at Bilston to assist in consideration of the issues. The invitation to visit was also issued to all Core Participants and is understood to have been of considerable benefit.
171. Police Scotland is a hierarchical service but there are circumstances in which the role of an officer is not rank specific. Qualifications are required for specific roles. Within the hierarchical structure there are certain commands which can only be issued by an officer who holds the specific role qualification requirement. This is particularly true for command and control of incidents and the deployment of specialist resources.

¹²¹ SBPI-00202 paragraphs 33 to 40

¹²² SBPI-00205

172. There is an issue as regards the availability of expert evidence in respect of the operation of the area control room ('ACR') in terms of the deployment of resources.
173. In the course of the hearings two expert witnesses have offered the Inquiry opinions about the operation of the area control room and the decisions taken about deployment of resources in response to the incident, in particular regarding an Armed Response Vehicle or the deployment of the PSU. These are **Joanne Caffrey** and **Martin Graves**.
174. Dealing firstly with **Joanne Caffrey**. It was abundantly clear when this witness gave evidence that her experience as an expert witness is woefully inadequate for the remit she had undertaken to cover. This is not the first time she has strayed out with her expertise.
175. In *Gemmell v The Scottish Ministers*¹²³, a personal injury case in which a prison officer was injured during the restraint of a prisoner, Joanne Caffrey gave evidence as an expert witness for the pursuer. Although the Sheriff found her¹²⁴ to be '*...a thoroughly engaging and impressive witness in her own field...*' he went on to attach very little weight to her evidence. She had a total lack of prison experience, her background and experience being in police custody settings and the Sheriff did not consider them to be comparable. In the circumstances, he found that she did not have the relevant expertise to offer reliable opinion evidence on key issues in the case. Large sections of her report were found to be entirely irrelevant and she relied upon irrelevant

¹²³ [2022] SC GLW 16

¹²⁴ at paragraph 25

factors when forming her opinions.¹²⁵ He also found that parts of her evidence did not bear critical analysis¹²⁶ and so was not accepted by him.

176. In this case in particular, having regard to her ACR expertise, the Chair may wish to consider whether she is qualified to offer a view on this aspect of the case. There is an absence of any relevant experience. From her list of qualifications and training delivery, there is only one reference to control room training which relates to delivering Casualty Bureau Incident Room training to control room staff. A Casualty Bureau is the central police controlled contact and information point for all records and data relating to casualties and fatalities. There is no reference to her having undertaken any form of armed policing training, including TASER officer training. Nor is there reference to her undertaking any firearms command training.

177. In her evidence she clarified that in 2008 (2008 to 2013) she held a newly created role called civil contingencies and emergency planning. In her CV at 3.4.8 she calls this the Constabulary Emergency Planning Unit. She said this was in light of all the new command and control processes that were being introduced¹²⁷ but there was no development of what she meant by this. The team she was a part of was headed by a Chief Inspector. In her CV she describes her role as designing plans and exercises for major incident management and supervising counter terrorism security advisors within the team. She also delivered training to all ranks '*concerning Gold, Silver and Bronze commands for incidents.*' She noted in her CV that this was part of the command and control function for major and critical incidents and that she had been

¹²⁵ At paragraphs 21-23

¹²⁶ At paragraph 100

¹²⁷ Day 28:10 line 9

Casualty Bureau room manager for a school bus crash which was declared a major incident in 2010.

178. Her role within civil contingencies in emergency planning involved her in advising control room inspectors in relation to unusual and major incidents. It is submitted that this is not akin to the role of an Initial Tactical Firearms Commander ('ITFC') as Overview Inspector at Bilston Glen. She recognised that an ITFC had more training for command and control as compared to other inspectors.¹²⁸ Emergency planning, it is suggested, should be differentiated from the normal response officer role and indeed the role of the ITFC.

179. When being questioned about circumstances where it is reasonable for a sergeant in the control room to be absent from their position, there was no understanding by the questioner or Joanne Caffrey, that the control room is different from East Overview where the ITFC is situated.¹²⁹ When answering a question about a declared firearms incident there appeared to be a lack of understanding. This is because she said that if a firearms incident was declared, the silver command would be the ACR inspector.¹³⁰ Her failure to understand the limits of her experience when asked to expand her remit to include ACR is perhaps suggestive of her lack of insight, knowledge and training in terms of the role requirements.

180. During her evidence it became very clear that her operational experience was mostly that of a custody sergeant. Operational experience is essential. In 2015, in Police Scotland, the deployment of an ARV could only be authorised by an ITFC as articulated in paragraph 11 of the first Position

¹²⁸ Day 28:17 (8-21)

¹²⁹ Day 28: 82

¹³⁰ Day 28:93

Statement¹³¹ and paragraphs 20 to 22 of the third Position Statement¹³² submitted on behalf of the Chief Constable. An ITFC had to undergo specialised training and have current operational experience of command of incidents.¹³³

181. The Chief Constable is acutely aware of the significance of the role of command and control in this matter and the specific skills and professional judgement which need to be applied in a collapsing timeframe when considering deployment of resource such as Authorised Firearms Officers ('AFOs'). It would be wholly inappropriate, unprofessional and challengeable if Police Scotland relied on someone with the qualifications of a custody sergeant to inform the operational requirements of this aspect of policing.

182. Martin Graves, properly accepted the limits of his experience. Although he had been a firearms officer he acknowledged, properly, that there were distinctions between Scotland and England in the way firearms training was developed. ¹³⁴He also acknowledged at paragraph 8 of his Inquiry Statement ¹³⁵report, that the Metropolitan Police Service have a different ACR and firearms deployment model from that in Police Scotland. In his oral evidence he said the following:¹³⁶

183. He worked additional shifts as a receiver and dispatcher within the Scotland Yard 999 system. He said that involved taking in what we call a Grade 1 or cat 1 call, communicating with informants, deploying and assigning units, setting up containment and cordons, managing Rendezvous

¹³¹ SBPI-00173 dated 31 March 2022

¹³² SBPI-00185, dated 7 October 2022

¹³³ This remains the position as at the date of this submission.

¹³⁴ Day 26 108-109

¹³⁵ SBPI-00190 paragraph 8 and Day 26 121-122

¹³⁶ Day 26:112-116

Points ('RVP'), if necessary and escalating any calls that needed to be looked at by the supervisors possibly the Chief Inspector or Inspector within the control room.

184. This was over weekends and nightshifts when resources were reduced, he said he would **sometimes** go in and *'be srgt, sort of controller in relation to a number of desks or a number of positions.'* He would supervise and make sure relevant resources were assigned. He acted as call receiver and dispatcher in the sergeant role and would be supervising a bank of dispatchers. They could be deploying to any of 32 Boroughs of London. It was not clear how long he did this for or the amount of shifts/experience or the actual area one particular bank of dispatchers covered.¹³⁷

185. He gave evidence about the Metropolitan Police Service moving to the ACR system but he said he did not actually work in one of those. One individual control room he worked in before they moved to the ACR system covered five stations and in excess of nearly 45 square miles¹³⁸.

186. Martin Graves had not performed the inspector role in a control room set up but made those decisions in a smaller control room for a larger area of London as Supervisor of that Control room. Controllers in Metropolitan Police Service are Sergeants or senior PCs. As part of his role, he was able to assign an ARV to attend a call or accept/reject them trying to attend a call (bearing in mind it is different in England as ARVs are out and about patrolling). He would be able to assign an ARV without requiring specialised authorisation. He would have had authority to deploy based on the risk

¹³⁷ Day 26:113

¹³⁸ Day 26:118

assessment and in Scotland that would be done in accord with NDM model which is used nationally.¹³⁹

187. Whilst Martin Graves did have some experience in deployment of ARVs in a different jurisdiction with different resources, this was not the same as experience in the Bilston Glen ACR system. ARVs were not a patrolling resource. Only trained ITFCs with operational experience could deploy ARVs.

188. The only evidence the Chair has before him at present from an ITFC is that of Inspector Steven Stewart. He was the ITFC on duty at the material time. He has provided considerable assistance to the Inquiry by giving evidence on two occasions as well as detailed statements.¹⁴⁰ The decisions of an ITFC require to be made based on their training, experience and an informed judgement as the events unfold. Inspector Stewart has provided good evidence of the operation of ACR, the role of an ITFC and a rationale for his actions in the dynamic circumstances.

189. However, given that it is Inspector Stewart's response which is under scrutiny by the Inquiry, the Chair will wish to hear evidence from an independent expert. This has not been fulfilled by the evidence of Ms Caffrey, who has no relevant expertise or Mr Graves, whose expertise and experience is not comparable with that needed. The Chief Constable respectfully submits that the Chair would be greatly assisted, and the interests of the Inquiry would be better served, by the instruction of a person with the necessary skills and experience as regards the command and control of such an incident. This would preferably be an independent officer with operational ITFC experience in Police Scotland.

¹³⁹ Day 26:119

¹⁴⁰ PIRC-00395, SBPI-00084, SBPI-00197. Days 5 and 25

190. Pending such an instruction, it is not proposed to make further submissions at the stage regarding the ITFC response to this incident. These will be reserved for a later date. When reviewing this aspect it would be helpful to include the fact that at 07.21.34, East Overview transmitted to Firearms Team FM19 but it was cancelled during the call.¹⁴¹

5.5 RESPONSE IN AREA CONTROL ROOM

191. At this interim stage it is proposed to address only the journey of the calls within the system which operated on the day. It is reiterated that the operation of C3 has undergone substantial change since the 3 May 2015. These changes will be covered in detail in later submissions.

5.5.1 Telephone calls to the Police

192. Five members of the public called the police over a short period of time between around 07:10 and 17:17.

193. Simon Rowe made the first call at around 07:09 49.¹⁴² Harry Kolberg made his first of two 999 calls, which was taken by call handler, Evelyn Bain¹⁴³, at around 07:10.¹⁴⁴ Joyce Joyce called at around the same time (07:10:58).¹⁴⁵ Mr. Kolberg's second call, taken by call handler, Paul Hamilton, was made at

¹⁴¹ PS01897

¹⁴² PIRC-01441 (Transcript of call) PS00001 101 call to C3

¹⁴³ PIRC-00156

¹⁴⁴ PS00002 999 Call (C3) and PIRC-01385 (transcript of call)

¹⁴⁵ PS00414; PIRC 01388 (transcript of call)

around 07:15.¹⁴⁶ Alan Pearson also made a 999 call just after 07:15.¹⁴⁷ Linda Limbert called 999 at 07:16:36.¹⁴⁸ This call was taken by Lorna Brown.

