



**PUBLIC INQUIRY INTO THE DEATH IN POLICE CUSTODY OF  
MR SHEKU AHMED TEJAN BAYOH  
HEARING ONE- SUBMISSIONS  
ON BEHALF OF THE BEREAVED FAMILIES OF SHEKU BAYOH**

**June 23<sup>rd</sup>, 2023**



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## INTRODUCTION

We make our submissions in the form of propositions. We will read with interest and care the propositions of other Core-participants and where appropriate make responses, either agreeing with or highlighting areas of disagreement- We do so in an effort to assist the Chair in narrowing any relevant issues for him to consider with the assistance of the assessors.

We have not finalised our position as it is vital to hear all of the evidence before making suggestions of findings. Before detailing our submissions, we have an overarching introduction below.

When in October 2019 the Lord Advocate advised the Bayoh family that no police officer or Police Scotland would face charges for the death of Sheku Bayoh, his family felt betrayed, believing there had been a failure to hold power to account, that a flawed investigation had taken place where many promises made by those at the Crown and PIRC were repeatedly broken, over the course of a number of years.

The living reality for the Bayoh families is that five days of protest for George Floyd in the United States delivered more than five years of waiting for the Scottish criminal justice system to act.

From the very day Sheku died, his family stated that the Sheku they knew and loved, acted out of character, and if he broke the law then the police had a right to act: - but the family fundamentally believed that any force used had to be reasonable, legitimate, and proportionate. Under no circumstances did he deserve to die.

Within minutes of Sheku's death, the family believe that misinformation began, not only information being given to them directly, but appearing in the media. Police

'sources' painted an image of a large black man, with stereotypical characteristics of extraordinary strength and dangerousness, wielding a machete to criminalise and negate Sheku's right to life. Matters in relation to the media and race will of course be dealt with in later chapters, however some of those issues arose in this session of evidence of police officers and the descriptions of Sheku Bayoh in written material.

Sheku's was experiencing a mental health crisis and should have been dealt with as a medical emergency: According to the Inquiry's reconstruction timeline the first police van to arrive at Sheku Bayoh stops at 07.20.23 and by 07.20.29 two people are visible moving near the rear passenger side of the Police Van. This may indicate that Sheku Bayoh had been sprayed within 6 seconds of the first car arriving. A person is seen falling over and then "there is some coming together and another falls" indicating that Sheku Bayoh was sprayed three times, hit with a baton and forced to the ground within 40 – 50 seconds of the first police car arriving. Sheku was brought to the ground in less than 45 seconds of the first police contact, never to get up again.

Sheku was not 6ft plus, he was 5ft 10 inches and he weighed 12 stones 10 pounds. The first two officers who dealt with him were however 17 and 25 stones and both 6ft 4 inches tall.

Sheku Bayoh who suffered multiple injuries, was pronounced dead in that hospital an hour and a half after first contact with the police. In contrast, none of the police officers suffered physical harm requiring significant medical attention that day.

The families with the benefit of the evidence heard during the Inquiry understand that Sheku was in the throes of a mental health crisis. the processes and procedures put in place to allow for assessment of a person in a mental health crisis were ignored, his safety was not considered. He ought to have been met with careful consideration and assessment.

Instead, Sheku was met with immediate verbal then physical violence. The reasoning for these actions, given by PC Alan Paton was in the following terms:

**21<sup>st</sup> of June, page 92, line 20**

**PC Alan Paton**

*Q. Then looking at: "I was straight out of the passenger side door of the van and I immediately took my CS spray out of my vest. I continued to think that he may still have been in possession of a knife and I wasn't taking any risks. As I have already said, I was still conscious of the fact that just because I could see his palms, he might still have the knife in his waistband or secreted somewhere else about his person. With my spray in my right-hand and pointing in the direction of the man, I shouted loudly and very clearly 'get down on the ground'. The guy was walking towards me and completely ignored me. He kept walking towards me with his palms out and I remember thinking how crazy he looked and as if he was on a mission. I was in genuine fear for my life and at this point I pressed my red emergency button and shouted loudly and clearly 'get down on the fucking ground'. My shouting and my pointing of my spray had absolutely no bearing on him and he kept walking towards me, ignoring me as if he was in a one-track mind. I was terrified and thought I was going to get attacked by him." Now, I would like to ask you some questions about that paragraph. You have told us today about your spray and shouting the commands. Now, earlier today you talked about communication and I'm interested -- you also say in your Inquiry statement you had been trained in de-escalation procedures and I'm quite interested in finding out -- there's no mention there of communication in the sense of a conversation, or -- A. It wasn't the time for a conversation. Q. Right. So you felt there wasn't time for that? A. It wasn't the time or the situation for a conversation. Q. Oh, sorry, it wasn't the time, right. A. Yes. Q. And that's because of the circumstances you have told us about earlier? A. Yes. Q. So you didn't think there was time to ask him any questions like "Are you okay?" or anything like that? A. It's not the situation for asking questions like that. The man was out of control. The man was drugged up. The*

*man had a big knife. He was using it, he was attacking cars. I needed firm control from the word go and then once he is in cuffs, then ask him if he is wanting a cup of tea or that, but not at that stage.*

The incident has been described as a violent confrontation: it was the officers who initially offered violence to Sheku Bayoh. On arrival at the scene he walked with his hands outstretched in front of him, a non violent, non threatening gesture. He did not say anything which might suggest he would offer violence. He did not have a knife in his possession. He did not pose a risk level necessary to engage with him in the way they did. Instead of acting in accordance with their instructions or their own standard operating procedures - and follow the UK wide recognised force continuum model - through their own actions they escalated events beyond that which was necessary. They failed to follow the very reasonable option of containment suggested by Professor Eddleston.

We heard from experts on how people in a mental health crisis should be dealt with ; to stay calm and give the person space so as not to put them under pressure , to express empathy. As set out by Professor Eddleston in his report (Para 22) : *If the first police officers on the scene had realised that Mr Bayoh was psychotic, consistent with their observations that he was ignoring them and looking crazy, and had followed Police Scotland advice for dealing with psychotic patients, the outcome might have been different. Ideally, open empathetic questioning while offering space to SB to keep walking, might have calmed the situation and prevented the attack or the need to restrain him physically until submission. In the meantime, an ambulance could have been called to help take SB to hospital. If this conservative approach had been ineffective, a combined physical and chemical restraint approach would have been necessary. At the very least, an ambulance and paramedics should have been present when physical restraint was initiated. This would have allowed paramedics to rapidly gain intravenous access to administer sedative diazepam and/or haloperidol under the guidance if necessary, from the local emergency department. At best, the restraint could*

*have been delayed until a doctor had come urgently from the emergency department to help control the situation, allowing the administration of fast-acting ketamine.*

We know that if Sheku Bayoh was treated in a calm and considered manner, the outcome could have been completely different – only a short time before the police arrived to Hayfield Road, Sheku Bayoh had a conversation with his neighbour, Neil Morgan, who treated him with consideration, care and kindness, and although it was clear to Neil Morgan that Sheku “was not himself”, he was able to speak to him, to reason with him, to get him to respond and invited him into his house for a coffee. He offered Sheku what he needed : **HELP**

It has been suggested that Mr Bayoh repeatedly stamped on a female police officer, for the families no credible evidence has been presented to prove this, rather the absence of forensic evidence and medical evidence it supports the proposition that this stamp did not happen, and officers have lied about this. Mr. Bayoh was battoned to the head and brought to the ground. As soon as reasonably practicable thereafter, communication should have been made to the control room to get an ambulance to the scene. That was not done until it was too late to save him.

Thereafter the police carried out a method of restraint that they have been trained to understand is dangerous and carries with it **a foreseeable risk to life**; it is well recognised that the method of restraint used can produce a life-threatening positional asphyxia.

Whilst he was on the ground Sheku was restrained and forced face-down on to the ground where he was hand-cuffed and leg restraints were applied to both his knees and ankles. Six officers were involved in restraining Sheku and, during the time he was face down on the ground, six officers lay on top of Sheku, crossing over him from

both sides and covering the whole of his body. The first two officers Paton and Walker involved in restraining Sheku Bayoh had a combined weight of 42 stones i.e., 266.7KG. The combined weight of 6 officers involved in the initial restraint of Sheku Bayoh was 546.7 KG, which is 86 Stones 2 lbs which is over half a tonne body weight on Sheku Bayoh.

One officer used a baton to hold Sheku down by pushing it on his body, and other officers were also seen to be using their body weight in order to restrain Sheku by placing themselves on his upper back, shoulders and neck area and by using their knees to hold him down. Sheku was positioned lying on the ground face - downwards and a high degree of pressure was applied to his trunk prior to his breathing becoming restricted and stopping. Mr Bayoh died in hospital covered with a number of injuries including petechial haemorrhages to his eyes and a fractured rib.

## **RACE**

The issue of race flows through the river of this Inquiry. We cannot address the woeful lack of training available and the attitudes of police officers – whether conscious or unconscious in their biases - in these submissions, but we have been asked to flag up evidence which we will rely on in the future.

At the start of this Inquiry Senior Counsel for the Chief Constable made an opening statement on behalf of Sir Iain Livingstone QPM- in which it was stated

*“sending a very clear and strong and clear message that if you hold racist, misogynist or discriminatory views you are unwelcome in policing.... The Chief Constable declares that upholding the core values of the Police Service of Scotland demands that it be anti-racist.”*



This statement was welcomed by the families of Sheku Bayoh as they hoped it would shine a light on the actions of Police Scotland on the 3<sup>rd</sup> May 2015 and in the days, weeks, months and years that followed.

In May of this year 2023, the Chief Constable of Police Scotland went one step further from his opening statement a year earlier, in that he accepted that Police Scotland was institutionally racist- this declaration was welcomed by the families of Sheku Bayoh as something that the black, Asian and minority ethnic communities had in fact known for decades- however in the case of Sheku Bayoh it will be submitted that a combination of overt and covert racism of police officers combined with institutional racism and unconscious bias, was a thread that weaved through the moments that Sheku Bayoh met his death until the Lord Advocate made a decision not to prosecute.

Whilst this is very much welcomed, the response of those representing the rank and file exposes a wide chasm of opinion in the police force in Scotland in relation to race. Speaking about the impact the comments would have on police morale, David Threadgold Chair of the Scottish Police Federation said: *“The use of the phrase ‘institutionally racist’ is one that has deeply offended and upset them and they do not recognise themselves in that way.”*

It is noted that in his opening statement Senior counsel for PCs Kayleigh Good, Alan Smith, and Ashley Tomlinson submitted " *that race did not Influence their actions In any way....*" That view is reflected in the evidence of all the officers have given before this hearing.

However, several significant race issues arose not only in relation to the actions of the police officers but also more broadly in relation to racism within the police force. The following is only a small number of the various issues

1. The use of possible racial profiling or racial assumptions in considering this may be a terrorist incident ;
2. The fact that language was used that is common to racial bias and unconscious racism– the perceptions of black men as being larger, more aggressive, such as “he was the most muscular man I have ever seen” and “he was massive and is the biggest male that I have seen.”
3. The fact that officers either did not know, or did not understand, the use of offensive language; like “coloured” – language which was described 20 years ago by the Steven Lawrence Inquiry REPORT PARA 6.3 AS “use of inappropriate expressions such as "coloured "or "negro" fall into that category. The use of such words, which are now well known to be offensive, displays at least insensitivity and lack of training. A number of officers used such terms, and some did not even during their evidence seem to understand that the terms were offensive and should not be used. This Report came out in February 1999 – almost quarter of a century ago.
4. The fact that we heard officer after officer say what could be described as a colourblind approach, an approach which is outdated and wholly fails to take into account unconscious racial bias – a matter which Police Scotland does not understand. If the officers were to be believed there was a lack of knowledge of black men dying in police custody being a particular issue.
5. Despite the fact that racist comments about “ISIS” were made and caught on CCTV
6. despite the acknowledgement of Senior officers about the evidence of WhatsApp groups which had racist, sexist, and homophobic language, where every police officer said if they saw racism, they would call it out and /or report it yet none of the officers involved in such groups appear to do so.

In submissions, we address where we say that some officers have not provided credible and reliable information to this Inquiry – We say that reflects the experience of the families of Sheku Bayoh who say they were lied to, and not told the truth by officers about the death of their loved one by officers when they were spoken to after he died.

For the families of Sheku Bayoh, it is imperative that this inquiry proceeds with the utmost diligence and care taking into account all of the relevant evidence and remains committed to uncovering the truth no matter how difficult or uncomfortable that may be for all the institutions of our criminal justice system that stand accused of failing Sheku Bayoh and his family.

In Scotland, as society begins to wake up to an institutionally racist police force and racial injustice, the families hope that this Inquiry will be robust in its analysis and searching out and recognising the existence of racism as a factor in the death of Sheku Bayoh.

Sadly Sheku is not by any means the first black man to die in police custody, but his families still have hope his name does not fade from memory and that one day the name of Sheku Bayoh leaves us a legacy that his sons Isaac and Tyler can be proud of.

## **CHAP 1 - Background events during night 02/03 May 2015**

The families of Sheku Bayoh accept the Hearing 1 Chronology (SBPI-00001) as an accurate outline of background events as evidenced by the statements referred to therein. The following headline issues are considered below:

- a. Background events during night 02/03 May 2015
- b. Movements and behaviour of Sheku Bayoh in morning of 3 May
- c. Reports by members of the public
- d. Level of Threat

### **(A) Background events during night 02/03 May 2015**

**PROPOSITION** – The events of 02/03 May were very unusual and out of character for Sheku Bayoh.

#### **Evidential Support**

Sheku Bayoh was a father of two children, a partner, son, brother, uncle and friend. He was loved and respected by all who knew him.

He had no history of violence. Many residents and neighbours at Arran Crescent knew Mr Bayoh. He was described as “a good neighbour”, “a genuinely nice, friendly guy who would always say hello”. He would “do anything for everyone”; “exceptionally well mannered and polite at all times” (SBPI -00001).

On the evening of 2<sup>nd</sup> May, Mr Bayoh attended his niece’s birthday party at his sister Kadi’s house. He was observed to be in a very happy mood and enjoying himself. He was observed to drink a little alcohol. His friend Zaeed Saeed also

attended the birthday party. Both men left Kadi's house later in the evening in good spirits.

### **(B) Movements and Behaviour of Sheku Bayoh in the morning of 3<sup>rd</sup> May**

**PROPOSITION** – The events of 3<sup>rd</sup> May indicate that Sheku Bayoh's behaviour had been adversely affected by drugs that he had consumed. He was experiencing paranoia and acting "out of character".

#### **Evidential Support**

As arranged via text message, Sheku Bayoh and Zaeed Saeed went to the home of Martyn Dick and Kirsty Macleod shortly after 4am on 3<sup>rd</sup> May, where all four sat together to watch a boxing match, Mayweather v Pacquiao on television. Mr Bayoh was drinking alcohol. During the visit Mr Bayoh's behaviour changed and he appeared to become paranoid believing that the others were being disrespectful towards him. At around 5.30am Mr Bayoh suddenly left the house followed by Mr Saeed.

Unable to find or contact Mr Bayoh, Mr Saeed made his way to Mr Bayoh's home in Arran Crescent. Shortly thereafter, Mr Bayoh arrived. He was behaving abnormally and told Mr Saeed to go away.

After entering the house, Mr Bayoh accepted his behaviour was abnormal and revealed a clear plastic money bag containing tablets. Thereafter, Mr Saeed left the house, Mr Bayoh followed and there was an altercation where Mr Bayoh assaulted Mr Saeed. Mr Saeed ran off and texted Martyn Dick.