5.5.2 The call handlers

194. The call handler, Adele McMillan, took the first call from Simon Rowe.¹⁴⁹ Mr. Rowe hung up suddenly before she could take his name. She required to speak to her supervisor due to the nature of the call. Her supervisor had to listen to the call several times before they could determine the area the male referred to as Templehall was in Kirkcaldy. This accounts for the later entry under 'Anon' which was made on STORM at 07:20:51, the call having come in at 07:09:49. Ms. McMillan became aware that an incident had already been created on STORM by Evelyn Bain (743).¹⁵⁰ Evelyn Bain had created the first incident on STORM, 743, as a result of the initial call from Harry Kolberg. Her entry on STORM starts 07:14:16 and finishes at 07:16:46 at the end of the call. She graded it as a Grade 2 call and transferred it to command and control to arrange for dispatch. She also tagged the call for overview. She was aware of other calls coming in from members of the public relating to the same incident.¹⁵¹

195. The Inquiry may wish to consider the evidence of Scott Masterton who took the view that the original call graded by Evelyn Bain should have been graded as a priority 1 call.¹⁵² Scott Masterton decided to duplicate the 07.14

¹⁴⁶ PS00005 and PIRC-01386 (transcript of call)

¹⁴⁷ PS00004 and PIRC-01383 (transcript of call)

¹⁴⁸ PS00006, PIRC 01387 (transcript of call) spoken to on Day 5 page 62 [entry made on STORM Log PS01413 at 07:18:35]

¹⁴⁹ PIRC-00157

¹⁵⁰ STORM entry PS01413 07:20:51

¹⁵¹ PIRC 00156 page 2 paragraph 2

¹⁵² Day 25:28 lines 14-24

call and link the two incidents¹⁵³, giving primacy to incident 0745. He explained that when multiple jobs are reported which look as if they are the same incident, rather than trying to look at two or more jobs, one of them is duplicated and after that, everything from that job will be shown in the master job.¹⁵⁴

196. Brian Renton took the call from Alan Pearson. He could see from the system that the incident had already been reported to the police and he added the details to incident 745.¹⁵⁵ At around the same time, Paul Hamilton is noted as taking the second call from Harry Kolberg¹⁵⁶ which he added to incident 743. Lorna Brown took the call from Linda Limbert and added that to incident 743 at 07:18:35.¹⁵⁷ She also took the call from Collette Bell later on that morning.¹⁵⁸

197. A composite table has been created below to show the calls taken from members of the public. The table lists the time of the call, the name of the caller, details of the call (only the words of the caller have been entered in this column) and the timing and detail of the entry made by the call handler on STORM.¹⁵⁹

198. The Chief Constable submits that it could be helpful to the Inquiry to have more detail on how the calls from the members of the public are transferred from the call handler on to STORM and the mechanism and timing of that transfer.

¹⁵³ PS00231 compared to PS00232 Day 25:10-11

¹⁵⁴ Day 25:11

¹⁵⁵ PIRC-00159 page 2 paragraph 1 and 2

¹⁵⁶ PIRC-00158

¹⁵⁷ See STORM log PS01413

¹⁵⁸ PIRC-00154

¹⁵⁹ Other calls will be addressed in later submissions on the basis of further expert evidence

Name of call handler	Time of call receipt	Time of entry on STORM	The actual words spoken by the caller on the recording of the call to control	STORM entry Note:- entries are replicated exactly as they appear on the original system	Name of caller
Adele MacMillan 160	07:09:49	07:20:15 ¹⁶¹ Added to incident 743	<i>...Ah Good morning. I've been just going along Templehall Avenue .and I've just spotted a black man with what looked like a huge blade walking along Templehall Avenue towards the Hub garage. ...No, like a big kitchen knife. ... he was just walking along the road with it.</i> ¹⁶²	Further call from anon male saying black male with a blade poss kitchen knife but not brandishing it about-just-visible-anon male then hung up Anon male gave address of	Simon Rowe

¹⁶⁰ PIRC-00157

¹⁶¹ STORM entry PS01413 07:20:51

¹⁶² PIRC-01441 (Transcript of call) PS00001 101 call to C3

				Templehall avenue ¹⁶³	
Evelyn Bain ¹⁶⁴	07:10	07:14:16 Incident 743 created	<i>Hi There there's about a 6 foot eh black guy eh T- hall area of ...Shell garage... The one in T- hall... ehm Kirkcaldy. It's the junction of Hendry Road and Templehall Avenue...Eh just as I passed eh him he thumped my car and it as looked as if he was actually carrying a knife and he started chasing the car... He's African origin.. Quite big build guy... Quite muscly built. White T shirt am no sure if it was like dark coloured jeans...yes...He came out...looks like he's actually ran out of Hendry Road out of Templehall Avenue. ...no</i>	African looking male was chasing comps car and he thinks he may be carrying a knife. 07:14:48 Comp states that male came out of templehall avenue and ran down Hendry Road. 07:15:27 Described as big with	Harry Kolberg (call 1) ¹⁶⁶

¹⁶³ PS00231

¹⁶⁴ PIRC -00155

¹⁶⁶ PS00002 999 Call (C3) and PIRC-01385 (transcript of call) and STORM PS01413

			<i>not at the moment it looks like he went down the way.</i> ¹⁶⁵	muscles and about 6 ft. 07:15:36 Wearing a white T shirt and dark coloured jeans.	
Andrew Ross ¹⁶⁷ SC_E020	07:10:58	07:15:42 - 07:16:42 Incident 745 becomes master incident Overview tagged	<i>Eh, there's black man, walking along, he's on the Victoria Road, Hayfield road. He's got about a 9 inch knife in his hand. He's walking towards the hospital. He's walking towards the hospital. I just came from the Hub garage to get petrol and I've just passed him. I'm actually just going to the valley to get my papers. He's wearing a White T shirt, dark trousers, he's a black man he's no jacket</i>	Male in possession of large knife, a black male wearing a white t shirt, no jacket, walking along the street with a large knife in right hand about 9 inch blade walking I the direction of the hospital	Joyce Joyce ¹⁶⁹ Grade 1 call

¹⁶⁵ Transcript of call PIRC-01385

¹⁶⁷ PIRC-00155

¹⁶⁹ PS00232 and spoken to by Scott Masterton Day 25:10

			<p><i>but he's carrying a knife. He had it in his right hand. Yes but he's walking quite smart. Towards the hospital way aye¹⁶⁸</i></p>	<p>walking quickly more</p> <p>07:16:42</p> <p>Inf was on her way to shop to get her papers when she saw the male</p>	
Paul Hamilton ¹⁷⁰	07:15:29	07:17:50 ¹⁷¹ Added to 0743 ¹⁷²	<p><i>I just phoned a few seconds ago, Eh there's a white, sorry a black man, white T shirt, black trousers. He's already thumped my car, he's actually on the road between Hendry Road and the hospital in Kirkcaldy, Hayfield Road I think its called. He's jumping out trying to hit other cars. He's stopping vehicles. I dinnae ken what's</i></p>	<p>Further call from the informant stating that the male is jumping in front of other cars and stopping them.</p> <p>I asked about the knife but they didn't</p>	Harry Kolberg (2)

¹⁶⁸ Transcript of call PIRC-01388 and call is PS00414

¹⁷⁰ Statement PIRC- 00158; call PS00005

¹⁷¹ Spoken to by Scott Masterton Day 35:32

¹⁷² PS01413 STORM log

			<i>wrong wi him. He's daen it to other cars now. He's getting a bit of a pain in the arse having to turn around now. He's jumping on cars, jumping in front of them...reverse and turn around...¹⁷³</i>	know if he had one or not.	
Lorna Brown ¹⁷⁴ SC-E024	07:16:36	07:18:35 ¹⁷⁵	<i>Hello there's a man with a knife, a black man on Hayfield Road, in Kirkcaldy, just at the roundabout. Just at where the White Heather pub is. Oh my god, yes. It's called Gallaghers now. He's a black man, he's got a white coloured T shirt on and he's carrying a huge big big knife and he nearly. . yes in Kirkcaldy . Beside Gallaghers yeah. It is a pub yeah. I'm driving</i>	Further call from Linda Limbert advising male is in Hayfield Road, near Gallaghers pub 07:18:43 Male is black with a very large knife 07:18:56	Linda Limbert ¹⁷⁷

¹⁷³ Transcript of call PS00005 is PIRC 01386

¹⁷⁴ PIRC 00154

¹⁷⁵ STORM log PS01413

¹⁷⁷ PS01413 and PIRC 01387

			<p><i>away, like I've just carried out driving ehm I'm at my work. I work in the casualty at the hospital. He's just he's a black guy, that's all I can tell you, cause when I realised what he was trying to stop me and I realised what he had in his hand I just drove. Well he he was at the roundabout. He was walking along Hayfield Road at the roundabout.</i></p> <p>176</p>	Linda can be contacted on...	
Brian Renton ¹⁷⁸ E025	07:15	07:19:30 ¹⁷⁹ Added to 0745	<p><i>'eh I'm not too sure what the address is. ...There's a guy in the middle of the street with a knife in his hand... eh just along from the hospital heading towards Templehall...Victoria</i></p>	Call from Alan Pearson. Also saw male large 6' tall, large knife, wearing white t shirt	Alan Pearson ¹⁸¹

¹⁷⁶ Transcript of call PS00006 is PIRC 01387

¹⁷⁸ PIRC 00159

¹⁷⁹ STORM log PS00232

¹⁸¹ PS00004 PIRC 01383

			<i>Hospital Kirkcaldy heading towards Templehall. ... It's the one that runs past the Industrial Estate. It's a big, coloured guy, quite well built, white t shirt... Yeah... Yeah Eh late thirties. Big build, large build. Eh probably about 6 foot.</i>	walking in direction of hospital, male in middle of road. ¹⁸⁰	
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5.6 DEPLOYMENT OF OFFICERS and RESPONSE BY LOCAL OFFICERS

5.6.1 Resources available

199. The evidence discloses that all units were dispatched. The Chief Constable's position is that this was appropriate. It was expected that response officers would have been dispatched urgently to a Grade 1 call.¹⁸² The first response officers arrived at the locus within about 4 minutes of the controller's deployment message 7:16:22. This was consistent with the immediate response expected or a Grade 1 call and was such that they were very quickly at the locus.¹⁸³

¹⁸⁰ PS00232 STORM log

¹⁸² Day 5: 122:88-12 and 123-124:10

¹⁸³ Day 5: 193:24-194:10

200. It is not disputed that all units, an ARV and a dog unit were requested by Sergeant Maxwell at 7.17.23.¹⁸⁴ The position about the availability of resources in 2015 was as follows:

1. Response officers - immediate
2. ARV – at a location 25-30 minutes distance¹⁸⁵
3. Dog Unit – at a distance of 27 miles from Edinburgh to Kirkcaldy, which would take at least 25 minutes.¹⁸⁶ PC Gary Wood agreed a period of at least 20 minutes probably more¹⁸⁷
4. Public Support Unit- not available as not a standing resource¹⁸⁸

5.6.2 Response Officer role – expectations 2015

201. The role of a Response Officer is to work as part of a Response Policing Team providing operational service delivery to members of the public, communities and partners. They require to maximise public safety through attendance at operational incidents taking appropriate actions to support victims of crime and members of the public and bring offenders to justice. Response officers are unarmed. They are deployed to deal with incidents. Whilst all resources would be considered for Grade 1 and Grade 2 calls, it did in the main, default to Response Officers to attend.¹⁸⁹ Once deployed they have no option but to attend the incident¹⁹⁰. On arrival at an incident police officers have considerable discretion as to how to deal with what they find. This is essential as training cannot cover every possible scenario. This is the nature of policing. The behaviour of individuals is unpredictable. Police

¹⁸⁴ SBPI 00047

¹⁸⁵ Inspector Stewart, Day 5:137

¹⁸⁶ Inspector Stewart, Day 5:190-191

¹⁸⁷ PC Gary Wood Day 26: 83-86 at 86

¹⁸⁸ SBPI-00185 Position Statement on behalf of Chief Constable at paragraph 29

¹⁸⁹ PS 11007 paragraph 4.8

¹⁹⁰ PS11007 paragraph 4.3 and 4.6 ('Task not Ask')

officers are expected to determine for themselves what requires to be done. Training was not prescriptive in 2015, nor is it now. Officers are human beings who need to respond dynamically and sometimes resort to techniques/ tactics not taught on any course.¹⁹¹ If there is a perceived threat to the public then response officers are dispatched and expected to exercise their judgement as to how best to deal with the situation.

202. The Inquiry may wish to consider the evidence of Martin Graves who observed that the options open to officers at the time were numerous, everything from stay in their vehicle, get out and engage, engage at a distance or engage at close up. It was difficult to say which was the correct option but the correct option was the one that they chose at the time based on the information they had available to them.¹⁹²

5.6.3 The threat posed by knife

203. The actions of the officers should be seen in the context of the fact that they were attending a scene which involved reports of a knife. Knife injuries can be fatal or can cause life changing injuries.

204. On an objective assessment of the available evidence, the reports of the knife as detailed in the paragraphs above were such as to indicate that action was necessary and there was a risk to the public. The position of the Chief Constable is in line with that of the expert evidence of Martin Graves ¹⁹³ – *'the fact that the knife was not seen is somewhat irrelevant.'*

¹⁹¹ SBPI-00153 dated 21 March 2022 paragraphs 70-72

¹⁹² SBPI-00190 paragraph 55

¹⁹³ COPFS-00024 13th April 2018 page 27 at b)

205. Based on the information and intelligence available to them which informed the officers' perception that he could be in possession of knife, securing the subject prior to search was prudent and appropriate. The officers' perception, tested objectively against the available evidence appears to be reasonably based. The Chief Constable is clear that it is not safe to assume that someone reported to be in possession of a knife is not armed simply because at the time of first engagement it cannot be seen. That could only be confirmed on search in controlled circumstances.

206. It is therefore important when reviewing the evidence of the assessment of the risk to members of the public – meaning everyone at the locus including Mr Bayoh - as well as the risk to the officers, to bear in mind the fact that Mr Bayoh was not seen to have a knife does not change the threat level. The fact that he did not have a knife is one established after the event. It later transpired that a knife was found which had been dropped close to the scene of his first engagement with police officers.

207. The Inquiry may wish to consider the significance of the threat caused by a knife and the evidence of Dr. Crawford who, during the course of the discussion regarding injuries, said the following regarding stabbing:

*'Stabbing is a lethal -- potentially lethal mechanism of injury and it's highly dangerous and ... minor differences in how a stabbing occurs can make all the difference between a fatal injury and a non-fatal injury.'*¹⁹⁴

208. Mr. Anderson, when describing the protection provided by the protective clothing, described as the 'stab vest' stated '*...it was designed to*

¹⁹⁴ Day 16:166

*prevent someone getting penetrating trauma, particularly in Scotland from a knife...*¹⁹⁵

5.6.4 Evidence of Joanne Caffrey on officer responses -absence of necessary operational experience and expertise

209. Her position as an expert witness in command and control is dealt with earlier in the submissions. As she also offered views about the options for response officers it is necessary to consider if she is qualified to do so and, if so, to what extent and what weight should be attached to her evidence.

210. Although she was a police officer with over 23 years' experience in Cumbria Constabulary, it is necessary to consider that in more detail in terms of the issues in this case.

211. When asked, quite properly, to provide examples of her operational policing experience which would qualify her to give evidence as regards the deployment of officers in this situation, she embarked on lengthy disquisitions of events in which she has been involved. It is submitted that none were in point –

(1) The circumstances of her attending a knife assault leading to arterial bleed. This was given to support her view that response officers should use a spontaneous rendezvous point. However, this whole incident took place within premises and was not relevant. On questioning by the Dean it seems that her delay in coming up with this

¹⁹⁵ Day 16:126

plan in fact led to matters being more serious. She could have been there before the stabbing.¹⁹⁶

(2) There was then a discursive description of her interaction with a person having a mental health crisis in police custody – this person was contained in a cell – again not relevant – she was managing matters through a hatch in the cell door. This included a discussion of her understanding of transactional analysis.¹⁹⁷

(3) The bail suspect - she had batoned him four times with a PR 24 baton – despite her saying she knew his behaviour was out of character and he had ‘*superhuman*’ strength.¹⁹⁸ She did not let him run away and try a containment plan despite the fact she had called for back-up. She did not call for an ambulance until she had used her baton which had caused injury to him. He was examined because the level of force used by her against him caused bruising across his chest, arms and legs from the baton strikes.¹⁹⁹

212. Her demeanour when giving evidence was unprofessional. She laughed inappropriately and referred to a serious incident as thinking it was possibly a simulated ‘*promotion opportunity.*’ An informed observer would lead to the conclusion that she was a singularly unimpressive expert witness.

213. She candidly accepted she did not know about all of the relevant training of Scottish police officers.²⁰⁰ When asked about her CV, which indicated that she specialised in safer handling of detained persons and safer custody and the use of force, Ms Caffrey referred to research from the

¹⁹⁶ Day 28: 20-32 and 28:51

¹⁹⁷ Day 28:41-49

¹⁹⁸ Day 29: 97 - 100

¹⁹⁹ Day 29: 99:7-100:4

²⁰⁰ Day 28:95:9-95:15

Independent Police Complaints Commission for England and the Safer Detention and Handling of Persons in Police Custody 2006 paper, which she accepted was written for England and Wales, not Scotland. She also accepted that her experience at the time was just in England.²⁰¹

214. The Chief Constable who is expert in such matters considered her evidence on some issues to be inconsistent and unrealistic. For example, she appeared to suggest deployment of a Police Support Unit ('PSU') as an alternative back-up or specialist resource as a control measure if the dog unit or ARV was unavailable. This is in spite of the fact that in Police Scotland the PSU is not a standing unit²⁰² and would not have happened to be '*in the policing area*'.

215. She suggested a spontaneous rendezvous point but this seemed to be because of the fact that in Cumbria, unlike Police Scotland, dispatch was not always double crewed. This is an example of where a different consideration should apply to Scottish policing.²⁰³ This also seemed to inform her position about delay and waiting for the rendezvous point.²⁰⁴

216. The idea that Police Scotland officers would only park up and observe *in the circumstances applicable* here would not be expected of them by the Chief Constable and would not engender public confidence in the police. There is a duty to protect the public which means that in reality officers do put themselves at risk. See Inspector Young's evidence.²⁰⁵

²⁰¹ Day 28: 36:10-39:4

²⁰² See SBPI-00185 Third Position Statement submitted on behalf of the Chief Constable and dated 7 October 2022 paragraphs 27 to 38

²⁰³ Day 28, 33

²⁰⁴ Day 28, 34:11-34:19

²⁰⁵ Day 23:115

Q. Are officers encouraged through this training not to put themselves and their own lives at risk?

A. **There will always be occasions when a police officer has to put the safety of others before their own safety and there will always be occasions when police officers have to intervene physically and it will put them at great risk. It is up to their own perception of the incident and their own perception of their own skills, knowledge, etc, if they feel that they can deal with that incident. You will get some officers who feel they can deal with an incident, you will get some officers who feel they couldn't, but I don't know, there's no specific training that says 'You will never ever put your own safety at risk'.**

217. Ms Caffrey offered views about Police Scotland SOPs but the Chair may have also had the overall impression of her Expert Witness Report²⁰⁶ being such that she has cut and pasted information obtained from Police Scotland reference manuals as well as various references and manuals that are out with Police Scotland in order to demonstrate what she considers best practice within the relevant area examined. A significant portion of these are taken from custody²⁰⁷ and health environments. These are wholly different circumstances in which there is already containment of the subject. They are not meant to apply to dynamic confrontation when the subject is in the open. In her report she fails to properly consider training proficiency and the ability

²⁰⁶ SBPI -000181

²⁰⁷ 'custody' commences from the time of arrest, however, where Ms Caffrey uses these references there is a general failure to focus sufficiently on the initial pre-arrest and arrest phase and instead focus on restraint within a controlled environment.

of an officer to execute policy and physical skills outlined within reference manuals when undergoing significant physiological stress caused by attendance and involvement in a high stress, violent incident on officer cognitive and physical abilities.

218. A good example of this is that she failed to identify that the custody Standard Operating Procedure was directed at custody centres and those officers who operate in those centres. Whilst it is true that there has to be a recognition that persons taken into police custody are technically in police custody whilst being taken to the centre, this was a wilful stretching of the custody SOP principles to place it within a response officer restraint situation in an open area. This approach was a common feature of her evidence.

219. Whilst it is appropriate for an expert witness to review relevant literature in order to inform their evidence, that of itself, does not provide the witness with the necessary operational experience to qualify them to offer expert advice.

220. These views are offered by the Chief Constable on the basis that it would not be responsible to allow this witness evidence to proceed unchallenged given his own expert knowledge on policing as a specialist matter. They are not offered with any agenda in terms of whether her evidence was helpful to any particular or not. He is concerned that it is simply not helpful to the Chair. In this regard he does not intend to draw attention to instances where her evidence is consistent or inconsistent with the views expressed by others.

221. It submitted that the Chair would be misinforming himself if he were to rely on her 'expertise'. Her evidence should be given no weight. Those

properly informed about policing matters would not respect her views. This is a specialist matter – she cannot assist the Inquiry as she is clearly not an expert in the relevant disciplines. The Chief Constable is a specialist. He would be failing to apply his own skill and knowledge and fulfil his own obligations if he allowed policing in Scotland be informed by such a witness standing the woeful inadequacy of her qualifications, experience and evidence.