Mr Bayoh appears to have returned to his home and collected a kitchen knife and left again. At around 0645, Mr Bayoh was spoken to by his

neighbour Neil Morgan on Arran Crescent. Neil Morgan's evidence (PIRC 00073) is *"I asked if he was okay. He turned to face me, he was holding a knife which was a stainless steel blade with similar handle like the biggest one you would get in a kitchen block. He had the knife down the right side of his body and was tapping it off his leg. He said "it's nothing, its nothing" I said "if you get caught with that you're going to get done or someone's going to get hurt." The witness goes on to say "He didn't seemed hyped up, didn't appear psychotic or drunk, I couldn't tell if he was under the influence of something but he definitely wasn't himself. -I asked him to calm down and come back to my house for a cup of tea"*.

Mr Bayoh declined the invitation. He walked from Arran Crescent, turned right into Cramond Gardens, left into Templehall Avenue, right into Hendry Road then left into Hayfield Road.

### **(C) Reports by Members of the Public**

**PROPOSITION** - Police Scotland Area Control Room (ACR) at Bilston Glen received various 999 and 101 calls between 07:09:43 and 07:16:33, from witnesses who observed a black man dressed in a white T-shirt, in possession of a knife and attempting to strike vehicles.

#### **Evidential Support:**

Evidence of Harry Kolberg (PIRC-00064), Linda Limbert (PIRC-00017, PIRC-00018), Joyce Joyce (PIRC-00065), Simon Rowe (PIRC-00010) and Alan Pearson (PIRC-00066; PIRC-00067).

### **(D) Level of Threat**

**PROPOSITION** - In early 2015 the Police Personal Threat Level for Police Scotland was Severe with an attack deemed "highly likely", officers being double crewed and officers advised to wear non identifiable clothing when

travelling to and from work. However, there was no communication from Police Scotland or elsewhere that there were threats being directed towards female officers.

### **Evidential Support:**

On 16 January 2015 the Police Personnel Threat Level for Police Scotland was increased to Severe. A “stay safe” memorandum issued by the Assistant Chief Constable Nicholson on 19.2.15 reiterated that an attack was “highly likely” (PS09749). In early 2015 officers were advised to be double-crewed, and not to wear clothing that would identify them as police officers when travelling to and from work. However, the recollections of PC Paton (PIRC – 00262) of a “rumour going about” Kirkcaldy Police Office that “somebody intended to cause harm to a female cop” and PC Geddes (PIRC – 00357) statement that he was “95% sure a briefing was given” regarding a possible attack on a female officer by ISIS” are not supported by the other evidence available to the Inquiry, namely:

**Temporary Inspector Stephen Kay** had no recollection of any briefing being given regarding a threat to a female officer (PIRC 00271 P.2 and SBPI 00036 Para 121);

**PC April Rodden’s** PIRC directed research of various databases showed no such threats directed to female officers having been recorded (PIRC 00433);

**Kara Ferrier** research on published briefings on Police Scotland Intranet and Scottish Database of threats to UK police officers, showed no specific threats to female officers.

## **CONCLUSION**

We invite the chair to conclude that there was no terrorist threat targeted at a female officer on 3<sup>rd</sup> May; that Sheku Bayoh was a loved and respected member of his community who was acting out of character on the morning of 3<sup>rd</sup> May following his consumption of drugs.



**CHAPTER 2 - RESPONSE IN AREA CONTROL ROOM/ RESPONSE BY LOCAL OFFICERS/ COMMAND AND CONTROL**

**Proposition :** Members of staff in the control room were not all at their posts and this led to confusion with what had been asked for and what had been said, and delay in the reporting and implementing of a plan for the police to approach, and a request for an ARV not actioned.

*Inspector Steven Stewart "occupied elsewhere in the building" and was not in EOV (East Overview) the initial calls came in.*

**PIRC-00395 - PI Steven Stewart, page 2, paragraph 6**

*"That morning sometime after 0700 hours, I was occupied elsewhere in the building, but I don't recall for what purpose, I may have been talking to one of the control room Sergeants, but I cannot be sure. However, when I returned to the EOV (East Overview) I was made aware by the EOV Sergeant that there was an ongoing incident in the Kirkcaldy area regarding a male seen in possession of a knife."*

*Insp Steven Stewart was "asked to return to the overview urgently".*

**Thursday 24<sup>th</sup> November, page 131, line 13**

**Insp Steven Stewart**

13 Q. Right. And were you aware at the time that you entered  
14 the Overview, if it was 7.18, that there had been six  
15 calls to Police Scotland by members of the public at  
16 that time?

17 A. No.

18 Q. You weren't?

19 A. No.

20 Q. What were you aware of at the time you entered the room?

21 A. I was shouted back up -- I'm sure I was annoyed back up

1 by the Overview just asked to return to the Overview

2 urgently, so I ran up the stairs and that was when

3 I entered the Overview.

4 Q. And was that the first point that you actually became

5 aware that there had been a grade 1 call and that

6 matters had been progressed by the controller?

7 A. Yes.

*Sergeant Bisset was told by Insp Stewart about the mess in the kitchen, Bisset leaves the control room floor to clean the kitchen. Both Sergeant Bisset and Inspector Stewart were not within Overview when the first calls came in.*

**SBPI-00192 Final Witness Statement - Steven Bisset - signed statement 18.11.202, page 6, paragraph 19**

19. I have been asked to consider Inspector Stewart's Inquiry Statement<sup>1</sup> at paragraph 15. Inspector Stewart states that he was not in Overview at the time that the initial calls came in and he thinks he was down on the Control Room floor amongst the controllers and Service Centre staff. I thought I received a phone call or someone had a phone call from him about the mess in the kitchen, but that would mean he was in Overview when the call was made. He has maybe phoned me and then came down to the Control Room or it's possible that he's been down and said to me face to face or somebody else face to face, "Have you seen the mess that our kitchen has been left in?". I thought it was a phone call from the Inspector but the message could have been delivered in person.

*Insp Stewart believes he was in the communications hall and was not aware Sergeant Bisset, the Sergeant in the Fife pod was always absent from his station.*

**Thursday 24<sup>th</sup> November, page 156, line 12**

**Insp Steven Stewart**

12 *Looking back now, do you remember where you were?*

13 *A. Yes, I was down in the big communications hall and --*

14 *yes, I was down there. I used to go down there, I would*

15 *tell the staff in the Overview I was going down there.*

16 *I would tell the staff in Overview if I was going to the*

17 *toilet or I was going to make a cup of coffee normally,*

18 *so I would have been down there -- or I was down there*

19 *speaking to staff, trying to sort things out. It was*

20 *a time in Police Scotland when we had taken on sort*

21 *of -- sort of other divisions, legacy divisions into the*

1 *control room area so often it required Duty Officers*

2 *like myself to be down there and walking the floor and*

3 *linking in with staff if there were issues.*

4 *So I did tend to go down and speak to my supervisors*

5 *at the start of the shift if it allowed, so I do*

6 *remember running up from -- the way I ran up the stairs*

7 *I must have been in the service centre area.*

8 *Q. Right. Were you aware that at this time*

9 *Sergeant Bisset, who was the sergeant in the Fife pod,*

10 *the supervisor of Mr Masterton -- were you aware that he*

11 *was absent from his station?*

12 *A. No.*

*The only person "that would have authority to deploy an ARV" was Insp Stewart.*

**Thursday 24<sup>th</sup> November, page 46, line 11**

**PC Scott Masterton**

11 *Q. Right. Let me just look at what you have said. As*

12 I understand your earlier evidence, firearms matters  
13 would be the responsibility of the Overview inspector?

14 A. Yes.

15 Q. In this case Inspector Stewart and he is the one that  
16 would have authority -- he is the only one that would  
17 have authority to deploy an ARV, an armed response  
18 vehicle?

19 A. Yes.

20 Q. And so it wouldn't be within your job description to  
21 deal with a firearms incident if it was declared

1 a firearms incident for example?

2 A. No.

*Due to delay Insp Stewart never heard Sergeant Maxwell's request for all units, an ARV and a dog. Insp Stewart never requested an ARV, preferring to wait for feedback from officers in attendance, which was not forthcoming.*

**Thursday 24<sup>th</sup> November, page 146, line 10**

**Insp Steven Stewart**

10 Q. We can look at the spreadsheet again, if that would  
11 help. So Sergeant Maxwell, at 7.17.23, on page 2 -- so  
12 this is before you come into the overview room, so  
13 page 2 of the spreadsheet, 7.17.23, he makes a request  
14 for all units, an ARV and a dog.

15 A. Yes.

16 Q. So he has made that specific request, he is the  
17 divisional sergeant on the ground and he has made that  
18 request and I'm interested in how significant you  
19 thought that was to your risk assessment.

20 A. Yes, I mean I never heard that. I mean, the risk

21 assessment that I make is based on the National Decision  
1 Model and the firearms training that I undertook, so  
2 just because he is requesting an ARV doesn't necessarily  
3 mean that the threat is there. He is obviously  
4 thinking: male armed with a knife, I want everybody  
5 there, all the resources there, which is fine, but  
6 I have to go through a structured risk assessment, which  
7 I did, to determine whether or not I thought the level  
8 of threat and risk merited the deployment of an armed  
9 response vehicle at that time, and again, I work through  
10 my model, which is an assessment model. It also covers  
11 proportionality as well, so you're taking into  
12 consideration a lot of different things, including,  
13 you know -- you need to know what's actually happening  
14 on the ground. We were doing as much as we possibly  
15 could in the control room to build up that intelligence,  
16 information picture, to understand the location, the  
17 subject, the risk to any persons in the area, what the  
18 threat was and to who, and you're working through your  
19 threat and risk assessment what an individual's identity  
20 is, his capability and intention, so you're going  
21 through all these things and then you come up with your  
1 conclusion. There was not a lot of information that was  
2 known other than the stuff that was coming through the  
3 999 calls, so a lot of this was unknown. We knew  
4 nothing about who the individual was, why he was there,  
5 in what circumstances, whether it was a road rage  
6 incident, whether it was a neighbour's dispute, whether  
7 it was a fight, whether it was a feud, whether he was

8 there to steal -- a car jack, whether or not he was  
9 having a mental health crisis, he was vulnerable, he was  
10 ill, under the influence of alcohol or drugs. You're  
11 thinking all these things but you don't know because you  
12 just don't have that information available at the time,  
13 so a threat to the members of the public, you know, it's  
14 actually unknown what the threat is, but the concern is  
15 there's a high possibility that he might come into  
16 contact with members of the public because people have  
17 already phoned in and he is in that area, so ...

*Delay also caused confusion over whether or not a stay safe message had been delivered.*

**Thursday 24<sup>th</sup> November, page 163, line 16**

**Insp Steven Stewart**

16 Q. Were you aware at 7.20 when you made your message that  
17 there had been no message -- stay safe message from the  
18 controller?

19 A. No, I wasn't aware of that at the time. I'm sure  
20 I asked Scott Dalglish actually if the stay safe  
21 message had been given and could he confirm that it had  
1 been given and I think he said "I'm not sure", so it was  
2 important for me to get on the radio at that last bit  
3 just before they went off to say: you need to make  
4 a risk assessment and you need to feedback straight  
5 away, just what's in front of you, but I acknowledge it  
6 wasn't the full stay safe message, it was what I said at  
7 the time for them to make that risk assessment.

*Insp Stewart would have also been responsible “for telling officers to go to the incident but observe only and not approach or attempt to detain.”*

**Thursday 24<sup>th</sup> November, page 48, line 11**

**PC Scott Masterton**

11 Q. Yes. And then you talk in this paragraph about -- it's:

12 "... almost definitely the local sergeant on the  
13 ground, the supervisor in the ACR, and the inspector in  
14 the ACR would probably make that decision first."

15 This is a decision about telling officers to go to  
16 the incident but observe only and not approach or  
17 attempt to detain the person, so you think that would be  
18 the responsibility of the sergeant on the ground?

19 A. Yes.

20 Q. We have heard that's Sergeant Maxwell, Acting Police  
21 Sergeant Maxwell?

1 A. Yes.

2 Q. Or the supervisor in the ACR, is that your sergeant,  
3 Sergeant Bisset that you were referring to?

4 A. Yes.

5 Q. Or the inspector in the ACR, that's Inspector Stewart on  
6 that day?

7 A. Yes.

8 Q. So you would have said that would be for one of them to  
9 make that decision about officers being told to attend  
10 but observe only, not approach or attempt to detain the  
11 person?

12 A. Yes.

*Ideally Insp Stewart “would have wanted to give the stay safe message earlier”.*

**Thursday 24<sup>th</sup> November, page 167, line 14**

**Insp Steven Stewart**

14 A. Ideally I would have wanted to give that stay safe  
15 message earlier, before they arrived at the locus or  
16 just before they arrived at the locus because I would  
17 want them to have in their minds before they were  
18 entering that street that "We need to take our time, we  
19 need to make a dynamic risk assessment and we need to  
20 feedback", yes.

21 Q. So if you had been in the room before 7.18, you would  
1 have been in a better position to give that message --

2 A. Yes.

3 Q. -- before the men arrived?

4 A. Yes.

*Insp Stewart felt he had "limited information" and was "looking for the up-to-date information" from officers in attendance.*

**Thursday 24<sup>th</sup> November, page 152, line 15**

15 Q. At any time did you consider deploying the ARV when the  
16 request was made, if you had heard Maxwell's request,  
17 but cancelling it, standing it down once you got that  
18 feedback from the scene?

19 A. I mean the time that I was in there I was doing my  
20 assessment, so, you know, it took me the two minutes or  
21 however long I was in there to understand what was going  
1 on, try and ensure that the relevant checks were being  
2 done, work through my threat and risk assessment and  
3 understand what was happening on the ground as best as  
4 possible and we had limited information in relation to



5 that, so for me to deploy armed officers, I'm really  
6 looking for the up-to-date information. I'm looking to  
7 have some kind of plan as well, some kind of tactical  
8 plan as to what's happening and I felt I didn't have  
9 enough information, there was too many unknowns and  
10 I wasn't sure of the risk as well, just in terms of what  
11 the male -- the risks the male was posing because,  
12 you know, he is seen walking down the street in  
13 possession of a knife, you know, not acting angrily or  
14 aggressively, flailing his arms around, no persons  
15 injured as well, or attacked by the male with the knife,  
16 so proportionality comes into it for me as well in terms  
17 of, you know, what is this individual actually doing,  
18 you know, I -- that's part of the consideration I have  
19 as well.

*Insp Stewart would have more time if he had been in the Overview room earlier*

**Thursday 24<sup>th</sup> November, page 154, line 6**

6 Q. If you had been in the Overview room earlier, at 7.14  
7 when the STORM log is created, or 7.15, would it have  
8 made a difference, would it have given you -- it would  
9 have given you more time.

10 A. Yes.

11 Q. Would it have made a difference to your assessment that  
12 day?

13 A. I have thought about this and I have thought about it  
14 quite a lot, so again, I would have asked officers to  
15 go, divisional officers, unarmed officers to attend at  
16 the locus initially to -- and provide feedback as to

17 what was happening on the ground and then I would  
18 have -- whilst that was happening -- you know, the dog  
19 handler would be away, the firearms vehicle was in  
20 Edinburgh, so, you know, you want to get your specialist  
21 resources as near as possible to an incident that's  
1 ongoing, if they're required, but again, if they're  
2 required is the key thing because until you actually  
3 know what's facing you, you don't know the level of  
4 threat, so police officers going, investigating this  
5 call, these calls, actually seeing what's in front of  
6 them and providing that update is what you need and  
7 again, if someone has a knife in a public place like  
8 this, you want police officers there as soon as you  
9 possibly can to keep people safe.  
10 So for me, you know, it's what I have been trained  
11 to do is to make sure that the public are kept safe.