222. This contrasts starkly with Martin Graves who was a very experienced police officer and was qualified to give evidence on the response officer deployment and tactical options on arrival. He approached matters in an informed, analytical manner.

5.6.5 Scottish Ambulance Service – implications for resources

223. From an organisational stand point the Chief Constable is concerned that some of the aspects of Ms Caffrey's evidence would have implications for resourcing not only resourcing of Police Scotland, but also of the Scottish Ambulance Service.

224. The ambulance service will triage calls. The Chief Constable is concerned that if police officers were to call an ambulance every time an intoxicated person (as opposed to a person suffering from properly identified Acute Behavioural Disorder (' ABD')) were to be arrested or detained, the situation could lead to an unmanageable strain on the emergency services and could become quickly unworkable. Further, on occasion, ambulance personnel will not interact with an individual until that person is controlled and restrained by the police.

225. Dr Lipsedge, who was speaking about the clinical setting, offered the view that once you have decided that restraint is needed, then you need an

ambulance straight away because the process, which is usually associated with a struggle against restraint, causes a person's physiological system to go into an abnormal state – the response he says is '*risky and perilous*'. His recommendation is that, as soon as decision is taken that restraint is necessary, an ambulance should be called straight away.²⁰⁸

226. A significant issue arises as to whether or not police officers should attend medical premises to assist with mental health patients.

227. Police Scotland has a collaborative relationship with the Scottish Ambulance Service. They are each organisations which require to deploy emergency service responses. They work together for the benefit of the communities of Scotland.

228. It is respectfully submitted that the Inquiry should seek evidence from the Scottish Ambulance Service on these issues.

5.6.6 Availability of specialist resources

229. The availability of Police Scotland resources such as ARVs and Dog units is an operational organisational matter. Responsibility for this ultimately sits exclusively, with the Chief Constable. It is something which is set out, and regularly reviewed, within the Service's Strategic Threat and Risk Assessment ('STRA'). The STRA is a dynamic document which is updated to reflect the demands – known and anticipated – that the Service will face. Views and thoughts offered by Ms Caffrey are not regarded as sufficiently well-informed to be taken into account in any review of the STRA.

²⁰⁸ Day 55: 91 (5-21)

5.7 INITIAL ENGAGEMENT OF OFFICERS WITH SHEKU BAYOH: PCS WALKER AND PATON

230. It will be a matter for the Chair to assess the facts in terms of what these officers were faced with when they arrived, the actual sequence of events and the reasonableness of their response.

5.7.1 Context

231. However, there are certain matters which it is important to bear in mind when reviewing their actions. In terms of context, the following factors are important:

1. The place in which they were operating.

As Mr Graves explains in his report²⁰⁹, the environment in which officers require to operate is important. There is a significant difference between open areas and a contained space. The same perception of risk will not apply. The environment here was an open area and, significantly in a residential area.

2. The fact that they were dealing with a subject armed with a potentially lethal weapon.

In this case this was an edged weapon, which was a large knife described as described in the calls listed above. These descriptions were broadly accurate when the knife was examined after the events.

3. A police officer's duty to protect the public.

Officers have a positive duty to respond and to keep the public safe.

²⁰⁹ COPFS- 00024 page 22

232. It is well known that in high adrenaline situations the participants are subject to autonomic responses which result in focussed attention, attentional deafness and misremembering. Martin Graves dealt with this in his report.²¹⁰

- a. "As the officers involved in this incident heart rates increased they would begin to act in a much more instinctive rather than cognitive way...their heart rates probably increased into the 120bpm plus range. Research has shown that an officers [sic] response, even in a training environment can be greatly compromised at this level.
- b. officers can lose ability to function during such incidents due to this response. They may appear to have 'lost it' as if their brain shuts down and actions become reactive and more instinctive.
- c. the application of tactics during training is very different to their use during operational deployment. The stresses on an officer are much greater in the operational environment, the risks are real and the behaviour of individuals can be more violent and unpredictable. Under these conditions an officer's ability to perform complex tasks or produce cognitive thought processes diminishes with increased heart rate. This can include recognising visual [q]cues, processing time for that they are and reacting to them.
- d. such traumatic incidents can affect officers in different ways. This can depend on a number of factors such as their experience in similar situations, their current state of mind, fitness levels, perceptions as to level of danger faced during the event. Even a very experienced officer can exhibit these symptoms even where others may believe the incident to be 'routine'.

²¹⁰ COPFS- 00024 at page 22 a-e.

233. He confirms the effects of stress on officers involved in such incidents as being the narrowing of focus, the fixation on one particular incident or situation.²¹¹ There is an increase in heart rate and their level of threat perception increases.

234. He provided evidence that the speed at which incident develops impacts any human beings ability to process rationally the information that is coming in.²¹² The individual becomes more responsive and reactive. The actions of the officers should also therefore be viewed in the collapsing time frame.

235. Inspector Young also covered this in his Inquiry statement,²¹³ as follows:

'In my experience, I find that in a crisis situation, when the adrenaline's pumping an officer's gross motor skills start to diminish, officers often go back to whatever they know. So, as long as it's within that legal framework, as long as that restraint technique was proportionate to the threat posed, the level of force used was the minimum amount necessary, et cetera, then in my view there's nothing to suggest that an officer has to stick to those prescribed techniques that are in the manual. We have to be cognisant of the fact that in that conflict situation, in a high pressure situation, it may be the case that their training is just insufficient for it to become instinctive and second nature and they may resort back to something else. There's nothing to say that they can't use something that's outwith that programme as long as it's within that legal framework.'

²¹¹ Day 27:58

²¹² Day 26:159

²¹³ SBPI-00153 paragraph 71

236. It will be matter for the Chair to assess the importance or conclusion to be reached regarding any discrepancies or contradictions as between the accounts of events given. An important factor in doing so would be to have regard to the effects that traumatic incidents can have on the provision of accounts. It will be within judicial knowledge that when a person's attention is focussed they may miss other events or messages which otherwise one might have expected them to have seen or heard. In the particular policing context, there is expert evidence from Mr Graves that it is not uncommon to find discrepancies between initial accounts and those recalled later in the investigation process. He notes that this is well documented in post incident management procedures especially when an officer is then shown CCTV footage. Discrepancies in the accounts of officers concerned are not uncommon and he suggests they are a product of the effects they suffered during the incident.^{214 215}

237. It is also within judicial knowledge that, in general, discrepancies are not necessarily an adverse reflection on credibility.

5.7.2 Use of Airwaves and the spreadsheet

238. Each witness was taken through the Airwaves in forensic detail. Caution requires to be exercised when trying to pinpoint exactly what an officer may or may not have heard en route to a call. The details of the Airwaves must be read in context. The Airwaves would have been heard by officers as they quickly made their way as safely as possible, to a knife incident which had been called in by various members of the public.

²¹⁴ See page 22e of his report

²¹⁵ This is supported by the evidence that was heard during the PIM hearing regarding the process for PIP in respect of the obtaining of officers' accounts after period of a minimum of 48 hours.

239. It is submitted that the logical, chronological manner in which matters were addressed by Martin Graves is the correct one. The Chair will wish to consider the actions of each officer by analysing them in the context of their individual experience, perception and the circumstances they each were faced with at the relevant points.

5.7.3 Preliminary overview

240. In accordance with his obligation to engage in a fair and impartial analysis of the evidence and act with absolute candour, it is only right that, if the officers acted in accordance with his expectations of them, then the Chief Constable requires to acknowledge that in so far as appropriate. If there were inadequacies in their training as at 2015 then that is the responsibility of the organisation.

241. The Chief Constable's preliminary view is that, if officers decided to exercise their judgment and seek to contain and control by seeking compliance, this would not appear to be contrary to their training as at that date.

242. See, for example, the **OST Theory PowerPoint (Agnew)**²¹⁶ slide 8 titled 'Tactical Communications for Gaining Compliance', which indicates that de-escalation comes *once* control or compliance has been obtained²¹⁷:

<u>Communicate</u> –	Speak calmly and clearly
<u>Explain</u> –	Explain what you are doing
<u>Ask</u> –	Why are they not complying?

²¹⁶ PS17208

²¹⁷ See also PS10933 Use of Force SOP section 4 which deals with the Confrontational Continuum and Module 1 sections 4, 8 and 9 of the OST Manual PS10938.

Inform – That you may need to use force
De-escalate – **When you gain control or compliance”** [Emphasis added]

243. Inspector James Young has explained that, on or before May 2015, the OST programme focused on gaining control and compliance, with the content of the training being tactical communications, control skills, the confrontational or use of force continuum, and the conflict resolution model. Subsequently, following his OST Training Review and Evaluation Report in April 2015, this training was replaced with the tactical options model and the National Decision Model (‘NDM’), which is now the basis of all police decision-making including the use of force²¹⁸. Although the NDM was in the 2013 OST Manual, he did not remember a specific input on it in OST training²¹⁹:

‘66. My opinion of OST training back in 2014/2015 was it focused heavily on gaining control and gaining compliance. I don’t know the circumstances of this incident at all because I’ve never been sighted on it. However, it wouldn’t surprise me, based on the training ethos back then, if officers moved forward to try and establish control and compliance, because that was very much, in my experience, what the training ethos was then. Prior to 2016, there was no reference in the OST manual to contain and negotiate. In 2016, I removed the confrontational continuum and replaced it with a tactical options model. One of the tactical options provided was to contain and negotiate. A description of this tactic was provided in the new manual. This training was

²¹⁸ SBPI-00153 dated 21 March 2022, paragraphs 61 to 67

²¹⁹ SBPI-00153, paragraph 62. This was in contrast to control room staff, especially the initial tactical firearms commander, who was firearms command trained, and for whom the NDM was central to everything they did. Inspector Young brought the NDM into OST in 2016 to assist officers with their decision-making.

provided to more specialist departments, public order, firearms, et cetera. As far as conventional officers were concerned, training was not provided in relation to containing and negotiate and to try and de-escalate the situation as we would expect officers to do now. So it wouldn't surprise me if officers back then, faced with an individual, would try and gain compliance and control from them. So they would end up closing that reaction gap, maybe trying put hands on, maybe deploying PAVA or CS Spray, or go in with baton strikes, et cetera...