**CONCLUSION :** The failure of the control room to be both properly staffed with all officers focusing on that job led to both delay and confusion in relation to the crucial early response to the police attending, and confusion as to whose role it was to order additional assistance such as an ARV. It led to the "stay safe message" not being delivered as soon as it should have been and officers attending not being reminded at an early stage they should stay back and report to provide information

**PROPOSITION :** The calls coming into the police ought to have made it clear that there was a man acting erratically, near a hospital, and that the police might be approaching someone in a mental health crisis

*Summary of the calls from Harry Kolberg, Simon Rowe, Joyce Joyce, Alan Pearson, Harry Kolberg's second call and Linda Limbert.*

**SBPI-00082 - Digital reconstruction - 999101 call transcript, page 1,**

**Harry Kolberg**

*HK: Hi there, there's a 6 foot eh black guy at eh T-hall area of Shell Garage [inaudible].*

*O: what's this black guy doing?*

*HK: Eh just as I passed him he thumped my car. It looked as if he was actually carrying a knife and he started chasing the car... He's of African origin... quite big built guy...*

*He's quite muscly built*

**SBPI-00082 - Digital reconstruction - 999101 call transcript, page 3**

**Simon Rowe**

*SR: I've just been going along Templehall Avenue in Kirkcaldy and I've just spotted a black man with what looked like a huge blade walking along Templehall Avenue towards the Hub garage.*

*O: Sorry a black male with a wh... a blade, you saying a sword?*

*SR: No like a big kitchen knife.*

*O: Oh right and what was he doing with it? Was he waving it about or?*

*SR: Just walking along the road with it.*

**SBPI-00082 - Digital reconstruction - 999101 call transcript, page 4**

**Joyce Joyce**

*JJ: Eh there's a black man, he's walking along, he's onto the Victoria Road, Hayfield Road. [inaudible] He's got about a 9 inch knife in his hand.*

*JJ: A white T shirt, dark trousers, he's a black man. He's got no jacket or nothing oan but he's carrying this knife. He had it in his right hand.*

**SBPI-00082 - Digital reconstruction - 999101 call transcript, page 5**

**Alan Pearson**

AP: Eh, am no actually too sure what the address is, em there's a guy in the middle of the street with a knife in his hand.

AP: Eh foah!! It's a big coloured guy eh, quite well built white T shirt.

AP: Big build... Eh probably about six foot.

**SBPI-00082 - Digital reconstruction - 999101 call transcript, page 7**

**Harry Kolberg**

HK: Aye, I just phoned a second ago. Eh, there's a white sorry a black man, white T shirt, black trousers. Eh, he's already thumped my car, he's actually on the road between Hendry Road and the hospital in Kirkcaldy, Hayfield Road I think it's called... He's jumping out trying to hit other cars, he's stopping vehicles. I dinnae ken what's wrong with him.

**SBPI-00082 - Digital reconstruction - 999101 call transcript, page 8**

**Linda Limbert**

LL: Hello, there's a man with a knife, a black man on Hayfield Road in Kirkcaldy, just at the roundabout... Aye 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 [inaudible].

The log of the first call had been "created incorrectly and it should have been a grade 1".

**Thursday 24<sup>th</sup> November, page 33, line17**

**PC Scott Masterton**

17 Q. We have the first, the duplicate incident, it's  
18 a priority 2, male with knife. Did the initial grading  
19 as priority 2 and the subsequent grading as priority 1  
20 have any impact on your decision when it came to  
21 despatching units, or the unit as it turned out to be,  
1 Tomlinson and Short?

2 A. No, I mean I would say that the first job has been

3 created incorrectly and it should have been a grade 1  
4 call. The second one is a grade 1 call. In my mind  
5 they're both the same incident, they're both high  
6 priority and I will be dispatching units as quickly as  
7 I can.

There were "four minutes between the call coming in from Mr Kolberg and the incident being logged in the STORM system". This may be due to the call handlers using a different system.

**Thursday 24<sup>th</sup> November, page 29, line 16**

**PC Scott Masterton**

16 Q. Thank you. Right, can -- we have looked at the STORM  
17 logs. You still have those in front of you. We have  
18 heard evidence that the first call that came in to  
19 the police was made by a Mr Harry Kolberg and that that  
20 came in at 7.10.14 and we have seen from the first STORM  
21 log that we looked at that the call taker has created  
1 this STORM incident card at 7.14.17 and you told us  
2 yesterday that they're creating these as they're on the  
3 phone to the caller.

4 There seems to be a period of four minutes between  
5 the call coming in from Mr Kolberg and the incident  
6 being logged in the STORM system at 7.14 and given what  
7 you were saying yesterday about the targets and speed  
8 and people getting things done quickly and they're  
9 typing as they're on the phone, can you explain in any  
10 way why it took four minutes?

11 A. No, no. I'm wondering from something that you said  
12 earlier ... we spoke about something in a CRM. I'm  
13 wondering if they use a different system to record the

14 jobs on the call takers' side and then if it merits it  
15 being a police incident it is then created on the STORM  
16 system for us as the police dispatchers, but if it isn't  
17 meriting a police response it may just be recorded on  
18 that system. That's the only thing I can think of here  
19 that -- I can't remember, I never ever worked on the  
20 call taker side so I'm not 100% certain how that works,  
21 but there is a possibility that they have their own  
1 system over there, they are taking the call -- you know,  
2 people phone in for lost property, etc, you know, asking  
3 "Have you found my dog?", etc, so they may just be  
4 recording information there and if it merits it going to  
5 a job that needs police response they may transfer it at  
6 that point onto this. I'm wondering if that's what's  
7 happening and I'm wondering if that's what that CRM  
8 reference was earlier.

**CONCLUSION :** The communications from the public showed that there was a man with a knife acting erratically near a hospital which dealt with people who had mental health issues. This should have informed the control room that there may be a person in a mental health crisis and to quickly pass a message on that this should be considered in the stay safe message.

**PROPOSITION :** There was no controlled sending of officers to the incident, or control of the way in which they were deployed

*Joanne Caffrey states you have to think about "your own capabilities, how many of you is there and what's your competency".*

**Wednesday 30<sup>th</sup> November, page 35, line 19**

**Joanne Caffrey**

4 Q. We have heard about -- some evidence about a mnemonic

5 "POP", "People, Object, Place"?

6 A. Yes and "people" is looking at the people you're dealing

7 with, but plus the person, yourself as well, and

8 thinking about your own capabilities, how many of you is

9 there and what's your competency, so, for example, if

10 I compare myself now as a 52-year-old to when I was

11 first promoted to a sergeant at 27, at 27 I was running

12 marathons, in the gym most days, I was fit and healthy

13 and now I'm not, so even looking at a situation now

14 I would be thinking, you know, I'm not going to get up

15 off the floor as quick now as I would have then, so I've

16 got to take my demographics into consideration, plus

17 I wanted this to be dealt with so I could deal with

18 priority of life.

19 Q. So when you're considering people it's not just the

20 subject, it's not just members of the public, it's

21 yourself and your own skills and experience?

1 A. Yes, and people's competencies and likewise then

2 thinking about, you know, the initial decision of

3 a probationer constable and a more experienced

4 constable, who am I going to direct to the casualty.

5 Q. So their skills and experience of members of your team?

6 A. Yes and that comes from knowing your team and having

7 a bit of knowledge about who you've got, what experience

8 they've got, what exposure have they had already and

9 then trying the best that you can.

**CONCLUSION :** The response was not controlled by anyone. The control room did not give the stay safe message early enough, but on arrival no feedback was given by any of the officers. The stay safe message was ignored.

**PROPOSITION. :** Consideration ought to have been given to the circumstances in which the police were sent to and arrived on the scene,: this should have informed the officers who arrived that Sheku Bayoh may have been involved in a mental health crisis

*Based on the calls Joanne Caffrey would view the incident as high risk. Because of multiple calls from different sources and members of the public it is unlikely it was a hoax. Calls of this nature at that time of the morning would be highly unusual.*

**Wednesday 30<sup>th</sup> November, page 78, line 12**

**Joanne Caffrey**

12 Q. -- in the ACR. So that is the scenario. Thinking about  
13 the control room staff and primarily, first of all, the  
14 controller, thinking about a reasonable officer in that  
15 position, how long would you envisage that that  
16 controller would take to respond or react to that  
17 grade 1 call on the computer screen?

18 A. It would depend on the initial -- because every person  
19 who is involved needs to conduct some initial risk  
20 assessment process and the National Decision-Making  
21 Model is the core model that's used throughout the UK,  
1 because different people could perhaps interpret risk  
2 and threat slightly different as well and about policies  
3 and options, so certainly such a thing coming in, the  
4 keywords for me are things like "9-inch knife". Multiple  
5 reports, so it's sort of making it more realistic that



6 there's multiple individuals, so each one is  
7 corroborating the other report that's coming in. "Male  
8 with big muscles", so there you could be thinking about,  
9 well, this is potentially a strong male, 9-inch knife,  
10 risk to death of officers attending, in addition to  
11 risks of death to public and also risk of death to the  
12 person themselves, so it's definitely -- on that first  
13 hearing this is a -- it's above business as usual, it's  
14 not your normal routine-sounding call.

15 Usually routine-sounding calls where knives or  
16 weapons are involved might be one call made saying  
17 "There's some people fighting, squaring up to one  
18 another, I think someone might have a knife", and it's  
19 a one-off call, and then you have the other extreme  
20 where you say, "I'm watching someone now shooting  
21 members of the public with a gun", and there's  
1 everything in-between that, so certainly it's in this  
2 unusual/suspected, but it's definitely a high risk to  
3 either officers attending -- because if you're thinking  
4 about 9 inches, you don't really want to be having to  
5 confront someone with a 9-inch blade because even with  
6 your protective equipment you could still get stabbed  
7 and killed.

8 Q. So we have heard some evidence that officers viewed that  
9 as a high risk incident --

10 A. Yes.

11 Q. -- it sounds like you would agree?

12 A. I would, yes.

13 Q. And we have also heard that the nature of there being

14 *multiple calls -- some evidence we have heard is that*

15 *some calls can be malicious or not true?*

16 *A. Yes.*

17 *Q. But with there being multiple calls from different*

18 *sources, different members of the public, that gave an*

19 *aura of authenticity and truthfulness?*

20 *A. Yes, that would enhance the reality of it and*

21 *truthfulness, yes.*

1 *Q. And to what extent -- if I tell you that these calls are*

2 *coming in at -- from 7.10 on a Sunday morning, what*

3 *comment would you have to make about that?*

4 *A. Sunday mornings, really the mindset when you go to work*

5 *on a Sunday morning is that it's usually quiet, you're*

6 *picking up work from the night shift in relation to --*

7 *it's more the investigative strategy and dealing with*

8 *prisoners who have been in overnight. You don't usually*

9 *get public order or violence to that level on a morning*

10 *shift.*

11 *Q. So to what extent would the timing of the calls have*

12 *caused you any --*

13 *A. That would indicate it's highly unusual.*

14 *Q. And we have also heard some evidence about this not*

15 *being a call about two men fighting in a location, that*

16 *there's no one that's being fought with --*

17 *A. Yes.*

18 *Q. -- or no one that's bearing the brunt of any aggression;*

19 *again, what difference does that make?*

20 *A. Because of its unusualness. You're identifying then*

21 *we've got a mobile -- we have potentially got a mobile*

1 armed suspect for a criminal side, or we've got a mobile  
2 armed suspect for medical help but we've got a person on  
3 the move and so it's not in a confined place, so that in  
4 itself is a logistical problem about how do you find the  
5 person, identify them and contain them in an open place  
6 where they're on the move.

*A reasonable officer should be assessing demeanour of subject, whether they are in mental health crisis or intoxicated. If they were unsure they would get an ambulance on the scene for the subject.*

**Wednesday 30<sup>th</sup> November, page 171, line 9**

**Joanne Caffrey**

9 Q. What if an officer -- a reasonable officer is looking at  
10 the subject but is unsure whether it is a mental health  
11 crisis --

12 A. Yes, then radio. So you would be passing back to the  
13 control room "This is what I'm seeing; advice, please".

14 Q. So they can also seek advice from the inspector?

15 A. Yes, yes.

16 Q. And then it's open to the inspector or the PIO or  
17 a sergeant to --

18 A. Yes.

19 Q. -- provide that advice?

20 A. Yes.

21 Q. What advice would you expect a reasonable supervisor to  
1 be giving if the officer is uncertain whether it's  
2 a mental health crisis?

3 A. So I think if they're passing things about the eyes and  
4 the behaviour --

5 Q. Yes?

6 A. I think then the reasonable supervisor is likely to say

7 "This needs a medical intervention", as in: we need to

8 deploy an ambulance, get an ambulance to the scene,

9 because there's -- it's quite common where an ambulance

10 will go to a scene and check someone over before they're

11 then brought to custody and then at custody, because

12 they have already been checked at the scene, the

13 embedded healthcare professional will then further

14 assess them and then decide do they need to go to the

15 hospital or can they continue with them at the custody.

16 Q. So you have explained the position if a reasonable

17 officer is clearly convinced that this is a mental

18 health crisis, they would seek medical intervention.

19 A. Yes.

20 Q. If a reasonable officer is unsure but seeking that

21 clarification --

1 A. Yes.

2 Q. -- would that also be something that --

3 A. Yes.

4 Q. -- would probably result in an ambulance being obtained?

5 A. Yes.

6 Q. Maybe not by the officer, or sought by the officer, but

7 by the supervisors?

8 A. Yes, because I think if the constable who is dealing

9 with the person has got suspicions that there might be

10 mental health, or health, then that's enough then to say

11 "This is no longer just business as usual, we have now

12 got suspected mental health, we need someone with

13 medical training to actually now look.”

14 Q. And what difference would it make if rather than mental

15 health issues, it was an issue about intoxication

16 through drink or drugs? Would any of the evidence you

17 have given alter in any way?

18 A. No, because same again, the intoxication through drink

19 or drugs are specified conditions, the same as mental

20 health, head injuries and angina, so as a specified

21 condition they need to be advised upon by a healthcare

1 professional, so the level of intoxication is important

2 to establish whether -- even if it's a criminal matter,

3 they might still not be safe to go to custody, to the

4 actual custody unit, they might still need to be taken

5 to hospital and officers remain at hospital with them

6 until they are deemed to be low enough intoxication and

7 safe enough to then be dealt with by non-healthcare

8 staff in a custody unit.

## **CHAPTER 3 – DEPLOYMENT OF OFFICERS**

This Chapter will consider the deployment of police officers in response to the various calls made by members of the public who had seen Sheku Bayoh in the area of and around Hayfield Road.

### **PROPOSITION**

The first 4 police officers who attended the scene failed to:

- (a) follow the instruction from Inspector Stewart to assess the situation and report back;
- (b) failed to carry out any risk assessment/engage in dynamic risk assessment, including the availability of police officer support, the location, the risk posed to members of the public, the physical mental and sensory condition of Sheku Bayoh and consideration of the proximity of a mental health facility, the seriousness of the imminent risk of attack and the presence of weapons.
- (c) Police engagement with Sheku Bayoh failed to follow any of the guidance or procedures relating to individuals who are/may be in a mental health crisis.
- (d) Police engagement with Sheku Bayoh did not follow relevant SOPs. Shouting and use of force, including the immediate discharge of CS/Pava (4 times within 1 minutes), was used against a man walking towards the officers with his palms facing forward and no visible weapon. This does not meet the two criteria for any use of physical force which are justification and preclusion.

### **EVIDENCE**

- (a) **Failure to follow the instruction from Inspector Stewart to assess the situation and report back;**

*Inspector Steven Stewart gave instruction to “make initial assessment... and feedback through straight away.”*

**SBPI-00001 – Hearing 1 chronology, page 7, paragraph 2**

*In response, at 07:20:12 Inspector Steven Stewart in the control room gave the following instruction:*

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

*Inspector Steven Stewart believed officers would “enter the road and do a search from their vehicle... shout back or feedback to their colleagues, to their sergeant and to the control room as well.”*

**Thursday 24<sup>th</sup> November, page 166, line 20**

**Insp Steven Stewart**

20 Q. *And at the time -- in the evidence previously we*  
21 *explained that it was during the course of your stay*  
1 *safe message that the first officers arrived?*

2 A. *Yes, yes.*

3 Q. *That was the first time you realised that?*

4 A. *Yes, yes.*

5 Q. *You hadn’t been aware of that before?*

6 A. *No, no.*

7 Q. *If you had been aware that the officers were approaching*  
8 *the locus, the scene, and had actually arrived on*  
9 *Hayfield Road, what difference would that have made to*  
10 *you? If you had been aware that they were very quickly*  
11 *approaching that and actually on Hayfield Road would*  
12 *that have made any difference to you and your stay safe*

13 message at 7.20?

14 A. Ideally I would have wanted to give that stay safe

15 message earlier, before they arrived at the locus or

16 just before they arrived at the locus because I would

17 want them to have in their minds before they were

18 entering that street that "We need to take our time, we

19 need to make a dynamic risk assessment and we need to

20 feed back", yes.

21 Q. So if you had been in the room before 7.18, you would

1 have been in a better position to give that message --

2 A. Yes.

3 Q. -- before the men arrived?

4 A. Yes.

5 Q. At that time did you consider, when you were giving the

6 stay safe message, any instruction to stay back, or wait

7 or observe?

8 A. I didn't realise, and it was only when I have attended

9 the Inquiry, I didn't realise that they were on the male

10 so quickly. I did because their emergency button was

11 pressed, but, you know, my thoughts were that they would

12 probably enter the road and do a search from their

13 vehicle for the male and then when they saw the male, at

14 the first opportunity they would sort of shout back or

15 feed back to their colleagues, to their sergeant and to

16 the control room as well so ...

**Thursday 24<sup>th</sup> November, page 168, line 17**

*Inspector Steven Stewart expected feedback "before they engaged with him, or they thought it was safe to engage with him and they would feed that back."*



*PC Alan Paton did not hear the request for an "initial assessment" because he was getting out of the van or out of the van already by the time the message ended and could not hear the radio when he was "in the heat of the situation."*

**21<sup>st</sup> June, page 15, line 16**

**PC Alan Paton**

16 Q. *And what was your understanding of the words "Initial*  
17 *assessment"?*

18 A. *I didn't hear the words "Initial assessment". I didn't*  
19 *hear -- I can't recall any of that. I think I was*  
20 *actually, if not getting out of the van already out of*  
21 *the van by the time the message ended.*

22 Q. *And we have heard that people can hear messages from*  
1 *their radio.*

2 A. *Yes.*

3 Q. *Is that not something that you were able to hear that*  
4 *day?*

5 A. *Not when you're in the heat of the situation.*

6 Q. *And is that an explanation why you didn't hear that*  
7 *message?*

8 A. *Yeah.*

**PIRC-01396 - PIRC010515 585 Combined Airwave Call Activity Data (Kirkcaldy 01)  
and Transcription, page 6**

- *First report back from scene was Alan Paton pressing his emergency button then stating, "officer down... PC Short... male" Control then acknowledge officer injured*
- *Second report back is Alan Paton explaining the location "adjacent to Gallaghers"*
- *PC Ashley Tomlinson then presses his emergency button and attempts to feedback however it is inaudible.*

- *The first proper report back is from PC Alan Smith "Control Bravo one officer's been punched to the back of the head no obvious serious injuries, male secured on the ground.*

**(b) Failure to carry out any risk assessment/engage in dynamic risk assessment, including the availability of police officer support, the location, the risk posed to members of the public, the physical, mental and sensory condition of the assailant and the proximity of a mental health facility, the seriousness of the imminent risk of attack and the presence of weapons.**

### RISK ASSESSMENT

**SBPI-00001 – Hearing 1 chronology, page 7, paragraph 4**

*No apparent risk assessment was completed prior to the arrival of the police officers at the scene.*

*PC Craig Walker considered the possibility of hitting Sheku Bayoh with the police van believing that "if there is an immediate risk to life then basically anything to preserve life is possible".*

**PC Craig Walker 19<sup>th</sup> May, page 73, line 20**

20 Q. *And can I ask you in relation to paragraph 3 of this*  
21 *statement -- so this is the statement that we looked at*  
22 *before and if I can have paragraph 23, sorry, 23, on the*  
74

1 *screen. This is the one where you said you had*  
2 *considered using the vehicle to strike the male should*  
3 *you deem the risk to the public and officers to be too*  
4 *high. Do you want to say anything about that paragraph?*

5 A. *That was a --*

6 Q. *Is that an option that you're taught, that you can*

7 strike someone with a vehicle?

8 A. If there's an immediate risk to life then basically

9 anything to preserve life is possible.

10 Q. So it's your understanding that including hitting

11 a person with a police van would be acceptable if

12 there's an immediate risk to life?

13 A. Yes.

14 Q. And what would an immediate risk to life be, in your

15 mind?

16 A. If we turned up and he was directly behind someone

17 brandishing the knife, about to stab them. In order to

18 save someone's life -- I mean I'm not talking about if

19 we're in the van and striking him at 60 miles an hour,

20 you know; enough to move him away.

21 Q. So self-defence really, or the defence of another

22 person?

1 A. The defence of another person, yes.

2 Q. Is that something that you were scared might happen,

3 that you might be put in that situation?

4 A. Yes, it was just another one of the options that --

5 considered on the route up. Obviously just given the

6 nature of the call, the large knife, the fact that it

7 was passed that he was chasing people, aye.

8 Q. But in all your years' service have you ever been put in

9 that position where you would need to consider this as

10 an option?

11 A. I haven't had to resort to that, no.

10 Q. So on the journey there you're gathering information  
11 from the Airwaves transmission and also you're adding  
12 into that your local knowledge and we have talked about  
13 that this morning, and then you are assessing the threat  
14 and developing a strategy, talking about options with  
15 PC Paton. You're considering what powers you have and  
16 identifying options, but when you get to the scene, is  
17 that an opportunity for you to then go back to the top  
18 there and gather more information and intelligence and  
19 see what's happening at the scene?

20 A. Yes, which is what we did -- what we done. The male  
21 wasn't in possession of the knife, he appeared to be  
22 reasonably calm on the pavement, so we then assessed the  
1 threat and decided to go and speak with him.

#### DYNAMIC RISK ASSESSMENT

#### **SBPI-00001 – Hearing 1 chronology, page 7, paragraph 8**

*There is no record of any dynamic risk assessment having been carried out at the scene by any officer.*

AS PART OF ANY PROPER RISK/DYNAMIC RISK ASSESSMENT, BEFORE ANY FORCE IS USED AN OFFICER REQUIRES TO CONSIDER IMPACT FACTORS INCLUDING:

- (i) THE AVAILABILITY OF POLICE SUPPORT,
- (ii) THE LOCATION, THE RISK POSED TO MEMBERS OF THE PUBLIC,
- (iii) THE PHYSICAL, MENTAL AND SENSORY CONDITION OF THE ASSAILANT,
- (iv) THE SERIOUSNESS OF THE IMMINENT RISK OF ATTACK AND
- (v) THE PRESENCE OF WEAPONS

(i) THE AVAILABILITY OF POLICE SUPPORT

Sergeant Maxwell's request for all units, an ARV and a dog handler

**(SBPI-00047 Digital Reconstruction - Audio & Video Timeline, page 2 07.17.23 –**

*P0349 A/PS Scott Maxwell – Control from four one one, I want all units to attend that, baring in mind officer safety, is there an A-R-V and a dog as well please.*

*Joanne Caffrey explains that given all the information received a reasonable officer would consider the need for specialist resources such as ARV and dogs.*

**Joanne Caffrey 30<sup>th</sup> November, page 84, line 16**

16 Q. Right. To what extent would a reasonable officer in the  
17 position of a controller receiving this information, as  
18 I have described to you, to what extent would they  
19 consider the need for specialist resources and by that  
20 I mean ARV or dogs?

21 A. I think it should be a primary thought of the reasonable  
1 controller, thinking that --

2 Q. Why do you say that?

3 A. Because potentially -- we've got an incident which on  
4 the description a control room inspector may decide to  
5 deem it a firearms incident, so we've got that period of  
6 thinking it's not a normal event, so it could be  
7 a suspected firearms incident, but without it even being  
8 a firearms incident, it's still a high risk because of  
9 the factors of the person, the object and the place that  
10 are being mentioned, so certainly I would expect  
11 a controller to be seeking supervision advice at the  
12 very least in relation to putting it up the scale.

Dog Handler evidence –

Insp Stewart never heard Sergeant Maxwell's request for all units, an ARV and a dog. Insp Stewart never requested an ARV, preferring to wait for feedback from officers in attendance, which was not forthcoming. There is no evidence to indicate that attending officers were aware that Inspector Stewart had not requested an ARV.

*PC Craig Walker did not believe ACR were aware of the call*

**PC Craig Walker 19<sup>th</sup> May, page 91, line 1**

1 Q. Thank you. In the normal course of events though you  
2 understood that when you arrived you were to carry out  
3 an initial assessment?

4 A. Yes.

5 Q. Or a dynamic risk assessment, yes? And did you  
6 understand that that was information that you should  
7 feed back to the control room.

8 A. Like I say, that would only be -- we never heard that  
9 message, so as far as I'm concerned like the ACR  
10 inspector wasn't aware of the call, he had no  
11 involvement in the call at that point.

(ii) THE LOCATION, THE RISK POSED TO MEMBERS OF THE PUBLIC

*PC Craig Walker acknowledges there was no members of the public in the area at the time, Sheku Bayoh was not striking cars or acting aggressively, and he could not see a knife but it was his "priority to get control of the male".*

**PC Craig Walker 19<sup>th</sup> May, page 95, line 1**

1 Q. Can I ask you to look -- we will leave this for one  
2 moment, but we will come back to it. I would like you  
3 to look at paragraph 11 of your statement. This is your  
4 Inquiry statement. You say there:

5 "As soon as we got out of the vehicle, the situation  
6 developed so quickly, there was no time to step back and  
7 pass back a situation report to the control room. In  
8 any event, there was no new information to pass which  
9 would have added to what was already broadcast."

10 I would like to ask you some questions about where  
11 you say there was no time. So you have described  
12 arriving and the area. Were there any members of the  
13 public in the area at that time, other than the man you  
14 were looking for?

15 A. On foot, no, not that I'm aware of.

16 Q. And when you arrived he -- am I correct in saying from  
17 your statement he wasn't striking cars at that time with  
18 his knife?

19 A. No, that's correct.

20 Q. And he wasn't acting aggressively at that stage?

21 A. Correct.

22 Q. And you couldn't see the knife at that time?

1 A. Correct.

2 Q. And I wonder if you could help the Chair understand what  
3 you mean then when you say there was no time to step  
4 back and pass back a situation report to the control  
5 room? What meant there was no time to step back?

6 A. That we'd arrived, we had got around the corner, he was  
7 there in front of us, and the situation we were

8 presented with we felt that we could deal with, take  
9 advantage of the fact that he didn't appear to be  
10 visibly in possession of the knife and get control of  
11 the male as soon as possible.

12 Q. So your priority was to get control of the male?

13 A. Yes.

14 Q. And was there anything stopping you at that stage from  
15 observing from a distance, so parking the van somewhere  
16 else, observing what was happening and reporting back to  
17 control or making messages on the Airwaves?

18 . I don't see what the advantage would have been to that.

(iii) THE PHYSICAL, MENTAL AND SENSORY CONDITION OF THE  
ASSAILANT / PROXIMITY OF MENTAL HEALTH FACILITY

**Joanne Caffrey - Wednesday 30<sup>th</sup> November, page 171, line 9** - A reasonable officer should be assessing demeanour of subject, whether they are in mental health crisis or intoxicated. If they were unsure they would get an ambulance on the scene for the subject. Joanne Caffrey states that a non-verbal suspect would indicate more risk factors. Officers should consider why they are not speaking, is it due to a disability, intoxication or mental health.

**Joanne Caffrey 30<sup>th</sup> November, page 175, line 2**

2 Q. And what difference, if any, would it make if the  
3 subject is non-verbal, so not communicating verbally  
4 with the officers?

5 A. That, for me, would indicate more risk factors because  
6 you're thinking then why are they not speaking? Is it  
7 an inability to speak through maybe a disability, in



8 which case, this could be even more frightening because  
9 maybe they can't hear as well. Are they not speaking  
10 because of impact of intoxication, drink or drugs, in  
11 which case if they can't speak, then they need medical  
12 help, because they're at such a level of intoxication,  
13 or is it the mental health aspect why they can't speak  
14 and either way, the communication then from the officers  
15 is going to be difficult because it's a barrier to  
16 communication if that person either has any impacted  
17 hearing ability or speech ability.

Joanne Caffrey identifies head injuries, alcohol intoxication, drug intoxication, mental ill health, asthma, diabetes and angina as specified risks to be considered.

**Joanne Caffrey 30<sup>th</sup> November, page 47, line 9**

9 Q. And what sort of things are you thinking when you say  
10 "control measures"?

11 A. Well, recognition of what then becomes a risk factor, so  
12 there are certain conditions which have constantly  
13 remained identified risk factors throughout all of the  
14 custody risks, that's: head injuries, alcohol  
15 intoxication, drug intoxication, mental ill health,  
16 asthma, diabetes, angina. So those are specified risks.

PC Craig Walker believed Sheku Bayoh "appeared to be reasonably calm on the pavement" when they arrived.

**PC Craig Walker 19<sup>th</sup> May, page 103, line 10**

10 Q. So on the journey there you're gathering information  
11 from the Airwaves transmission and also you're adding

12 into that your local knowledge and we have talked about  
13 that this morning, and then you are assessing the threat  
14 and developing a strategy, talking about options with  
15 PC Paton. You're considering what powers you have and  
16 identifying options, but when you get to the scene, is  
17 that an opportunity for you to then go back to the top  
18 there and gather more information and intelligence and  
19 see what's happening at the scene?  
20 A. Yes, which is what we did -- what we done. The male  
21 wasn't in possession of the knife, he appeared to be  
22 reasonably calm on the pavement, so we then assessed the  
1 threat and decided to go and speak with him.

**PC Craig Walker - 19<sup>th</sup> May, page 105, line**

13 he appeared to  
14 be walking along the road in a calm-ish manner. He was  
15 walking with purpose, a bit of speed and determination.  
16 He wasn't shouting, raised voices, he wasn't -- he  
17 didn't appear to be overly angry with the world."

On arrival neither PC Paton or Walker could see a knife in the possession of Sheku Bayoh. PC Alan Paton saw Sheku Bayoh holding out his hands with his palms facing out.

**PC Alan Paton 21<sup>st</sup> June, page 35, line 16**

PC Nicole Short states that she believed Sheku Bayoh may be under the influence of something after seeing the CS/PAVA spray have no effect however she did not think to feed that information back to the control room.

**PC Nicole Short 24<sup>th</sup> May, page 89, line 14**

14 Q. No, that's fine. So actually when you saw him being

15 sprayed by Walker and Paton and it having no effect, was  
16 that the moment that you realised he may be under the  
17 influence of something?

18 A. Yes, yes.

19 Q. Right. And so before you have mirrored him going up the  
20 path, you had that information?

21 A. Yes.

22 Q. Had you thought about feeding that back to control room,  
1 or to Sergeant Maxwell?

2 A. I will be honest, like I say, it was such a fast-moving  
3 situation that we were in and, like I say, all the while  
4 we're called there because -- and not just by one  
5 witness, by several, that there's reports of a man with  
6 a knife so -- sorry.

*PC Ashley Tomlinson used his spray on arriving at the scene when he believed Sheku Bayoh was at Level 3 Passive Resistance.*

**26<sup>th</sup> May, page 153, line 11 onwards**

11...Level 3 is:

12 "Passive Resistance.

13 "This is a typical tactic used but not exclusively  
14 by demonstrators. It is best described as non-active  
15 conduct with no compliance to lawful instruction."