67. Now we'd expect officers to contain that situation, contain rather than restrain. But in my view it was still an appropriate tactical option back then to create that distance, maintain that distance depending on that threat and risk assessment. It comes down to individual officer perception, what their perception of the threat and risk posed by the subject was back then. ...' [Emphasis added]

244. There is no doubt that the officers were responding to calls regarding a person with a knife. In the Chief Constable's assessment there was a risk to the public and there had in fact been an approach to members of the public causing alarm as referred to in previous paragraphs. If a member of the public came across an individual reported to be in possession of a knife, they could suffer serious or fatal injuries. The public do not have protective clothing. In a residential area it would be reasonable to expect that members of the public would be around and even specifically come out to see what was happening.²²⁰

245. The expectations by the Chief Constable of response officers in 2015 were such that he would expect them to respond and not to wait for over 20-

²²⁰ For example, Kevin Nelson came out of his house albeit at the time of police officers being at the scene.

25 minutes for additional resources, always provided that they should only engage if they felt it acceptable on their own assessment. Whilst consideration can be given to choosing a tactical option of taking safe observations, there is an expectation that where a specific threat was present that required decisive action, police officers would make a dynamic risk assessment and deploy in accordance with their training. They would make use of PPE available to maximise the safety of the public and minimise the risk to themselves and the subject.

246. The application of the National Decision Making Model by Inspector Stewart will be addressed when the evidence of command and control from an independent expert is obtained.²²¹

5.8 INVOLVEMENT OF PC SHORT AND TOMLINSON

247. In examining the actions of PC Short and PC Tomlinson, the Chair will no doubt review the situation which they faced on their arrival. This is different from that faced by PC Walker and PC Paton. The Chair will also wish to consider the facts of their initial tactics and whether they were mirroring Sheku Bayoh's. Again, their perceptions of risk and danger are important factors having regard to their own ability, skills and experience.

248. There seems to be no doubt that Ex PC Short was the subject of an assault. The Chair will require to consider whether this necessitated action and if so, what action was justified. PC Tomlinson has accepted that he used his baton. The Chair will no doubt consider whether there has been a consistent position about this.

²²¹ Day 5: 144 and 157

249. The position about the stamp has been a matter of much evidence. There has been a formidable testing of it²²², and a lot of expert evidence reviewed, the aim of which appeared, at times, to be to establish that it did not happen. The Chair will no doubt weigh this evidence carefully.

250. It will be a matter for other representatives to address the medical and scientific evidence regarding the stamp and how that assists with the determination of whether or not that took place. However, during the course of Dr. Anderson's evidence, Junior Counsel to the Inquiry advised the witness that whether Mr. Bayoh stamped on Nicole Short remained contentious and that the Chair would require to determine whether she was stamped on at all and if so, where, how many times and with what degree of force.²²³ The eyewitness, Kevin Nelson, was referred to in this context and his evidence put to the witness as evidence that the stamp could not have occurred²²⁴:

'Kevin Nelson said in his evidence that the stamp did not happen and that before he left his window to go outside Mr Bayoh had moved away from Nicole Short and had been tackled by a police officer in what he described as a bear hug'

5.8.1 Evidence of Kevin Nelson

251. For this reason the Chief Constable considers that there is a requirement for him to address the witness evidence of Kevin Nelson purely as a question of fairness, particularly as it has been used to inform the views of a medical witness. There are significant issues with Mr Nelson's evidence.

²²² In particular the evidence of Dr Crawford Day 16:121 and Day 17: 1-24 and Dr Anderson Day 16:93-140

²²³ Day 16:162

²²⁴ Day 16:164-22

It is a matter of concern that his evidence has not been consistent on such a matter.

252. Mr Nelson's account generally was rather confused, even in his earliest PIRC²²⁵ in which he said he could not remember the exact order of things as they happened, as it all seemed to happen at the same time.

253. Mr Nelson first spoke to PIRC two days after the events.²²⁶ In a detailed statement he was clear that after the assault on Ex PC Nicole Short which he saw from the window within his home, he decided to go into the front garden. It may have taken 10-20 seconds to do this. By the time he got there, Mr Bayoh was face down on the pavement and there appeared to be 5 or 6 officers trying to restrain him. On 6 October 2016 he gave a statement to investigators for the Crown²²⁷. Again, he stated that after the assault on Ex PC Nicole Short '*at this point*' he left his living room window to go outside. He said it would have taken him about 10 seconds to get from the living room window, '*unlock the door*' and get outside. Once outside he saw two officers on the ground struggling to restrain Mr Bayoh. By the time of his Inquiry Statement, taken in December 2021,²²⁸ his position has changed considerably. He now stated that after the assault on Ex PC Nicole Short he saw Mr Bayoh moving away and a police officer try to take hold of Mr Bayoh before he left his window viewpoint.²²⁹ His estimate of the time was now 15 seconds and there was no mention of unlocking the door. In his evidence to the Inquiry,²³⁰ he said it took him 15 seconds with no mention of unlocking the door. He makes reference to this being tested when his Statement was taken. That exercise has not been

²²⁵ PIRC 00019 at page 2

²²⁶ PIRC 00019

²²⁷ COPFS- 00055

²²⁸ SBPI-00014

²²⁹ SBPI-00014 paragraph 6

²³⁰ Day12: 41

produced by the Inquiry. The Chair will consider whether or not it is notable that Mr Nelson did not appear to be able to be clear as between the date of that reconstruction and giving evidence. He offered a time period of 15 or 12 – 15 seconds as he could not remember what time it had taken in the reconstruction²³¹. It is not clear whether the reconstruction included unlocking the door.

254. Mr Nelson was asked in para 20 of his Inquiry Statement ²³² about the fact that he did not mention in his earlier PIRC or COPFS statements that he saw Mr Bayoh move or run away from Ex PC Short. He said in that Statement that *'...it was a moving scene I was watching. The officers were moving away, Sheku was moving towards them, it seems to me he was trying to get past them and she [sic] swung at the female officer as he was going past. So they were moving already, if that makes sense. It's not as if he stopped to swing at her and then ran away. He was running and swinging at the same time, moving across the road. I don't remember ever being asked by PIRC or the Crown about Sheku stamping on anyone'*.

255. Mr Nelson told the Chair that *'it was all happening so quick'* and Mr Bayoh *'was just swinging his arms and then by the time he went down and away, it was just like a blink of an eye'*.²³³ This is important because it might be seen to undermine his later assertion in evidence that it was impossible for the stamp to have happened when he was on the way from the window to the garden.

256. As to PIRC or the Crown not asking Mr Nelson about the stamp, Senior Counsel to the Inquiry explained that *'In fairness to PIRC, the officers who spoke to the stamping'* did not give their statements to PIRC until 4 June 2015 and Mr Nelson gave his statement on 5 May 2015. The Chair may wish to explore this

²³¹ Day 12: 41

²³² SBPI -00014

²³³ Day 12:96-97

further in the hearings involving PIRC and Crown regarding post incident management next year. This is because, as discussed later in these submissions, Sergeant Maxwell did mention the stamp on the Airwaves and these transmissions were recovered .

257. The Chair's question on this issue was astute,²³⁴ as can be seen from the following exchange:

"Just before you read on, I wonder if I could ask a question to clarify the position here. You gave evidence earlier on that before you left the window to go into the garden, you saw the male officer tackling or giving a bear hug to Mr Bayoh.

A.Yeah.

LORD BRACADALE: And then you said you went into the garden. Now, looking at this page of your PIRC statement on 5 May, you say that you saw him lunging at the female police officer and striking her, and then you say: "At this point I decided to go into the front garden to have a closer, look." Now you didn't, in your PIRC statement, describe the intervention of the male police officer at that point, and I'm just wondering why that was.

A. Going back over seven years, I - I couldn't say, but that's how I remember it as I'm sitting here just now.

LORD BRACADALE: I'm just a little puzzled why you weren't able to describe that to the PIRC inspectors on the two days'

A. Yeah, going on -- going on all that, yeah, I can see why you would think that, but my -- my memory of it is that that is what -- what happened, what I've described today."

²³⁴ Day 12:99-100

258. The Chair has extensive experience of hearing evidence in various court settings and will be able to determine whether or not this is a classic situation of a person whose 'memory' has developed and become contaminated over time. The witness who has become convinced of the truth of the ultimate narrative is not deliberately trying to mislead but their evidence is simply unreliable. The Chair may wish to consider this evidence in light of the *de recenti* statement principles, the fact that Mr Nelson was so clear he left the window immediately after the punch to Ex PC Nicole Short's head from such an early stage. The stamp is said to be immediately after the punch. The Chair will need to consider whether this may explain why in either 10 or 15 seconds it was not seen by Mr Nelson because he was away from the window immediately after the punch.

259. The Chair may also consider this in light of the evidence that Mr Nelson did not at any time²³⁵ see the baton strikes spoken to by PC Tomlinson. There has been no suggestion by anyone that PC Tomlinson did not administer these strikes, which on the evidence available about them, would have taken place immediately after the assault on PC Short. The Chair may wish to consider the original position of Mr Nelson in terms of when he left the window and whether or not that appears to be consistent with him missing the stamp and the baton strikes.

260. Attention is drawn to the transmission, '*officer injured*' timed as 07:21:03. The timeline shows figures falling to the ground at about 07:21:08. Kevin Nelson appears at his gate at 07:21:21, around 18 seconds after the broadcast and 13 seconds after 'falling to the ground'.

²³⁵ see day 12:63

261. The Chief Constable, as indicated in the Introduction, cannot ask the Chair to make any particular findings but is compelled to draw attention to this matter for consideration on such an important issue. The Chair may consider that the position of Mr Nelson appears to have varied and developed over time – even his timing from 10 to 15 seconds. The Chair may wish to consider whether or not his evidence has been influenced by facts that had been provided to him by others.

262. Mr Nelson only became aware that people (in the media or in the local area) were suggesting that Mr Bayoh had stamped on Ex PC Short a while afterwards. (He was also getting told stories that Mr Bayoh had a large knife or machete but he did not see a knife that morning). However, he could not be 100% sure if he had read it somewhere or online. He also saw another documentary, Disclosure perhaps, that referred to the stamp.²³⁶

263. The Chair will be in a position to consider whether or not the witness was providing evidence on the basis of his own assessment of what could or could not have happened during what appears to be a flexible time frame.

264. The Chair may wish to consider the reliability of Mr Nelson's evidence in light of the fact that he appears to be convinced that because he did not see something happen, that means it could not be true.

5.8.2 General Observations

265. In considering the overall position, a reasonable question may be, of what interest is it to Ex PC Short to be invested in perpetrating that she had been stamped on, if that was not the case? She is no longer a police officer. She

²³⁶ Day 12, page 90

was not involved in any aspect of the restraint. The Chair will wish to consider whether or not the stamp is material depending on the facts he finds established in relation to action which brought her to the ground.

266. For PC Tomlinson a similar question may be asked. He accepted that he had batoned Mr Bayoh to the head. The Chair will no doubt consider whether the chasing after PC Short, striking her to the head and bringing her to the ground was sufficient justification for that use of force. This would put the issue of whether or not the stamp occurred in a different context.