16 A. Yes, that's what Mr Bayoh demonstrated.

17 Q. So that's level 3?

18 A. Yes.

*PC Alan Paton and PC Craig Walker discussed the mental health hospital in Whiteman's Brae was nearby and "he could have been from there or the main hospital the Victoria Infirmary."*

**SBPI-00001 – Hearing 1 chronology, page 7, paragraph 5**

*On route to the incident at Hayfield Road, PC Walker "had a brief discussion with PC Paton on tactics and worst case scenario". He considered whether it was a hoax call; they were aware the man appeared to be acting under the influence of a substance; PC Walker recalled "PC Paton also mentioned the mental health hospital in Whiteman's Brae was also nearby and he could have been from there or the main hospital the Victoria Infirmary, but PC Paton and I did not discuss the hospitals".*

*PC Alan Paton did consider that it could be someone who had escaped from Whytemans Brae Hospital but "that doesn't change things when somebody is using a big knife".*

**21<sup>st</sup> June, page 26, line 4**

**PC Alan Paton**

4 Q. Did you consider that this could be a mental health  
5 situation, a -- he was having a mental health crisis?

6 A. Yes, definitely.

7 Q. And if -- when did that thought go through your mind?

8 A. The thought went through my mind at the same time that

9 I thought it could be a terrorism attack. As soon as

10 I'm going towards that call, it's quarter of a mile away

11 from Whytemans Brae Hospital, could be somebody escaped

12 from there. Yeah, I totally considered it to be

13 a medical matter, but that doesn't change things for

14 whether somebody's on a medical matter or not, that

15 doesn't change things when somebody is using a big knife

16 to stab it at cars, kick cars, things like this. You

17 have still got to deal with it promptly, with clear and

18 concise comments.

*The Armed Policing Operations SOP has advice for dealing with people suffering from mental health issues. This is to stay calm, give them space and recommends only one officer speak to the subject.*

**PS10985 D7270 167 8 4 Armed Policing Operations PSoS SOP v 1.02 (Pol Sup), page 16, paragraph 8.7**

*8.7 DEALING WITH PERSONS SUFFERING FROM MENTAL HEALTH ISSUES, DISSORDERS AND SYNDROMES*

*8.7.1 When dealing with a person who has mental health issues it is important that officers/ staff don't try to diagnose the specific illness. It is important that there is a realisation that a person has some form of mental health issue or condition.*

*8.7.2 The following suggestions may assist in dealing with such persons:*

- 1. Do not approach from the rear as it may be deemed to be an attack;*
- 2. Always stay calm and give a person the space they require so as not to put them under pressure;*
- 3. Only one officer/ staff member should speak to a subject to prevent confusion and establish a rapport. It is often the case that the subjects will show preference to a particular officer/ staff member. This should assist in achieving a positive rapport.*
- 4. Always explain fully who you are and what you are doing – remember keep it simple;*
- 5. Show an interest in the subject and express empathy;*
- 6. Try to limit anything that causes distraction to the person, and address them by name without hurrying them along. Do not use police jargon;*
- 7. Do not stare. This may seem threatening;*
- 8. Try to find out what has caused the upset; and*
- 9. Don't assume a person suffering from a mental disorder is unintelligent or out of touch.*

*(iv) THE SERIOUSNESS OF THE IMMINENT RISK OF ATTACK AND*

*Whilst in the van PC Alan Paton decided the incident “needed to be drawn to some sort of conclusion ASAP”*

**PC Alan Paton 21<sup>st</sup> June, page 26, line**

20 Q. So can I ask you, first of all, was there a reason on  
21 that day why you didn't sit in the van and observe  
22 Mr Bayoh rather than getting out straight away?

1 A. Because we didn't know if he had a knife or if he didn't  
2 have a knife and it needed to be drawn to some sort of  
3 controlled – some sort of conclusion ASAP.

*PC Craig Walker believed people were “phoning the police because they're looking for this danger to be removed”*

**PC Craig Walker 19<sup>th</sup> May, page 99, line 3**

3 Q. Okay. And is that your experience, that you don't want  
4 to wait for things?

5 A. If you could get somebody under control then, aye,  
6 I don't see why you would put other people at risk just  
7 so you could observe. People are phoning the police  
8 because they're looking for this danger to be removed.

9 Q. And if the control room, or Sergeant Maxwell, had come  
10 onto the Airwaves transmission at that time saying  
11 “Provide feedback, give me an update”, or something  
12 along those lines, is that something that you would have  
13 waited to give, or were you keen to take control  
14 straight away?

15 A. I would say that I was happy to go in and try and take  
16 control in the situation and neutralise any risk.

PC Craig Walker claims to have carried out a dynamic risk assessment when he and PC Alan Paton "were presented with eyes on the male".

**PC Craig Walker 19<sup>th</sup> May, page 105, line**

16 Q. Thank you. And when you arrived at the scene in  
17 Hayfield Road, did you carry out that dynamic risk  
18 assessment at the scene?

19 A. When we were presented with eyes on the male, yes.

20 Q. Eyes on the male. So you have described what you saw  
21 when you first arrived and he has not got a weapon, he  
22 is not acting aggressively or striking vehicles at that  
1 stage, so can you explain what risk you considered he  
2 posed to you and Officer Paton at that time?

3 A. He is still a high risk individual. We have no reason  
4 to doubt that he has had or still has possession of  
5 a knife, just because we can't see it, and then  
6 obviously we're looking at the fact that his body  
7 language, et cetera, is he aggressive, is he fighting  
8 with people and so the intelligence -- the information  
9 that we got at that point was he wasn't actively in  
10 possession of a knife, for want of a better word, it  
11 wasn't in his hand, so that increases the reaction time  
12 for dealing with him, if he does have a knife he needs  
13 to retrieve it from somewhere first, and he appeared to  
14 be walking along the road in a calm-ish manner. He was  
15 walking with purpose, a bit of speed and determination.  
16 He wasn't shouting, raised voices, he wasn't -- he  
17 didn't appear to be overly angry with the world.

(v) THE PRESENCE OF WEAPONS

On arrival neither PC Paton nor PC Walker could see a knife in the possession of Sheku Bayoh. PC Alan Paton saw Sheku Bayoh holding out his hands with his palms facing out.

**PC Alan Paton 21<sup>st</sup> June, page 35, line 16**

16 Q. When you first saw him. As soon as you saw that and saw  
17 his eyes bulging out of his head, what did you think  
18 about the situation?

19 A. I still thought this situation needs to be taken control  
20 of, firmly taken control of as soon as possible and the  
21 fact that he didn't have the knife in his hands, I could  
22 see his hands, I thought "I've got to take my  
1 opportunity, grasp this opportunity and confront him and  
2 try and engage in conversation with him".

3 Q. Right. You say you could see his hands. What could you  
4 see -- tell us -- describe what you could see of his  
5 hands? How was he holding his hands?

6 A. Palms of his hands like that (indicates).

7 Q. Could you hold that up because the Chair -- there's  
8 a screen in front of you, right. So you're holding out  
9 your hands palm-out, so at that time you could see he  
10 wasn't holding a knife?

11 A. Yes.

Joanne Caffrey explains that the preferred response is 'contain and negotiate' and this is always an option open to officers in the course of their duties.



**Joanne Caffrey 30th November, page 99, line 9**

9 Q. Right. And can we look please at section 1.2 on page 5,  
10 and you will see there on the screen "Purpose", 1.2:  
11 "Whilst a policy of 'Contain and Negotiate' may be  
12 a preferred response to many firearms incidents, it  
13 should be clearly understood that there is no single  
14 policy or tactic contained within the APP (AP) or  
15 National Police Firearms Training Curriculum ...  
16 (available via the Chief Firearms Instructor) that can  
17 provide an all-encompassing response to meet all types  
18 of threat that may be anticipated or encountered."

19 A. Yes.

20 Q. Are you able to explain what that means?

21 A. So what that's saying there is that would be the  
1 preferred option --

2 Q. Contain and negotiate?

3 A. Yes, unless you can show why it wasn't.

4 Q. Right.

5 A. So it's like with a lot of the guidance, it's the  
6 preferred option unless you can justify why it wasn't,  
7 so it may be -- I wouldn't even say if they had a hold  
8 of someone because the last thing you want to do is try  
9 and grab hold of someone who has already got like  
10 a hostage, because even that one you would be wanting to  
11 contain and back off and bring in professional  
12 negotiators in order to deal with that person but yes,  
13 that's the preferred unless something -- so just  
14 thinking there, if the person then dropped their weapon  
15 and they were seen to drop their weapon and then they're

16 fumbling, you might then think "I'm taking my  
17 opportunity" and go for them, but if the person is  
18 holding a weapon or you believe they've got access to  
19 a weapon but you can't actually see it, then the  
20 preference would still be contain and negotiate where  
21 possible.

1 Q. And that's an option that's available to individual  
2 officers --

3 A. Yes.

4 Q. -- in the course of their duties?

5 A. Yes.

### **(C) POLICE ENGAGEMENT WITH SHEKU BAYOH**

Guidance for police officers engaging with a suspect who is perceived as being/possibly being in a mental health crisis is contained within Use of Force SOP. The appropriate behaviour when dealing with a person who is/may be experiencing a mental health crisis was referred to in the evidence of a number of witnesses.

#### **COPFS-00038 PRO 884 Expert review of the case by Professor Eddleston, page 6, paragraph 17**

*IX) Addendum – Police Scotland. Use of Force Standing Operating Procedure (PS UoF SOP)*

*17) "Section 8.7.2 (p.17) provides suggestions to help officers deal with person with mental health issues such as psychosis. For example: "do not approach from the rear as it may be deemed to be an attack (1), "stay calm and give the person the space they require so as not to put them under pressure" and "... express empathy". Both this and the next (8.7.3) section encourage speaking to*

*the person to establish what is happening and their interpretation of the situation.*

*This advice is consistent with standard clinical practice for the management of psychotic patients, whether due to schizophrenia or to drug exposure.*

*Of note, there is little practical guidance to police on the diagnosis of schizophrenia or psychosis and it is not clear that police officers will be sufficiently confident of recognising such patients.*

...

*19) Psychotic patients from either cause are often confused, deluded and/or paranoid about the circumstances, and unable to understand instructions. As advised by the PS UoF SOP, psychotic patients need to be treated considerately with an awareness that they have difficulty understanding the situation.*

...

*22) If the first police officers on the scene had realised that Mr Bayoh was psychotic, consistent with their observations that he was ignoring them and looking crazy, and had followed Police Scotland advice for dealing with psychotic patients, the outcome might have been different.*

*Ideally, open empathetic questioning while offering space to SB to keep walking, might have calmed the situation and prevented the attack or the need to restrain him physically until submission. In the meantime, an ambulance could have been called to help take SB to hospital.*

*If this conservative approach had been ineffective, a combined physical and chemical restraint approach would have been necessary. At the very least, an ambulance and paramedics should have been present when physical restraint was initiated. This would have allowed paramedics to rapidly gain intravenous access to administer sedative diazepam and/or haloperidol under the guidance if necessary from the local emergency department. At best, the restraint could have been delayed until a doctor had come urgently from the emergency*

*department to help control the situation, allowing the administration of fast-acting ketamine.*

### **Professor Lipsedge**

Section 136 of the English Mental Health Act which allows you to take someone in mental health crisis to a “a place of safety” is “highly disproportionate” in case of black people. “Now a police station would not be regarded as a place of safety, and so an A&E department is the appropriate place.”

**Prof Lipsedge 11<sup>th</sup> May 2023, page 54, line 19**

*Q. And:*

*19 The current management guidelines may apply to  
20 a significant number of people, including those  
21 experiencing a mental health crisis.”*

*22 And they talk about excited delirium having been  
23 controversial:*

*24 “... when used in a way that minimises the role of  
25 restraint in understanding why someone has died  
1 following the use of force by police or health services,  
2 particularly those from ethnic minority backgrounds.  
3 The disproportionate use of force against people of  
4 colour is well documented across health and criminal  
5 justice in the UK.”*

*6 Can you explain a little bit more about those  
7 comments that were put in the position statement?*

*8 A. Yes. There is a chapter that deals with discrimination  
9 on the basis of skin colour. Both -- certainly within  
10 the mental health services and by -- when it comes to  
11 restraint in public places, so the evidence for this was  
12 accumulated by Sir Simon Wessely, past president of the*

13 Royal College of Psychiatrists, in his review of the  
14 Mental Health Act, and he found, for example, that there  
15 is a highly disproportionate use of a section of the  
16 Mental Health Act, this is the English Mental  
17 Health Act, section 136, which allows the police to  
18 detain a person who they perceive in a public place who  
19 they deem to be suffering from some sort of mental  
20 disorder and take them to what used to be called, or is  
21 still called "a place of safety", which was originally  
22 either a police station or an A&E department. Now  
24 police station would not be regarded as a place of  
24 safety, and so an A&E department is the appropriate  
25 place.

1 So there's an excessive use of section 136. When it  
2 comes to the mental health service itself, black people  
3 were more likely to be restrained while they were in the  
4 hospital, more likely to be put into seclusion, more  
5 likely to have lengthy admissions in secure units, more  
6 likely to be involved in the criminal justice system as  
7 well as the mental health system and less likely to have  
8 extended psychological help once they were back in the  
9 community.

10 So there's a general view that people of colour fare  
11 badly within the mental health services in England, and  
12 also seem to be discriminated against by the police.

13 Q. Thank you. Then the Royal College were calling for the  
14 need for a robust consensus about how to understand,  
15 define and respond to this issue and to make sure front  
16 line services were supporting and providing the best

17 *standard of care whilst ensuring appropriate scrutiny*

18 *and accountability in the event of a death. And –*

19 *A. Yes.*

The guidance on dealing with individuals who may be experiencing a mental health crisis is in sharp contrast to the actions of PCs Walker, Paton, Tomlinson and Short.

*PC Craig Walker believes that both he and PC Alan Paton had their sprays drawn before exiting the vehicle.*

**19<sup>th</sup> May, page 100, line 22**

**PC Craig Walker**

22 *Q. "... PC Paton drew his CS spray and exited the vehicle.*

1 *A few seconds later, after securing the handbrake,*

2 *I drew my PAVA spray and also exited the vehicle."*

3 *So Paton, before he exited the vehicle, had his*

4 *spray and you had your spray in your hand before you*

5 *exited the vehicle.*

6 *A. Yes*

*PC Alan Paton believes he drew his spray once he exited the vehicle.*

**PC Alan Paton 21<sup>st</sup> June, page 38, line 13**

13 *Q. When did you take your spray out so that you had it in*

14 *your right hand?*

15 *A. Once I was out the van.*

16 *Q. And when in relation to the commands did you have your*

17 *spray in your hand? Was it before or after?*

18 *A. I couldnae be certain.*

*PC Alan Paton got out the van, shouted and swore at Sheku Bayoh then deployed CS spray with the majority of it getting caught by the wind.*

**PC Alan Paton 21<sup>st</sup> June, page 40, line 11**

11 Q. *What did you do?*

12 A. *Put my -- emphasised my spray with a straight arm that,*

13 *you know, there was no question at all that he saw it --*

14 *he didn't see it. Maybe before my spray could have*

15 *maybe been in a lower hold, but directly towards him,*

16 *pointing down on the ground and I says "Get yourself*

17 *down on the fucking ground", and he just kept walking*

18 *towards me, same time as I'm walking back.*

19 Q. *So he is walking towards you, same direction that he was*

20 *walking in before?*

21 A. *Yeah.*

22 Q. *No deviation from that?*

1 A. *No.*

2 Q. *And any other reaction from him?*

3 A. *No. No reaction whatsoever.*

4 Q. *What did you do?*

5 A. *I sprayed him.*

6 Q. *How far were you away from him at that time?*

7 A. *12 feet.*

8 Q. *Was this CS spray or PAVA spray?*

9 A. *CS.*

10 Q. *What happened after you discharged your spray?*

11 A. *Some of it hit him, but some of it -- the majority of it*

12 *just got caught by the wind, about turned and just --*

13 *when CS gets distinguished -- extinguished I should say,*

14 *it goes out and it's kind of -- it's liquid form,*

15 isn't it, but it's like that silly string that you get  
16 and so it went out, hit him and then curled back round  
17 in the wind and came back and hit me.

PC Craig Walker did not give a warning before discharging his spray.

**PC Craig Walker 19<sup>th</sup> May, page 181, line 12**

12 Q. Did you issue a warning that you may discharge your  
13 spray?

14 A. I don't think I did, no.

15 Q. Was there a reason for that?

16 A. Because the situation changed that quickly that he was  
17 now walking towards me, he wasn't following commands,  
18 closing down the gap again, and, as I say, that's --  
19 it's a standard drill for OST, if somebody is walking  
20 towards you, posing a threat, it's "Get back, stay back,  
21 stay where you are, I'll spray", and you shout "spray"  
22 as it is being sprayed as opposed to giving a verbal  
1 warning.

2 Q. That's what you're taught in OST?

3 A. That's the standard drill, yes.

4 Q. You said he was posing a threat. Do you want to say  
5 a little bit more about how threatened you felt?

6 A. Again, it's going back over the fact that we have  
7 numerous credible witnesses stating that he is in  
8 possession of a knife, a big knife. He is coming  
9 towards us, he is not engaging with us, we covered it a  
10 wee bit earlier on, but he has got a stare about him  
11 that's -- aye, it just felt like a dangerous situation  
12 and he was closing the gap on me rapidly so the spray



13 was deployed.

PC Alan Paton sprayed and then had to retreat due to being incapacitated by his own spray

PC Craig Walker sprayed and then retreated due to going into 'survival mode'.

**19<sup>th</sup> May, page 211, line 19**

**PC Craig Walker**

19 Q. And when you saw him wipe the PAVA spray off his face

20 and flick it away, how did you factor that into this

21 review, this risk assessment issue that you're doing?

22 A. It concerned me that it had no effect on him because

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1 like I say that was one of my go-to tools so it

2 concerned me that it had no effect on him but that was

3 immediately replaced by the fact that I was then

4 incapacitated by the PAVA which was one of the points

5 that PAVA is not meant to have cross-contamination and

6 it had an effect on me at that point, so aye, I went

7 from probably pre-planning into -- I would probably say

8 my reaction at that point was survival, just get away,

9 turn my -- try and get myself to a place of safety as

10 opposed to a risk assessment or anything like that.

**19<sup>th</sup> May, page 70, line 9**

**PC Craig Walker**

9 Q. So in your entire ten years, you had used spray two or

10 three times?

11 A. In my entire 18 or 17 years I've used spray two or three

12 times.

13 Q. And one of them was Hayfield Road?

14 A. Yes.

There is an obvious conflict between the statements of officers PC Tomlinson and PC Short as to whether they are in attendance at the stage where PC Paton and PC Walker discharge their incapacitant sprays. PC Tomlinson says he is not and PC Short says that they both are there. PC Short provides significant detail in this regard and reports that she witnesses both PC Paton and PC Walker spray Mr Bayoh.

**SBPI-00043 Sheku Bayoh - Ashley Tomlinson Statement Rule 8 - 13 April 2022, page 4, para 11**

*On my arrival, I saw PC Walker was on foot and stood on a footpath which was set back from the police bus stop on Hayfield Road. Directly in front of PC Walker, also on the footpath was a male who I now know as Mr Bayoh. They were facing each other. I observed that PC Walker was using both of his hands to cover his face as Mr Bayoh was stood in front of him.*

**SBPI-00041 Nicole Short - SIGNED Rule 8 Response 070422 - 7 April 2022, page 1, paragraph 5**

*5. When I did arrive and looked at the scene from the vehicle I was in, I saw PC's Walker and Paton who were out of their van and had their CS spray out already. When I saw that and heard them shouting at Sheku Bayoh to stay back, telling him that they had their spray and would use it, I realised that this was two of the most experienced members of our team and they had assessed that Sheku Bayoh was a genuine and serious threat.*

This issue can be easily resolved in favour of PC Short who is supported in her account by, (a) an examination of the CCTV footage which shows the arrival of PC Tomlinson and PC Short before the activation of the emergency button by PC Paton at 07:20:42; at this point PC Paton has advised that has not used his incapacitant spray, and (b)

the eyewitness evidence. In this situation the explanation provided by PC Tomlinson that he thought that PC Walker “had been slashed” (PIRC- 00263) is plainly not credible. Mr Bayoh’s hands are in plain view the whole time, no other officer reports this as even being a remote possibility and, the point at which PC Walker is affected by the incapacitant spray and holds his hands to his face, is when he is standing at least 8 feet away from Mr Bayoh.

*Sheku Bayoh walks away from PC Alan Paton and PC Craig Walker who are both incapacitated with spray. PC Ashley Tomlinson continues to shout at Sheku Bayoh.*

**PC Ashley Tomlinson 25<sup>th</sup> May, page 62, line 22**

20 Q. What did you do when you were at position 5?

21 A. When I got obviously as far as position number 5

22 Mr Bayoh started to then walk away from PC Walker and

1 I started to shout like “Get down”, like “Stop what

2 you’re doing”, to try and gain some sort of control.

*PC Ashley Tomlinson used his spray when he believed Sheku Bayoh was at Level 3 Passive Resistance.*

**PC Ashley Tomlinson 26<sup>th</sup> May, page 153, line 4**

4 Q. And level 2 is:

5 “Verbal Resistance and/or Gestures.

6 “This includes shouting, swearing and verbal

7 challenges to requests and/or instructions given. It

8 normally includes non-verbal gestures and posturing

9 (body language) and can consist of Warning and Danger

10 signs of potential attack.”

11 That’s level 2. Level 3 is:

12 “Passive Resistance.

13 “This is a typical tactic used but not exclusively

14 by demonstrators. It is best described as non-active  
15 conduct with no compliance to lawful instruction."

16 A. Yes, that's what Mr Bayoh demonstrated.

17 Q. So that's level 3?

18 A. Yes.

19 Q. When you used your spray?

20 A. When I used my spray, yes.

21 Q. And then what category would you say of behaviour did he  
22 demonstrate when you used your baton?

1 A. The most serious one, so point 6.

2 Q. So level 6:

3 "Serious/Aggravated Assaultive Resistance.

4 "The highest level of resistance encountered which

5 generally involves the intended use of weapons as part

6 of the attack where the perceived threat is that of

7 serious injury or is life threatening. It can also

8 include situations without the presence of weapons where

9 the perceived threat is that of serious injury or is

10 life threatening."

11 And so when you used your baton that's the level of

12 behaviour of Mr Bayoh that you --

13 A. Yes, his actions towards PC Short were such that

14 I thought he was going to kill her. Obviously we have

15 had reports of a knife as well, so there's

16 a consideration that the weapon is still in play and

17 what I mean by that is it is unaccounted for at that

18 time, so yes.

19 Q. You have told us that at no time you saw him produce or

20 brandish the knife.

21 A. No, but there's an opportunity to produce that from  
22 a concealed location on a person's body.

PC Ashely Tomlinson sprayed Sheku Bayoh twice, emptying his CS canister on the second deployment.

**25<sup>th</sup> May, page 75, line 9**

**PC Ashely Tomlinson**

9 Q. Now it may be that we will be able to narrow those  
10 options down in due course, we will be able to see lines  
11 of sight and things when Mr DeGiovanni is here, but if  
12 we -- could we hear your description -- assuming  
13 number 1, that was your first choice, assuming you're  
14 there, you have adopted the stance, you have taken your  
15 CS spray out, tell us what you did?

16 A. I drew it and I would continue -- I continued to shout  
17 obviously "Stop, stop what you're doing, stay where you  
18 are", and when that has not had any effect I issued --  
19 I would have issued a warning which is "If you don't  
20 stop what you're doing, I will use my spray", and again,  
21 nothing.

22 So I sprayed initially and the reason I sprayed  
1 twice is one, when I did my initial burst because you're  
2 shown to use initial, like, bursts of CS or PAVA, so  
3 that if you miss, you have then got the option to kind  
4 of spray again, and when I sprayed my initial burst,  
5 like, it's a case of on/off, like, it's no longer than  
6 on/off, and it fires out, obviously, a jet of  
7 incapacitant spray, and the wind that day just blew it  
8 away, so the next time I -- the way I kind of overcame

9 that was I just kept my finger on the trigger -- I say  
10 the trigger, the button, and then I guided the spray in,  
11 so the wind was basically blowing it and I could  
12 physically see that the spray was bending, so rather  
13 than it keep missing, I just basically went like that  
14 into the wind so I would stay still and I would  
15 basically guide the stream onto, obviously, Mr Bayoh.  
16 Q. Right. I will go back over that with you, if you don't  
17 mind. So you have -- we're working with number 1 at the  
18 moment, we can refine that later. How far was Mr Bayoh  
19 from you at that stage?  
20 A. He was within, I would say, probably 12 to 15 feet,  
21 something like that. Whatever the distance is from that  
22 pavement to the path.  
1 Q. Point to the area on the path where he was? What  
2 direction was he facing?  
3 A. Like -- that's not much use, is it? Towards the  
4 Gallaghers.  
5 Q. So towards the left of -- as we look at the screen?  
6 A. Towards the left if you look at it, yes.  
7 Q. And what direction were you facing?  
8 A. Like, directly at Mr Bayoh, so he is facing obviously  
9 left, I'm facing, like, in a north-ward direction kind  
10 of towards him.  
11 Q. Thank you. And you have described the short burst of  
12 spray. How long does that last?  
13 A. Like, you would just keep your finger on and then just  
14 take it off, just as quick as you could do that, but  
15 that would be enough, like, in training when you do

16 that, that's enough to give you enough, like, spray to  
17 travel and hit the intended target.

18 Q. But your recollection today is that that did not  
19 connect?

20 A. No, the wind -- basically when I have sprayed, the wind  
21 just took it, so it actually just totally missed.

22 I don't know where it went, but I just know it blew it  
1 off into basically nowhere.

2 Q. Which direction was the wind coming from?

3 A. Sort of from -- if you look at this picture, from left  
4 to right, so blowing towards the big van.

5 Q. Thank you. And so you have then described that you made  
6 a second attempt with your spray?

7 A. Yes.

8 Q. And you kept your thumb on the button?

9 A. Yes.

10 Q. And how long did you keep your thumb on the button?

11 A. I don't know if I took my thumb off, or whether or not  
12 the can just finished, but it was until nothing came  
13 out.

14 Q. How long does it take for a CS spray to reach empty?

15 A. I don't know because we never -- in training, because of  
16 the way you do the scenarios repeatedly you just -- you  
17 always do short bursts because -- to fill the training  
18 aids is, I think probably quite expensive, I think, from  
19 what I have been told, so you always just train with  
20 short bursts so that you can increase the longevity of  
21 the training aids, but I don't know how long it would  
22 take from start to finish.

*PC Ashley Tomlinson delivered one blow to Sheku Bayoh's head after witnessing 'the alleged stomp', when there was no reaction from Sheku Bayoh, he decided to deliver two further blows with his baton.*

**Ashley Tomlinson 25<sup>th</sup> May, page 98, line 21**

21 Q. *What did you do?*

22 A. *I honestly thought he had killed her, or was in the  
1 process of killing her, so -- because I had my baton out  
2 I used my baton to deliver a blow. The only -- I deemed  
3 that the only option I had was to use my baton because  
4 if I'd have ran (inaudible) ended up -- my fear was if  
5 I had fallen I'm on the floor as well and the floor is  
6 not a safe place to be when you're dealing with  
7 something like that, you know, you can't run away, and  
8 trying to strike a leg isn't an option because that's  
9 moving about again, the arms are moving about and I want  
10 him to stop, so I struck him in the head area.*

11 Q. *Right. And you struck him with your baton?*

12 A. *Yes.*

13 Q. *Where in the head area did you strike him?*

14 A. *I remember initially the first blow was from back of  
15 head to what would be, if you imagine drawing a line  
16 through someone's head, it would have been from the back  
17 to the jawline area.*

18 Q. *Do you want to show us on your own head?*

19 A. *Yes, so sort of from that to kind of jawline  
20 (indicating).*

21 Q. *So that's behind your left ear towards your jaw?*

22 A. *Yes, somewhere in that area, but the reason I say*



1 diagonally is because that would have been, like, the  
2 way my body would have moved, do you know, it would have  
3 been a natural diagonal sort of down.

4 Q. And once you had done that, what happened?

5 A. It didn't stop him, so I delivered two more baton  
6 strikes to that general area, but I don't know where  
7 they would have connected, or if they did connect,  
8 I couldn't say. I would have to rely on my original  
9 statement, but that stopped him.

10 Q. When you say the first strike didn't stop him, what was  
11 he doing at that point?

12 A. Well, I think the first strike obviously it was timed so  
13 that -- just a coincidental timing that he wasn't  
14 actually stomping on her, but it didn't move him away  
15 from her, it didn't cause him to fall, it didn't cause  
16 him to turn around and my fear was that he was going to  
17 do it again, so I didn't want to gamble on the "What  
18 if", so I delivered two more strikes and that was enough  
19 to cause him to basically turn around and look at me and  
20 do that (indicating).

PC Nicole Short drew her baton when PC Craig Walker asked for a baton. PC Craig Walker did not have a baton with him that day and had already deployed spray which had incapacitated him and PC Alan Paton due to blow back.

**PC Nicole Short 24<sup>th</sup> May, page 71, line 14**

14 Q. All right. Do you want to look at page 6, perhaps? You  
15 will see at paragraph 5 it says:

16 "Craig Walker shouted 'somebody give me  
17 a baton' ..."

18 A. Yes.

19 Q. And then the last line is:

20 "I drew my baton in my right hand and presented my

21 open left hand to him."

22 A. Yes.

1 Q. "I rested the baton on my right shoulder."

2 And:

3 "I told him to 'stop where you are', 'go down to

4 your knees', 'put your hands behind your back or I will

5 strike'."

6 A. Yes.

*PC Craig Walker confirms he had never used a baton at any incident previously.*

**PC Craig Walker 19<sup>th</sup> May, page 63, line 9**

9 Q. But as I understand your statement, you had never used

10 the baton in a knife incident before?