267. A relevant factor the Chair may wish to consider is the fact that the stomp / stamp was mentioned on the Airwaves by Sergeant Maxwell before the return to Kirkcaldy Police Station and apparently when Ex PC Short was not present. In his evidence Sergeant Maxwell was taken to his transmission on the Kirkcaldy 1 Airwave at 07:24:28 when he indicated that Ex PC Short had been stomped to the body a few times and struck to the head.²³⁷ He thought that before he made this transmission, PC Tomlinson, who had heard his earlier transmission, told him that PC Short had been stamped on. When he was asked when PC Tomlinson shared this information, he told the Inquiry that PC Tomlinson was walking about in a shocked state when he came to pass that information on.²³⁸

268. The Chair may wish to consider why PC Tomlinson would invent a complete story about a stamp immediately at the scene and then perpetuate that with PC Walker, if he finds it established that there had already been a serious assault on Ex PC Short by punching her to the head. The consistency of the maintenance of their position(s) about this will no doubt be tested

²³⁷ Day 15:13-14

²³⁸ Day 15: 15

rigorously. It is also relevant to consider matters in the context of what PC Tomlinson's perceptions were at the material time.

269. An allegation or even an inference or suggestion that the stamp was invented and maintained is a very serious one of collusion and perjury involving lying in written statements to the PIRC and lying under oath. The Chair will no doubt consider the cogency of evidence for such a serious matter as discussed in chapter 2.2 above.

5.8.3 Loss of evidence of impairment of quality of evidence

270. There was much scientific evidence regarding the marks on Ex PC Short's vest and evidence from the examination of footwear. It will be for other Core Participants to invite findings on that evidence and the conclusions, if any that can be drawn from it. From the point of view of the Chief Constable, if evidence of the stamp on the vest of Ex PC Short is lacking as a result of poor evidence gathering and lack of preservation as well as handling techniques (all to be reviewed as part of the PIM and crime scene management), then this would be a failing on the part of other officers and/or the organisation. The latter may be as result of processes or procedures or training. This will be addressed in submissions on PIM and crime scene management. The officers for whom this evidence is material should not be prejudiced by any omissions which led to either the loss of evidence or the reduction in quality of such evidence.

5.9 SHEKU BAYOH BEING BROUGHT TO THE GROUND, INITIAL RESTRAINT, CONTINUED RESTRAINT, (position of Sheku Bayoh during the restraint, the force applied to Sheku Bayoh during the restraint)

271. It will be for the representatives of other Core Participants to invite findings based on their respective assessments of the evidence as regards the position of each of the officers as to their actions on the day. It will be a matter for the Chair to come to a view about the credibility or reliability of those accounts.
272. The Chief Constable offers the following observations but does not invite any particular finding.
273. The Chair has heard evidence from the officers, he has the CCTV footage of the events leading up to this point but the footage is not particularly helpful as regards the actions at this point which is during the attempted restraint but before it is accomplished. He will require to consider all the available evidence of the eye witnesses.
274. The Chair will no doubt be aware of the guidance from the House of Lords that the elimination of one improbable theory does not automatically mean that another improbable theory is accepted. *Rhea Shipping Co. SA v Edmunds (The Popin)* ²³⁹ Sometimes the standard of proof is not satisfied. A judge is not always bound to make a finding one way or another on evidence which is not sufficient for him to be satisfied to the requisite standard. In this case the Chief Constable has of course invited the Chair to take the flexible

²³⁹ 1985] 1 W.L.R 948 at 954-958 per Lord Brandon of Oakbrook

and varied approach but this does not mean that the standard of proof should not be addressed.

5.9.1 Use of expert medical evidence to inform analysis of events and use of force

275. In relation to other available evidence, it is crucial to understand the limits of the expert evidence in terms of determining whether or not certain events occurred.

276. In general terms, there were a number of injuries which were reviewed in detail by the Consultant Forensic Pathologist, Dr KerryAnne Shearer. She provided clear evidence as to the possible causes and levels of force in the Post Mortem report²⁴⁰ and in her oral evidence. The Chair will consider the evidence as to whether or not these are, of themselves, individually or collectively, indicative of either reasonable or excessive force in a resistive arrest. This will include consideration of the baton strikes by PC Tomlinson including to the head. The latter has not been linked by any witness to the cause of death.

277. In respect of particular actions, one of the major issues in question is whether or not PC Walker's actions in lying across or on Mr Bayoh's back caused asphyxia. This is a serious matter requiring robust and cogent evidence to find it established on the balance of probabilities.

278. It is submitted that a question for the Chair to consider is whether the medical evidence based on the findings at pathology assists with the determination of whether or not PC Walker placed his weight (25 stone) on Mr Bayoh? In the witness statement of Professor Lucas it is stated that '*...the*

²⁴⁰ PIRC- 01444

*Chair will be seeking to determine whether there is evidence of asphyxia in relation to Sheku Bayoh's death. I am told this will rely predominantly on eye witness accounts of the restraint, weight and force applied to Sheku's body by the Police.'*²⁴¹ This may be a misrepresentation of the approach the Chair will take. It is submitted that the Chair will require to determine from the witness evidence the credibility and reliability of the accounts of the body positions taking together the evidence of the officers and that of the eye witnesses. This will not determine whether asphyxia was present. That will be for pathology.

279. The relevant findings in this respect are the petechial haemorrhages. These are not a specific injury but a '*response... to something*'. Dr. Shearer said that petechiae '*could*' be indicative of a degree of asphyxia.²⁴²

280. Dr Shearer explained that petechial haemorrhages can be seen for a variety of reasons – one reason is asphyxia or lack of blood supply which can cause these blood vessels to pop. If you vomit, you get these haemorrhages.²⁴³ You can see them, commonly, in people who have been resuscitated²⁴⁴ you are pushing blood at reasonably high pressure to get to the brain. They are a more worrying sign if asphyxia is a potential cause of death. There are a lot of potential reasons - positional asphyxia, mechanical asphyxia, resuscitation. She was asked if they assist with determining weight being applied. She advised that this requires looking at external and internal injuries to see if there is a support for a particular scenario. In this case there was nothing categorically indicative of weight being applied to the back and no significant injuries to confirm that weight had been applied²⁴⁵. There was one area of

²⁴¹ SBPI-00314 at paragraphs 43 to 44

²⁴² Day 54:67 (24) to Day 54:67 line 5

²⁴³ Day 53:56 lines 16-25

²⁴⁴ Day 53:56 line 25 to Day 54:57 lines 1-11

²⁴⁵ Day 53:79 from line 19 to Day 53:80 lines 1-5

subcutaneous haemorrhage on the left upper back, indicative of a degree of blunt force trauma - only internal, nothing external and nothing to indicate severe force being applied to the back from those findings²⁴⁶.

281. The Chair also has before him the evidence of Dr. Cary in relation to the potential causes of petechial haemorrhages. He agreed with Dr. Shearer that they could be indicative of a degree of asphyxia and that they implied a degree of mechanical asphyxia which would include the chest being squeezed very hard.²⁴⁷

282. The Chair will therefore require to consider whether the findings of petechial haemorrhage, which are evidence of asphyxia, which has several possible plausible causes, can properly assist him in the analysis of the position of whether or not bodyweight was applied to Mr Bayoh during the restraint.

283. Another important consideration in the assessment of the use of force is the cause of the rib fracture. This is not a cause of death but should properly be considered in the context of whether or not it informs the analysis of the level of force used in the restraint. The oral evidence of Professor Freemont as regards the rib fracture is important because he is the recognised expert and all the pathologists deferred to him on the issue of the timing of the rib fracture.²⁴⁸ He produced useful informative slides. The timing of the fracture is important because it determines whether or not it falls within the period of the police engagement.

²⁴⁶ Day 53: 132-135 and Day 54: 51 lines 5-16

²⁴⁷ Day 59:43-46

²⁴⁸ Day 57

284. Professor Freemont's original view on timing of the solitary first rib fracture was that it was definitely 12 hours and probably within 6 hours of death.²⁴⁹ During his evidence he said it was probably less than six hours and certainly less than 12 hours before death.²⁵⁰ In 2017 he had formed the view that there was osteocyte necrosis and in an adult this would put the timeframe to more than 2 hours before death.²⁵¹ ²⁵² In his Inquiry Statement ²⁵³ he said the likelihood is that the event leading to the fractured first rib occurred sometime during the first altercation (with his friend 2 hours 45 minutes before death) and his interactions with the police (1 hour 45 minutes before death).

285. In his evidence he confirmed that his original view was based on the formation of osteocytes and studies on infants. His view had changed since 2017. The Chair will no doubt pay close attention to his rationale for doing so. The Chair will wish to assess if this is based on a considerable degree of speculation and data which he had conceded would not justify a study. He had conducted an extrapolation based on the use of the steroid drug nandrolone meaning that the window of timing of the formation of the osteocytes in adults was more in line with his infant studies. He *'could not come to a conclusion'*. The Chair may wish to consider whether or not this was no more than a theory. His thinking was that if you give nandrolone it is making a young man's cells younger *'but there is no evidence for this'*. It is for this reason that he offered the view that the effects of the nandrolone *could* have moved the osteocytes back to a similar time frame for infants in terms of osteocyte apoptosis i.e. to within the 2 hour period before death.²⁵⁴

²⁴⁹ Day 57:70 and COPFS-00036 paragraph 115 (a)

²⁵⁰ Day 57:73

²⁵¹ Day 57:52-53

²⁵² He had determined that the point of death was the correct time for the stoppage of circulation due to resuscitation efforts.

²⁵³ SPBI-00310 paragraph 118

²⁵⁴ Day 57: 124-125

286. Professor Freemont qualified his adult studies, which led to the original timeframe, with statements about the variation in the circumstances and lack of information on steroid use. What is not known is whether any of the cohort of adults on which he already had data had in fact taken steroids. He himself said this was not always admitted.²⁵⁵ This will all be a matter for the Chair to consider in assessing the reliability and weight of Professor Freemont's revised evidence of the timeframe in which the injury could have occurred.

287. In the event that the Chair is persuaded that the timing of the rib fracture is such that it is within the timeframe of the police engagement then it will be a matter for him consider the competing causes and explanations as to the most likely mechanism. There was considerable evidence about the unusual incidence of the fracture given the anatomical position of that rib and the absence of any other injury.

288. In relation to the position of Mr Bayoh at various times, an issue for the Chair to consider may be whether or not Mr Bayoh was ever lying in the prone position with his chest flat to the ground because he was handcuffed to the front and not the back.

5.10 COMMAND DURING THE RESTRAINT AND WHETHER AN OFFICER MONITORED THE BREATHING OF SHEKU BAYOH

289. A question of practice and process arises here which will be covered in the training hearing. PC Smith monitored the breathing of Mr Bayoh once control had been established. If that was in line with the training at the

²⁵⁵ Day 57:124- 126

material time then consideration will require to be given as to the adequacy of the training.