11 A. I had never used the baton full stop

## **WHAT WAS THE APPROPRIATE ACTION OF FIRST OFFICERS ON SCENE?**

*Armed Policing SOP detailing the actions of the first unarmed officer at the scene*

**PS10985 D7270 167 8 4 Armed Policing Operations PSoS SOP v 1.02 (Pol Sup), page 15, paragraph 9.10**

### **9.10 ACTIONS OF THE FIRST UNARMED OFFICER AT THE SCENE**

9.10.1 *In many situations the first officers on scene at a spontaneous firearms incident will be unarmed. In these situations the officers should, in accordance with this standard operating procedure and the content of the College of Policing (COP) Stay Safe at Firearms Incidents follow the SEE, TELL, ACT guide;*

*STAY SAFE - Think about your own and the public's safety;*

*SEE - What is happening and where;*

*TELL - Communicate, describe incident/type of weapon;*

*ACT - Stay Safe, update, observe/contain.*

*9.10.2 The first officer at the scene of a spontaneous firearms incident should ensure that the ITFC is updated of a potential firearms incident in order that the ITFC can arrange:*

- Armed support to be considered, which will normally be Armed Response Vehicles (ARV) ;*
- A RVP and safe route are established and communicated ;*
- Local procedures for implementing command structure have been initiated i.e. first line manager informed of circumstances ;*
- Other resources have been considered e.g. helicopter, Dog Section, Negotiators etc;*
- A paramedic ambulance and other emergency services have been requested where necessary;*
- On duty TFC or in their absence an officer from the on-call Armed Policing Cadre have been informed of the incident.*

## **WHAT IS THE APPROPRIATE RESPONSE TO A VERBALLY NON COMPLIANT SUSPECT?**

*Use of Force SOP detailing profiling behaviour and the corresponding reasonable response from officers.*

**PS12359 D9125 19 1 871. Use of Force Use of Force PSoS SOP Version 0 7 (LTD), page 7, paragraph 4.6**

### **4.6 PROFILED OFFENDER BEHAVIOUR**

*4.6.1 This term encompasses the actions and behaviour of the subject and comprise of the Warning and Danger signs they exhibit coupled with Impact Factors. Profiling a persons behaviour may assist in determining an officer's reasonable response. Profiled Offender Behaviour can be sub-categorised:*

#### *4.6.2 Level 1 – Compliance*

*Most people dealt with are reasonable and will comply with any lawful instruction. This compliance may be verbal or it may be active compliance such as stopping an action when told.*

#### *4.6.3 Level 2 – Verbal Resistance and/or Gestures*

*This includes shouting, swearing and verbal challenges to requests and/or instructions given. It normally includes non-verbal gestures and posturing (body language) and can consist of Warning and Danger signs of potential attack.*

#### *4.6.4 Level 3 – Passive Resistance*

*This is a typical tactic used, but not exclusively, by demonstrators. It is best described as non-active conduct with no compliance to lawful instruction.*

#### *4.6.5 Level 4 – Active Resistance*

*This is more of a physical form of resistance, in that the subject is actively doing something to prevent or obstruct an officer from carrying out their duty. This type of resistance, although physical by nature, falls short of an assault upon another. It can include holding on to an object/person either physically or mechanically; struggling to break free from an officer's grasp; trying to dispose of evidence.*

#### *4.6.6 Level 5 – Assaultive Resistance*

*This is when there is a deliberate intention by another to cause a physical effect upon a person, either directly or by indirect means (assault by menaces). It can be caused by an individual or by a group of people acting together.*

#### *4.6.7 Level 6 – Serious/Aggravated Assaultive Resistance*

*The highest level of resistance encountered which generally involves the intended use of weapons as part of the attack where the perceived threat is that of serious injury or is life threatening. It can also include situations without the presence of weapons where the perceived threat is that of serious injury or is life threatening.*

*The above provides a rising scale of resistance. An offender may display a combination of these types of behaviour, and may start at any level. They may escalate through the*

*levels; similarly, they may de-escalate their levels of resistance and any force used by an officer/staff must be proportionate and appropriate to the perceived resistance in combination with the Impact*

*Factors present at that time.*

#### **4.7 OFFICERS REASONABLE RESPONSE (FORCE OPTIONS)**

*4.7.1 By combining the elements of Profiled Offender Behaviour and Impact Factors it affords the officer/staff the ability to quickly assess the threat and to make an informed decision to adopt appropriate tactics from a range of force*

*Options in order to deal with the situation in a controlled justifiable and accountable manner. These responses (force options) can be subcategorised:*

##### **4.7.2 Level 1 – Officer Presence**

*This is a broad term encompassing the physical and psychological aspects of an officer, especially in uniform or other specialist equipment, having a visual impact and effect on the mind or will of another merely by attending to or arriving at the situation. Adopting a professional approach and conduct can enhance this.*

##### **4.7.3 Level 2 – Tactical Communications**

*By definition, tactical communication means the ability to give out and take in information in a way which gives the officer a tactical advantage. It incorporates verbal and non-verbal communication skills and is the ability of an individual to effectively use all forms of communication, within reason, to resolve an identified area of conflict. This level could include giving specific direction, commands and/or instructions to an offender, even in a forceful vocal manner.*

##### **4.7.4 Level 3 – Control Skills**

*This is the lowest level of physical use of force where there is some form of restraint applied to an offender. This may be as little as placing a hand on an offender, applying hold and restraint techniques, up to and including various handcuffing techniques and the use of leg restraints.*

##### **4.7.5 Level 4 – Defensive Tactics**

*These tactics are generally perceived to be strikes, whether delivered by means of empty hand techniques or baton strikes, but also include the more robust defensive handcuffing techniques and the use of CS Incapacitant Spray.*

*In circumstances where use of Specialised Operations are authorised use of Public Order Tactics, Police Dogs and specialist weapons available to Authorised Firearms Officers, such as the L104A1 Launcher and Taser may be considered as Defensive Tactics.*

#### *4.7.6 Level 5 – Deadly or Lethal Force*

*This is a level of force that has the potential to cause serious injury or even death when it is applied. It may in certain circumstances, where there is a serious risk of severe injury or life threatening risk, be a deliberate choice of option, but in all circumstances must be proportionate to the perceived threat and degree of imminent danger. If this is the chosen option there must be high degree of jeopardy involved; i.e. the subject has the Means, Ability/Opportunity and is displaying Intent to cause serious injury or kill. All elements of Jeopardy must be present immediately at the time that lethal force is applied. Officers using empty hand strikes, baton strikes as well as Authorised Firearms Officers use of conventional firearms could potentially deliver lethal force.*

## **WHAT CIRCUMSTANCES JUSTIFY USE OF FORCE ?**

**Use of Force PSoS SOP Version 0 7 (LTD), PS12359 D9125 19 1 871, page 10, paragraph 5.3.2**

### *5.3.2 Levels of Resistance*

*The resistance that a person offers can be expressed on a sliding scale from low to high. The levels of resistance below show how a relatively passive subject can still exert some force on a Police Officer and try to take over control. If this is successful then instead of controlling the subject, the officer is merely responding to them:*

- 1. Psychological intimidation (presence) – a look, a type of dress or gesture that conveys a hostile message to the officer;*

2. *Verbal resistance – ranges from a polite refusal to shouting;*
3. *Passive resistance – stands still and will not do as they are told;*
4. *Active resistance – walks off, pulls away, runs;*
5. *Assaultive resistance – pushing, fighting, kicking, etc; and*
6. *Serious/Aggravated resistance – assaults using means likely to cause severe injury or the endangerment of life or producing or picking up any kind of weapon.*

*Note that picking up or holding a weapon is ranked as more forceful than fighting with empty hands. If someone has a weapon of any sort the only safe option is to assume that they are willing to use it. In such circumstances officers and staff should conduct a Dynamic Risk Assessment to reduce the potential of being vulnerable to serious injury.*

*Joanne Caffrey confirms that you would only use spray at Level 4 if you felt an attack was imminent and you were precluded from being able to get in front of or stop the attack.*

**30<sup>th</sup> November, page 224, line 19**

**Joanne Caffrey**

19 Q. *So the use of that spray is a level 4 --*

20 A. *Yes.*

21 Q. *-- response?*

1 A. *Yes.*

2 Q. *And can you explain what would the view of a reasonable*

3 *officer be in using a level 4 defensive tactic by using*

4 *their spray in those circumstances?*

5 A. *Yes, I think you would be looking at --*

6 Q. *Sorry, could I have one minute.*

7 *(Pause).*

8 *Are you happy to answer this question?*

9 A. *Yes.*

10 Q. Sorry.

11 A. You would be looking at use of spray if you felt there  
12 was an imminent attack about to happen on you by that  
13 person, or on your colleague by that person, and you're  
14 using it then to defend your colleague or yourself or  
15 a member of the public who is in imminent danger of  
16 being attacked and preclusion-wise, you haven't got  
17 a chance to, like, get in front of them and try and stop  
18 them.

*Joanne Caffrey does not believe that it is reasonable or proportionate to use a Level 4 response (CS/PAVA) if they are faced with a level 2 behaviour.*

**Joanne Caffrey 1<sup>st</sup> December, page 5, line 2**

2 Q. Thank you. Before we leave this scenario, may I return  
3 to the question: if a reasonable officer is faced with  
4 level 2 behaviour, would a reasonable officer consider  
5 using a level 4 response, namely using their CS or PAVA  
6 spray?

7 A. I don't believe so.

8 Q. Why do you say that?

9 A. Simply because looking at proportionality, if the  
10 person's at level 2, they're not actually being a threat  
11 to the officer and the idea of level 4 is it's  
12 a defensive tactic, so it's used in defence of the  
13 officer, or defence of another person, or all other  
14 options have been discounted because of the severity of  
15 the incident.



## CONCLUSION

The first 4 police officers who attended the scene failed to follow the instruction from Inspector Stewart to assess the situation and report back. Those officers failed to carry out an effective risk assessment which took account of relevant factors such as the presentation of Mr Bayoh, the locale where the police encountered him, the availability of police support and the level of risk in the absence of a visible weapon and his presentation of passive resistance.

Police engagement with Sheku Bayoh did not follow the relevant SOPs and, in particular those relating to Use of Force. The principles informing use of force by a police officer include that the force used must be the **minimum amount necessary** to accomplish the lawful objective concerned and must be reasonable in the circumstances. The **use of force** must be absolutely necessary for a purpose permitted by law, such as self-defence, to prevent crime, or to effect a **lawful** arrest – **force** should be the last resort. When considering the question of use of force, and Police Scotland's Standard Operating Procedure provides that:

- (i) Any action must be proportionate in relation to the competing rights of individuals and any force used should be no more than is absolutely necessary;
- (ii) In **no circumstances** must a prisoner be harshly treated or have a greater force used towards them than is absolutely necessary to restrain them;
- (iii) Indiscriminate or unnecessary use of force is unacceptable. The two criteria for **any** use of physical force is (i) justification, where the force used is reasonable and proportionate to the perceived threat and (ii) preclusion, where other reasonable options have either been attempted and failed or considered inappropriate;
- (iv) The overriding principle is that **any** force used by Police Officers must never be excessive and must be reasonable based on the individual persons' perception of the threat they are immediately facing;

- (v) When engaged in confrontational circumstances Police Officers must at all times consider the force continuum with regards to escalation and de-escalation;
- (vi) Before using **any** force an officer must consider: **the impact factors** affecting the situation, such as;-
  - (a) the availability of police officer support in the form of other officers and whether this is available – for example the availability of other units nearby, the support from Senior Officers in the control room, the availability of dog units and whether a call has also been made for the presence of an armed response vehicle;
  - (b) location, and the presence of and risk posed to other members of the public,
  - (c) the physical, mental and sensory condition of the assailant,
  - (d) the seriousness of the imminent risk of attack and
  - (e) the presence of weapons.

The evidence before the Inquiry indicates that the 4 officers who engaged with Sheku Bayoh were aware that they were not going to be the only officers in attendance. Following the first call at approximately 07:11:00 by 07:17:52 the call has gone out for all units to attend on a Grade 1 call, along with requests for an armed response vehicle and a dog unit. Cars 41A, PW101 and 104 confirm they are attending by 07:18:36; at 07:19:47 it is confirmed the dog unit is “*en route*” and by 07:19:51 it is confirmed, “*we are organising an ARV as well, standby*”. Inspector Stuart at the control room informs as follows; “*Inspector Stuart at the control room I am monitoring from an ARV perspective – if you get sighted of the male you need to make an initial assessment yourself and feedback to me straight away*”.

Examination of the evidence available demonstrates that there was no justification for the use of force and there was no effort made, by the 4 officers PC s Paton, Walker, Short and Tomlinson, to consider the impact factors listed above.

When the officers PCs Paton and Walker approach the scene, Mr Bayoh is walking with his hands in plain view. He is wearing jeans and a t-shirt, is not carrying a weapon and he is not running away; in short, he is not creating a danger to anyone - this is also clear from the CCTV evidence.

Officers immediately confront Mr Bayoh and use force; they use incapacitant sprays in a manner that is contrary to all guidance and training and batons are drawn. In all of their actions, they fail to follow the force continuum model and escalate events beyond that which was necessary.

They fail to follow the obvious and reasonable option of containment which in the circumstances of this case was the most obvious way to meet the criteria of preclusion. As highlighted above, *“The two criteria for **any** use of physical force is (i) justification, where the force used is reasonable and proportionate to the perceived threat and (ii) preclusion, where other reasonable options have either been attempted and failed or considered inappropriate.”*

The fact that the local force could deploy two police vans, five police cars and nine uniformed officers at the scene within a period of minutes demonstrates this to be the case – particularly where dog units and armed response vehicles are also reported as on route.

## CHAPTER 4 - ALLEGED STAMP AND BATTONING

**PROPOSITION:** There is no credible and reliable evidence that Sheku Bayoh stamped on Nicole Short. The stamp did not occur and is a retrospective justification for the use of lethal force by battoning Sheku Bayoh on the head. The evidence of officers who said that this occurred is not credible and reliable. There was no credible and reliable evidence to support the proposition and the medical and forensic evidence does not support it either.

### **THE REPORT OF THE INCIDENT - NOT SEEN BY PC ALAN PATON**

PC Alan Paton was first to report back to the control room at 07:21:02 "Officer's injured PC Short... male" after pressing his emergency button at 07:20:42. PC Paton believes he passed a message saying that an officer had been injured and more units were required however only part of the message was transmitted.

**21st June, page 114, line 8**

#### **PC Alan Paton**

*7 Q. And then looking at the next paragraph: 8 "With the effect of PAVA and CS on me I could not 9 keep my eyes clear and I was very vulnerable. I went to 10 the back of the police van. I basically curled up, 11 braced myself. I was probably rubbing my eyes. I was 12 expecting to feel pain of some sort. It felt like slow 13 motion. But I felt that I would get plunged (stabbed), 14 or struck to the head. That's what was going through my 15 head. I kept thinking about the Lee Rigby boy, the 16 soldier who was killed. That's what was in my head. 17 I must have been at the back of the van for seconds. 18 I did not actually get touched at all by the guy. 19 I could not see at this point. I was not aware of 20 anyone else's arrival. I heard Nicole screaming behind 21 me. She was between the van and Hendry Road. I [was] 22 not aware of any of the police vehicles arriving. My 1 eyes were still streaming at that point. I tried to 2 open my eyes. I could see Nicole trying to get up to 3 her feet. Every*

time she tried to get up she fell down. 4 I went over and lifted her up. She was hysterical. She 5 was standing up but I was holding her lapels. When she 6 was able to stand on her own I told her to go and sit in 7 my van. I think she made her own way over there." 8 And that's what you have been telling us today. 9 Then: 10 "I passed the message over the Airwave that 11 an officer had been injured and that more units were 12 required." 13 Can I ask you about that message that you passed 14 over the Airwave. Now, we see at 7.21.02 -- so if you 15 look at page 4, please, you will see that there was an 16 Airwave at 7.21.02, it says "PC Alan Paton", and it 17 says: 18 "Officer's injured PC Short male." 19 And was that you that said that?

20 A. I think so.

21 Q. You think so. So if you look at the bottom of page 3, 22 so this is just before that message, you will see that 1 "PC Alan Paton's emergency status is turned on". So 2 your status is turned on at 7.20.42. There's that 3 Airwaves transmission at 7.21.02. Did you make any 4 other transmissions after that? Because you mention on 5 this statement you passed a message that an officer had 6 been injured and that more units were required. So 7 I can see the officer injured bit; I don't see anything 8 about more units being required?

9 A. Again, the confusion with being incapacitated, you maybe 10 have nae got your finger fully on the button and so it 11 would not transmit. It could also -- your mind can tell 12 you you're saying something, but in reality you have not 13 said something, so again, it's just all coming down to 14 the confusion.

15 Q. So it's possible that the "Officer injured PC Short 16 male" is the only part of that transmission that 17 actually recorded or transmitted?

18 A. I don't understand the "male". "Male" to me doesnae 19 really mean anything. I think I have been trying to 20 transmit a further sentence, perhaps beginning with the 21 word "Male", but then my finger has come off the button 22 and so it has not transferred the rest of it.