290. The Chair clarified with PC Smith whether he started to monitor Mr. Bayoh's breathing *after* he realised he was unconscious and PC Smith agreed. He also asked whether, as a general proposition, in a restraint involving someone in a prone position, he would expect one of the officers to monitor the breathing of the subject to which he responded that it would be beneficial if someone is going to be in a prone position for a prolonged period of time.²⁵⁶

5.11 FIRST AID BY OFFICERS

5.11.1 Cardiopulmonary resuscitation ('CPR')

291. The evidence is that CPR was administered by officers PC Smith, PC Walker and PC Paton. All officers received Scottish Police Emergency Life Support ('SPELS') training. PC Alan Smith had additional qualifications and was a First Aid trainer. PC Walker also underwent additional first aid training 23-25 May 2012. All First Aid training issues will be covered in later hearings and submissions.

5.11.2 Presence of handcuffs

292. Mr Bayoh needed medical attention. The Chief Constable recognises that the failure to remove the handcuffs during the initial treatment interventions is, understandably, something which would be distressing for the families of Mr Bayoh. It is important to understand how this came about and to reflect on that in terms of organisational learning.

²⁵⁶ Day 11 190

293. There is a consistency in the evidence that the handcuffs were not removed during CPR. Of the officers who administered CPR, only PC Smith and PC Paton were asked why restraints were not removed. Explanations for not removing them were provided by those officers, which the Chair will require to consider. Sergeant Maxwell and PC Tomlinson were also asked and provided their views based on their knowledge and experience.

294. The evidence of the officers will be a matter for their representatives to address in detail for the Chair to consider. The Chief Constable's position is that there was nothing in the guidance available to officers as at May 2015 that mandated removal of the handcuffs. The training, and the adequacy of that training, will be addressed at the later hearing on training. In the meantime, reference is made to Position Statement 8.²⁵⁷

295. In the applicable OST Manual, Module 3 dealt with Rigid Handcuffs.²⁵⁸ There is no instruction to officers that they should remove the handcuffs in order to deliver CPR. Rather the focus was on removing the handcuffed subject from the prone position once control has been obtained in order to reduce the risk of positional asphyxia. The expectation was that handcuffs would be removed in custody or in the safety of a secure location and that officers maintain control.

296. Section 2 dealt with handcuffing theory. On page 89,²⁵⁹ under Rules for Handcuffing, rules 8 to 10 state that:

“8. The officer should not attempt to handcuff a resisting subject until they are in a position of control.

²⁵⁷Position Statement number 8, paragraph 71(a)-(b)).

²⁵⁸ PS10938

²⁵⁹ Page 95 of the PDF

9. The officer should remove handcuffs whilst maintaining a high level of awareness.

10. The officer should remove the handcuffed subject from the prone position as soon as possible to avoid the likelihood of Positional / Restraint Related Asphyxia”

297. Section 5 deals with handcuffing techniques. On page 94²⁶⁰, under the section for Handcuff Removal, it states that:

“When removing handcuffs from a subject in custody, it is advisable to do so **in the safety of a secure location**. It is **vital that the officer(s) maintain control whilst releasing handcuffs**.

Handcuffs should be removed with a high level of awareness. The officer should remain outside the subject’s fighting arc during all handcuff techniques, including application and removal.

Where possible, two officers should maintain control of a subject during handcuff removal techniques. This allows for the safe control of a subject, particularly when the first handcuff has been released.

There are three options for the safe removal of handcuffs. These three options are only applicable for compliant subjects.’ [Emphasis added]

298. On pages 104 to 105²⁶¹, under the section for Pull Down to Prone – (Top Cuff)²⁶², it is explained that this technique ‘*may be considered by officers if resistance is encountered from a subject*’ and officers are given two options to complete the handcuffing procedure (application or removal), having ‘*secured compliance*’.

²⁶⁰ Page 100 of the PDF

²⁶¹ Page 110 of the PDF

²⁶² The same principles apply to other cuffing techniques, e.g. bottom cuff wrist drag (see page 106 of the OST Manual (page 112 of the PDF))

299. On page 105, the section on Prone Search states that:

‘Once control of a subject has been obtained, it is important that they do not remain in the prone position for longer than necessary. This is due to the medical concerns surrounding positional/restraint related asphyxia.’
[Emphasis added]

300. Although the Inquiry will hear evidence at the hearing on training about the changes which have been introduced, it is important to record in this submission that the guidance to officers on this important matter has been updated. On 13 November 2022 advice to remove handcuffs to undertake CPR was included in First Aid Training and a form of words will be added to reflect this in the updated manual in 2023.

5.11.3 Was there impairment of CPR?

301. It is important to consider what impact, if any, there was on the treatment of Mr Bayoh of the failure to remove the handcuffs. There was some conflicting evidence on the issue of whether removal of handcuffs would have hindered CPR. There seems no doubt that Mr Bayoh was handcuffed to the front. Dr Pickering, Consultant in A&E (Registrar at the time) gave evidence that handcuffs would have hindered giving really good compressions.²⁶³

302. The Chair will require to balance the evidence of Dr Pickering with the evidence available from the police officers who were performing the CPR,²⁶⁴ the other police witnesses present, as well as the ambulance personnel, Alan Finlayson and David Taylor. The paramedics did not ask for them to be

²⁶³ Day 13

²⁶⁴PC Walker was not asked about whether there was any impediment to CPR

removed. Alan Finlayson in his first statement taken on 26 May 2015 by PIRC investigators²⁶⁵ confirmed that the police were doing CPR at the scene on arrival. After David Taylor had ventilated Mr. Bayoh with a bag valve mask, he asked a police officer to continue with CPR. In his COPFS statement he said *'As far as I am concerned, we had good access to the chest and the cuffs did not stop us from doing CPR.'*²⁶⁶ This was said in the context that the removal would only be of benefit if they were going to cannulate. However, if they had asked for the cuffs to be removed they would have to stop CPR to do so and the time taken to put in a cannula would be time not doing CPR. In his Inquiry statement,²⁶⁷ he was clear that *'At the time we were happy with [sic] that the CPR we were doing was good CPR in spite of the handcuffs. They weren't affecting us in any way, and that's why we made a decision to just go to the hospital.'*

303. Mr Taylor in his first statement²⁶⁸ stated that he *'allowed the officers to carry on CPR'* and, whilst they did that, he got the bag and mask ready which he then applied to Mr Bayoh. In his statement to COPFS²⁶⁹ he stated that the *'restraints could have been removed while we were there but, to be honest, we were so close to the hospital we were preoccupied with getting him there.... The restraints didn't hamper us in any way.'* This was restated in his Inquiry Statement.²⁷⁰ *'I didn't ask for the handcuffs to be removed. It didn't impede CPR or chest compressions or any bag and mask in the back of the vehicle.'*

304. Mr. Taylor confirmed in his oral evidence that CPR was not impeded by the handcuffs.²⁷¹ He did not ask for the handcuffs to be removed. They did

²⁶⁵ PIRC-00220

²⁶⁶ COPFS-00044 page 6 paragraph 1

²⁶⁷ SBPI-00007 at paragraph 73

²⁶⁸ PIRC 00179 – 19 May 2015

²⁶⁹ COPFS -00051 25 October 2016 at page 4

²⁷⁰ SBPI-00017 at paragraph 60

²⁷¹ Day 21:95 11-14

not impede CPR or chest compressions or the bag and mask. They did not impede his ability to connect the defibrillator to the chest.²⁷²

305. As well as the evidence of the officers, there is also the evidence of DS Davidson. The witness confirmed that she is first aid trained and there was nothing about the CPR at that time that caused her concern as to its effectiveness or the way it was being performed. The CPR was *'very effective, and there was no restriction to the chest area that [she] observed'*. Senior Counsel to the Inquiry pointed out that Mr Bayoh was cuffed to the front and that position could compress the chest and interfere with CPR. The witness reiterated that her observation of the CPR gave her no concern and she *'was not drawn to the cuffs causing any issue'*.²⁷³

306. As stated above, it will be a matter for the Chair to determine what impact, if any, the failure to remove the handcuff had on the effective administration of CPR. In the meantime, Police Scotland has amended their guidance as noted herein.

5.12 LOSS OF CONSCIOUSNESS, THE POINT AT WHICH HE STOPPED BREATHING

307. The timing of this is a matter upon which there is witness evidence from the officers as well as Airwaves transmissions. There is also the evidence of Chief Inspector Robson on this issue. The Chief Constable considers these are matters for the Chair to resolve having heard the representations of other Core Participants.

²⁷² Day 21:96

²⁷³ Day 17:155

5.13 AMBULANCE CALLS TIMING AND ATTENDANCE

308. On the ALI spreadsheet, the ambulance arrived on Hayfield Road at around 7.33am. The Chair will require to address whether or not an ambulance should have been called earlier for Mr Bayoh, the nature of the communications from the officers at the scene to command and control, how that information was conveyed to the Scottish Ambulance Service and how that was then communicated to the ambulance personnel.

309. In terms of arrival of a second ambulance. Alan Finlayson, in COPFS 00044 stated as follows: *'Following a campaign by us, two ambulances come as standard to a cardiac arrest. That's because it has been shown you need two teams for a cardiac arrest to deal with it. The second ambulance didn't come thought because I told it to stand down.... Because there were umpteen police officers to help get him in the back of the ambulance and drive it to allow us to work on him on the way to the hospital and they were more than happy to help. If we hadn't done that it would have bene a case of waiting for the second ambulance which was coming from Leven so would have been another 10 minutes'*

5.14 TREATMENT AT THE HOSPITAL AND LIFE PRONOUNCED EXTINCT

310. The Inquiry has oral evidence from the relevant treating physicians and has disclosed witness statements from those not called.

311. Every effort was made to save Mr Bayoh's life by the emergency physicians. There seems to be no doubt about the time of the pronouncement of life extinct being 9.04am.

5.15 CAUSE OF DEATH

312. It is not possible to embark on any discussion of the cause of Mr Bayoh's death without pausing to consider the devastating effect his death has had on his families. Any submissions on this matter are ones which will have an impact on those grieving families. The Chief Constable is acutely aware that the subject matter of legal submissions is their much loved son, partner, father, brother and cousin. It is necessary in such cases to approach matters of legal and medical causation in a formal manner but in doing so there is no intention to cause any further upset or distress to his families.

5.15.1 Law on Causation

313. The Inquiry paper²⁷⁴ is not reflective of the full extent of the law as it has evolved in this complex area. The paper appears to be largely directed at legal tests to establish civil liability. This is not the function of the Inquiry.²⁷⁵ At this stage Core Participants have not seen the Inquiry submissions and anticipate this will no doubt be covered in detail by Inquiry counsel. The Chief Constable would be happy to assist with further submissions, if it would assist the Inquiry at a future date.

314. The determination of the cause(s) of Mr Bayoh's death is a matter for the Inquiry and one which is being thoroughly investigated with the relevant experts. The Chief Constable will not be inviting the Chair to make particular findings but presents the following submissions with the intention assisting his consideration of some of the issues which arise.

²⁷⁴ SBPI- 00301

²⁷⁵ Section 2 2005 Act.

5.15.2 Cause of death - medical

315. In terms of the medical pathology and certification of death, Dr Shearer made it clear that a pathologist gives a narrative cause of death including everything that is important. This is in the context of statutory provisions regarding certification. It does not include a psychiatric diagnosis. As Dr Shearer agreed, it will be a matter for the Chair to look at all the circumstances in relation to determining the cause(s) of death.

316. There is consensus between the experts that there was no evidence of any direct traumatic cause of death and that cause of death was multifactorial.²⁷⁶ The post mortem report recorded cause of death as 1(a) sudden death in a man intoxicated by MDMA (ecstasy) and alpha-PVP, whilst being restrained.²⁷⁷ In his expert report, Dr. Cary observed that restraint could not be considered separately from struggling.²⁷⁸ He suggested that in the post mortem report he would replace the words '*whilst being restrained*' with the words '*in association with struggling and restraint*'. Dr Shearer agreed and added during the course of her evidence that the struggle during restraint was important and, that if revisiting this case, she would have added the words to that effect.

317. There appears to be a reasonable consensus that the mechanism of death was that Mr Bayoh's heart stopped due to a fatal arrhythmia. There is a question over the role of sickle cell trait but this is not a cause of death of itself. It will be for the Chair to determine the chain of events which led to the arrhythmia which resulted in the heart stopping and death.

²⁷⁶ See Inquiry statement of Dr. Shearer SBPI-00304 paragraph 81

²⁷⁷ Day 53:140 and PIRC 01445 dated 4 May 2015

²⁷⁸ COPFS-00196 page 6

5.15.3 Use of terminology

318. It is submitted that it will be essential to consider what is meant by the terminology 'restraint' when used by the Inquiry, by witnesses, by Core Participants and in findings. It is common to use the term restraint in a general sense. Most witnesses when giving evidence were asked or provided opinion about 'the restraint' or 'during the restraint'. It will be important for the Chair to consider what was happening at the various stages of each police officer's interactions with Mr Bayoh. There is a difference between police engagement, steps to seek to restrain and then achieved control by restraint. This is important because of the various hypotheses discussed as to the duration of 'the restraint'.

319. The same is true for the descriptions of Mr Bayoh's position. The term 'prone' is used, generally without definition. However, what is meant by 'prone' is important because the consideration of impairment of breathing arises most acutely in this context. The Chair will wish to consider whether the fact that Mr Bayoh was handcuffed to the front is relevant. The length of time in various positions in a dynamic situation will need to be considered and the risks of those other positions considered.

5.15.4 Chain of events leading to 'the restraint'

320. As a preliminary to any review of medical causation it necessary to consider first what it is that requires to be addressed in respect of **causation**. It is submitted that there are two aspects to this. The first is the circumstances which lead to the attempts to restrain. The second is the cause of death in the context of actions in those attempts, and the role that those actions in seeking to achieve control, may or may not have played in the cause(s) of death. The

evidence adduced by the Inquiry to date has established that the cause of death is multifactorial.

321. If the Chair finds that the steps taken in achieving control, has been a cause of death or has contributed to the cause of the death of Mr Bayoh, then it will be necessary to consider if it has been established that there was anything improper about the actual actions in achieving control, or, if the death was as a consequence of the very fact of seeking to gain control and the struggle in that context. It is therefore necessary to consider the cause of the initial actions in seeking to achieve control.

5.15.5 ARV and Dog Unit attendance

322. Evidence about command and control is not complete but it seems tolerably clear that any ARV attending would not have attended in sufficient time. Deployment or tactical relocation would not have made a difference. This was a point made by Martin Graves.²⁷⁹

323. A Dog Unit would not have attended in time. PC Woods ultimately agreed, in answer to a Rule 9 question, that he could have been at the scene at the very quickest, within 20 minutes and probably a bit later than that. His original assessment was 10-15 minutes to cover 26.7 miles.²⁸⁰ A dog is a use of force and an escalation of force.

324. PC Wood emphasised that, when attending a knife incident with his dog, he would perform a risk assessment, using the NDM, as deployment of a dog is '*a high level use of force*' that he would have to justify. He would be

²⁷⁹ Day 26:147 and SBPI 00190

²⁸⁰ SBPI-000108 para 38 and 39 and Day 26:68

looking for as much as he could gather in order to determine his deployment options and those options would depend on the exact situation and circumstances that he faced.²⁸¹ He observed that there were some situations where a dog would not be effective or beneficial.²⁸²

5.15.6 Effect of the actions of PC Walker and Ex Constable Paton

325. The actions of PC Walker and Ex PC Paton will no doubt be reviewed against the proposition that they should have taken a more conciliatory approach and de-escalated the situation to the extent that Mr Bayoh did not have to be restrained. That will include a consideration of their training and experience as at that date. It will be reviewed further at the hearing on training.

326. The Inquiry currently has evidence from Inspector Young that compliance and control was the dominant and expected tactic. The Chair will need to be satisfied to a robust degree, with cogent and compelling evidence,²⁸³ that any action or failure on the part of PC Walker and Ex Constable Paton were such that the attack on Ex PC Nicole Short would not have happened but for their action or failure.²⁸⁴ In that regard the Chair may wish to give consideration to the following:

1. The evidence of Zahid Saeed that neither he nor his friends could calm Mr Bayoh down, as discussed at paragraph 137 onwards, and that they feared he would even harm his partner, Collette;

²⁸¹ Day 26: 32-34

²⁸² Day 26: 42:5-42:13

²⁸³ As a serious matter requiring cogent and compelling evidence under reference to chapter 2.2 regarding the standard of proof.

2. That at the time when PC Tomlinson and PC Short arrived Mr Bayoh was walking away;
3. The evidence of PC Tomlinson that he was mirroring the movements of Mr Bayoh and was maintaining distance;
4. That PC Walker and PC Paton were incapacitated by their use of the CS and PAVA at the time of the assault on Ex PC Nicole Short; and
5. The evidence of Ex PC Nicole Short regarding her actions.

5.15.7 Potential issues with de-escalation and unpredictability of outcome

327. The Chair may consider another important factor is the evidence of Kevin Nelson regarding what he saw of the assault on Ex PC Short. Senior Counsel to the Inquiry took Mr Nelson to para 12 of his Inquiry Statement where he referred back to his PIRC-00019 statement page 3 (which states that Mr Bayoh lunged at PC Short with his left fist towards her face, head area. He struck at her with his closed **fists 3 times** and he heard PC Short scream out). In para 12 of his Inquiry Statement, Mr Nelson said that *'it was like a switch had just went. It was like he just woke up. It was just like an explosion just went'*. Senior Counsel to the Inquiry asked what he meant by this, to which he responded:

'It was like two different people. You had one guy walking along the road oblivious that anything was going on at one point, and then all of a sudden, like a switch, like a click of someone's fingers, almost like a hypnotic trance type thing, just exploded'²⁸⁵

²⁸⁵ Day 12: 47:12-47:16

328. The Chair may wish to consider this this together with the evidence of Professor Lipsedge who said, in the context of having an escalation discussion with a patient in the clinical context:

'What I should have said right at the beginning is if a person is armed with a gun or with a knife or some other weapon, what I have been describing is completely unrealistic and safety takes top priority. But if during the dialogue the situation changes and the patient tries to attack you or somebody in the room, then you've got no alternative but to use physical restraint' ²⁸⁶

329. The evidence of Dr Maurice Lipsedge regarding the effects on the drugs known to be found in Mr Bayoh's system in particular Alpha-PVP is relevant to this assessment. There are several points at which there is the 'switching' (Zahid Saeed) interspersed with calmness (Ted Morgan). The Chair will wish to consider the evidence and actions of the officers in that context.

330. If the restraint is established as being necessary, given the assault on Ex PC Short, the next issue becomes the reasonableness and proportionality of the actions and the cause of those officer responses. Such actions require, as a matter of fairness to be examined in the context of the actions of Mr Bayoh.

331. These will be the subject of detailed submissions by others in terms of the witness evidence.

²⁸⁶ Day 55:24

5.15.8 Opportunities for Treatment

332. The Chair will need to be satisfied regarding the attempts at CPR, the timing of the ambulance calls and arrival and whether or not any opportunities to save Mr Bayoh's life were lost.
333. The call to attend was allocated to David Taylor and Alan Finlayson at 07:24. They were on the Thornton bypass, the A92 when they received the updates and received the correct address at 07:30. At 07:31 as they were approaching the scene, they were told by control that the patient was in cardiac arrest. They arrived at the scene at 07:33. They left the scene at 07:42 and bag and mask ventilations continued. A police officer drove the ambulance. They arrived at hospital at 07:44 (2 mins to get there; 9 minutes on the scene so 11 minutes from scene to hospital).²⁸⁷
334. In this regard, the Chair may wish to also consider the evidence of Professor Carey on the last day of the hearing on causation, which was to the effect that the most important tipping²⁸⁸ point was the occurrence of cardiac arrest. He said that once that happened, even with good resuscitation, sadly, death was inevitable.
335. The Chief Constable wishes to make it clear that the evidence of the First Aid actions, communications with the ambulance service by command and control, the availability of equipment such as face shields and the provision of blankets are all being reviewed and lessons are being learned. This will be addressed at the hearing on training.

²⁸⁷ David Taylor SPBI-00017 paragraph 62

²⁸⁸ Professor Carey Day 59: 66

6. CONCLUSION

336. The Chief Constable has welcomed the invitation by the Chair to make submissions on an interim basis. He has made these in so far as is possible standing the limitations as to the extent to which it is proper for him to be engaged. The absence of a submission on any particular issue should not be seen as an acceptance of any findings in fact advocated for by any other as regards individual actions. These submissions regarding issues the Chair may wish to consider are not intended to convey the formation of any view about the facts as regards any the officer's actions.

337. Where there is a potential organisational issue or an organisational expectation of officers of Police Scotland, these are matters, which in fairness need to be addressed by the Chief Constable. Expectations of police officers are high. The Chief Constable is mindful that police officers do risk their lives for the safety of the public. They attend incidents such as this because they are deployed to do so to fulfil the policing duty to keep the public safe.

Submitted on behalf of the Chief Constable of Police Scotland

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