1 Q. So it could have cut that off short?

2 A. Yeah

PC Tomlinson sees Sheku Bayoh walking away from PC Walker, he does not initially see PC Paton. It should be noted that despite being sprayed twice with CS/PAVA there was no violence displayed by Sheku Bayoh to PCs Paton or Walker. The officers spoke of their vulnerability in having sprayed themselves with CS/PAVA. It is important to note that Sheku Bayoh did not act in any way to assault these officers : his attempts were to get away from them.

**25<sup>th</sup> May, page 61, line 10**

**PC Ashley Tomlinson**

9 A. *I didn't see -- obviously I seen the back of him, 10 I didn't see the front of him, but, aye, he was close 11 to -- as I say, within arm's reach of PC Walker.*

12 Q. *Could you tell anything about his position, or his 13 demeanour from the back?*

14 A. *No, because I couldn't see his face or kind of what he 15 had in his hands or anything like that.*

16 Q. *Could you hear anything at that point?*

17 A. *I never heard anything, no.*

18 Q. *Where was PC Paton?*

19 A. *I never actually saw PC Paton.*

20 Q. *Right. How far were you from Mr Bayoh and PC Walker?*

21 A. *So I was probably -- see when I've got in my van, see 22 where 1 is, if I click again -- I don't necessarily know 1 if I've got as far as 5, but obviously as I have seen 2 what's unfolding in front of me I have moved probably 3 towards position number 5, so I don't know distance-wise 4 what that would be.*

5 Q. *That's just before the pavement on Hayfield Road appears 6 to curve round slightly to the left?*

7 A. *Yes, I don't think I ever got as far as the bus stop.*

8 Q. *Right. When you were in position number 5, where was 9 PC Short?*

10 A. *I thought she was somewhere behind me, but I don't know 11 where exactly behind me. I don't know if it was to my 12 left or my right, but I had an awareness she was there.*

13 Q. *When you were in position number 5, could you see 14 PC Paton?*

15 A. *No.*

16 Q. *How long did it take you to get from position 1 to 17 position 5?*

18 A. *Not long.*

19 Q. *What did you do when you were at position 5?*

20 A. *When I got obviously as far as position number 5 21 Mr Bayoh started to then walk away from PC Walker and 22 I started to shout like "Get down", like "Stop what 1 you're doing", to try and gain some sort of control.*

2 Q. *What direction did Mr Bayoh walk in? Do you want to use 3 an arrow for this?*

4 A. *Aye, please.*

5 Q. *We will get that on the screen if you give us a moment. 6 Thank you. You can use the arrow now. Thank you. 7 So Mr Bayoh has turned round at that point and 8 walked away from PC Walker?*

9 A. *Yes.*

10 Q. *And you have drawn that arrow, number 6, towards we have 11 heard what is a path between the trees?*

12 A. *Mm-hm.*

**PROPOSITION:** In the conflicting evidence around the stamp, the evidence of Kevin Nelson is to be preferred .

Only PC Craig Walker and PC Ashley Tomlinson witnessed the alleged stamp to PC Nicole Short. Nicole Short, despite not having lost consciousness, does not remember a stamp. Kevin Nelson who was looking on from a window and is clear that the stamp was not possible as Sheku Bayoh moved away from PC Nicole Short as soon as she started to fall to the ground.

PC Craig Walker does not witness the punch to the back of PC Nicole Short's head. As it happens, he is turned towards PC Alan Paton asking for his baton and only turns round again to see PC Nicole Short mid fall.

**19<sup>th</sup> May, page 214, line 19**

**PC Craig Walker**

18 Q. *Where at that point was Sheku Bayoh?*

19 A. *At that point, or the next thing I was aware of is him 20 appearing in my line of vision coming from behind our 21 van chasing after PC Short.*

**19<sup>th</sup> May, page 221, line 4**

**PC Craig Walker**

3 Q. *And when you turned back – do you want to look at paragraph 47 of your statement. You will see: 4 "I turned back to PC Paton briefly as she was in 5 mid-fall and obtained PC Paton's baton from him."*

6 A. *That's a typo, that should be "I turned back in the 7 direction of PC Short".*

8 Q. *PC Short, I thought that might be the case. So you 9 turned back looking to your right to PC Short and she 10 was in mid-fall?*

11 A. *Yes.*

12 Q. *Can you describe what that mid-fall looked like?*

13 A. *Both feet were off the ground. It's hard to explain it 14 but yes, somebody who is -- you know, the top part of 15 her body was further forward than her feet, there was no 16 way she could keep her balance and she had been running 17 at the time so both her feet were off the ground and she 18 was clearly going to fall at that point.*

19 Q. *What direction was she going to fall in?*

20 A. *Forward. She was running forward.*



PC Alan Paton did not witness the punch or the stamp, he heard screaming and then picked PC Nicole Short off the ground by her lapels of her stab vest and told her to go to the van.

**21<sup>st</sup> June, page 46, line 8**

**PC Alan Paton**

8 Q. So you remain in that position for perhaps 15 seconds. What's the first thing then that you notice that 9 changes? You have talked about being in that position 10 at the rear of the Transit van; what happened after 11 that?

12 A. I heard Nicole screaming. 13 Q. Could you tell where her screaming came from?

14 A. Behind me, ish. 15 Q. Did you have any impression at the time where behind 16 you, how far away she was? 17 A. No. I was disorientated, completely and utterly 18 disorientated with the CS spray.

19 Q. What -- when you say you heard her screaming, what was 20 it you heard her scream? 21 A. Just screams, just a scream. 22

Q. What did you do? 1

A. The effects of CS spray were -- well, I certainly 2 thought at the time were starting to wear off, but just 3 turned around and saw her on the ground, trying to 4 get -- she was trying to get up onto her feet but her 5 feet were -- her legs were like rubber, she just kept 6 falling back down. So I went across and picked her up 7 by the lapels of her stab vest and just told her to go 8 back and -- go back to the van, sit in the van.

PC Ashley Tomlinson claims that he saw Sheku Bayoh strike PC Short with his fist to the back of her head and then stamp on her back.

**May 25<sup>th</sup>, page 88, line 6**

**PC Ashley Tomlinson**

5 Q. And when you pivoted, describe what you saw?

6 A. What I saw was Mr Bayoh strike PC Short with his fist to 7 the back of her head. She wasn't wearing a hat, so that 8 impact would be fist on head, so it was the back of

*her 9 head and that action caused her to fall, or lose balance 10 and she fell forward onto the road.*

**May 25<sup>th</sup>, page 89, line 1**

**PC Ashley Tomlinson**

*Q. What force did he use?*

*1 A. From where I was standing, a lot, because it knocked 2 her, like, so off-balance that she has fallen forward, 3 so I would imagine to do that would require a lot of 4 force.*

*5 Q. And you have talked about her falling forward; how did 6 she fall forward, are you able to describe that?*

*7 A. Full length, basically. If you imagine, like, a child 8 going down a slip and slide -- I'm just trying to think 9 of things that would be similar in terms of movement. 10 Like that (indicating), kind of putting her arms out and 11 taking, basically, a dive towards the road.*

*12 Q. And what position did she fall into?*

*13 A. Like, flat on the road, so, like, it would have been -- 14 so the front of her body and face and that on the side 15 of her arms would have been touching the road.*

**May 25<sup>th</sup>, page 91, line 2**

*1 Q. You have said you became involved. Tell us what you 2 did?*

*3 A. When Mr Bayoh had punched PC Short, she has fallen down 4 on the floor. What I remember is she has tried to push 5 herself up, but then he stamped on her back, which has 6 caused her to basically ... I thought he'd killed her.*

PC Craig Walker turns to sees Sheku Bayoh raise his right leg with his arms up and bring his right foot down in a full force stamp down onto PC Nicole Short's lower back, kidney area. Nicole Short was prone, lying flat on the ground.

**20<sup>th</sup> May, page 7, line 11**

**PC Craig Walker**

10 Q. You turned back to PC Short briefly: 11 "... as she was in mid-fall and obtained PC Paton's 12 baton from him. I turned back towards PC Short. By 13 this time, PC Short was lying face down in the prone 14 position on the road, close to the south pavement. 15 Sheku Bayoh was on the opposite side of PC Short to me, 16 standing at right angles to her and facing towards me. 17 I had a clear and unobstructed view of him and saw him 18 with his right leg in a high raised position. He had 19 his arms raised up at right angles to his body and 20 brought his right foot down in a full force stamp down 21 onto her lower back, the kidney area." 22 So I would like to ask you some questions about this 1 paragraph.

2 A. Yes.

3 Q. The prone position is on her front?

4 A. Yes.

5 Q. And she was close to the south pavement, so that's the 6 other side of the road from -- on Hayfield Road --

7 A. Yes, from (inaudible over speaking), yes.

8 Q. -- from where you were. When you say she was prone, can 9 you describe what position she was in? Was she flat 10 out, or was she in a different position?

11 A. Flat out, as though somebody had fallen and went 12 (inaudible) basically.

13 Q. Right, and you're pushing your arms towards you. Were 14 her arms in front of her, or was that --

15 A. I mean, like, I say, it's as if someone has fallen, put 16 their hands down and just sort of lying sort of flat on 17 the road was how she was, flat on her front. 18 Q. Right.

And where were her arms when she was flat out on 19 the road? 20 A. I'm not sure. 21

Kevin Nelson saw Sheku Bayoh swinging his arms, "like arched, hooked punches rather than a straightforward jab, it was just wild swinging" that connected with PC Nicole Short " at the left side of her head". Kevin Nelson's description differs from PC Walker and PC Tomlinson, Kevin Nelson sees PC Short facing Sheku Bayoh but walking backwards away from him when she is hit on the left side of her head and

starts to stumble but does not see her fall due to the hedge at the front of his property. The evidence of Kevin Nelson, an independent witness, should be preferred.

**31<sup>st</sup> May, page 36, line 7**

**Kevin Nelson**

6 I'd like to get a full description from you about what you saw from your living room window. 7 So you've talked about the man's arms. Could you 8 give us a description of what you meant when you 9 described his arms in this paragraph?

10 A. In terms of the way he was swinging his arms?

11 Q. Yes.

12 A. Yeah. They were just, like, throwing punches, like 13 arched, hooked punches rather than a straightforward 14 jab, it was just wild swinging.

15 Q. Right. And was that with both arms?

16 A. Both arms were going, yeah.

17 Q. Right. Wild swinging? 18 A. I would say it was -- it didn't look -- I'm not a boxing 19 expert, but it didn't look in any controlled away at 20 all.

21 Q. Did you see where it connected with the female officer?

1 A. At the side -- side of -- the side of her head.

2 Q. And you're gesturing to your right side. Is that 3 the side that you saw it connect with the female 4 officer?

5 A. As I'm looking out, it would have hit her on -- if her 6 back was towards me -- her left side.

**31<sup>st</sup> May, page 37, line 15**

**Kevin Nelson**

14 Q. And if we've heard that she turned round and was running 15 away, do you remember her facing you?

16 A. No.

17 Q. No. Your recollection is she had her back to you?

18 A. Yes. 19 Q. When the blow struck?

20 A. At best, maybe side-on, slightly at an angle, but not 21 facing me.

1 Q. When you say "side-on", can you describe to us what you 2 mean?

3 A. Because she was walking backwards, he was coming towards 4 her. It may not have been exactly parallel with me, it 5 may have been slightly walking back side-on, if that 6 makes -- if I've described that okay.

7 Q. All right. So if she was side-on, what side of her 8 could you see better?

9 A. I would probably say the left-hand side.

10 Q. Her left-hand side?

11 A. Yeah. It was the same as me, because we were both 12 facing across the road. 13

Q. Okay, right. 14 And you say she kind of stumbled?

15 A. Mm-hm.

16 Q. What were you able to see?

17 A. I seen her getting hit and just like, if you see -- if 18 you do see a boxing match when someone's punched, they 19 go in the motion of where the force has come from, so it 20 changed; it was no longer just walking or backing off, 21 it was a bit more to the side and a bit faster.

1 Q. Did you see how she fell?

2 A. No, I couldn't see how she fell because of the -- 3 the hedge and the cars. I did see her starting to go 4 down.

5 Q. So you saw her going down --

6 A. Yeah.

7 Q. -- towards the ground?

8 A. Ah-ha.

9 Q. But the hedge and the cars in front of your living room 10 window --

11 A. Yeah, I would never -- I would never have seen anybody 12 after the fall behind the --

13 Q. So you couldn't see her on the ground?

14 A. No.

Kevin Nelson does not think the stamp as described by PC Walker and PC Tomlinson was possible as soon as PC Short was going down Sheku Bayoh changed his course away from her.

**31<sup>st</sup> May, page 74, line 10**

**Kevin Nelson**

9 Q. *Is it possible that when his arms were raised and you 10 saw him with his arms raised, that he was stamping on 11 the female officer?*

12 A. *I don't think it's possible, no.*

13 Q. *And why do you say that?*

14 A. *Because she was down and had moved away from him. As 15 soon as she was going down, that's when he changed 16 course.*

**31<sup>st</sup> May, age 107, line 5**

**Kevin Nelson**

4 Q. *So you just don't think that's possible that he stamped 5 on the female police officer?*

6 A. *I -- no.*

**PROPOSITION :** The evidence of PC Nicole Short in relation to the alleged assault is not credible and reliable and she ought not be believed.

PC Short gave several different descriptions of what happened to several different people, PC Short herself admits that she has no recollection of being stamped on or being unconscious.

When PC Short was taken to the Victoria Hospital A&E on the morning of the 3<sup>rd</sup> of May she told Dr Katherine Mitchell that she had "been struck blows to the back of the head" and Staff Nurse Leigh Anne McLaughlin she "had been punched five times to the back of her head." Later on 3<sup>rd</sup> of May PC Short told Dr Gillian Norrie "She was

hit on the back of the head with fists and fell forward to the ground onto her hands and knees. Her back was then stamped on, she thinks several times.”

PC Short then presented at A&E on the 4<sup>th</sup> of May where she told Dr Zoe Smeed she had been assaulted, “she had received a blow to her head (back of head) and her back had been stamped on” and she did not know if she had lost consciousness.

PC Short visited her GP Dr Erica Ellison on the 5<sup>th</sup> of May and said she had “been attacked by a man. She said she ended up on the ground and he had jumped on her back and that she had sustained injuries to her knees and her neck.”

PC Short called NHS24 at 1944 on the 10<sup>th</sup> of May and was assessed by Dr Christopher Speakman on admission who she told “she had been violently assaulted during the arrest of a suspect and had been punched to the back of her head and that after being punched she fell to the ground and that the suspect had stamped on her head.” Dr Arsalan Ali Siddiqui saw PC Short on the 11<sup>th</sup> of May as part of the same admission and was told “she had been involved in an assault whilst on duty when she had been kicked and punched on the right side of her head.”. Finally Dr Katherine Jean Pollok was responsible for the release of PC Short on the 11<sup>th</sup> of May and was told that “she had had blows to the head.”

PC Short has no recollection of being stamped on by Sheku Bayoh or being unconscious.

**24<sup>th</sup> May, page 107, line 3**

**PC Nicole Short**

*“At some point, I had asked PC Ash Tomlinson what 3 happened back there, and he told me, ‘Nicole, he was 4 stamping on you’. He told me that he thought I was dead 5 after being hit by Mr Bayoh...” 6 And then he went on to describe the sound. 7 And is that the first time in the canteen that you 8 were told Mr Bayoh had stamped on you? 9 A. Yes, yes, that’s the first time I found out I was 10 unconscious as well.*

Dr Katherine Mitchell was a Doctor within A&E Victoria Hospital who saw PC Short on the morning of the 3<sup>rd</sup> of May 2015.

**PIRC-00294 - Katherine Mitchell, page 2, paragraph 2**

*She described to me as having been chased by a member of the public earlier that morning and having been struck blows to the back of her head. She said that she remembered falling to the ground putting her arms out to save herself when she was on the ground curling up into a ball. She said she had been from there lifted up by one of her colleagues and told to sit in a police van.*

**PIRC-00294 - Katherine Mitchell, page 2, paragraph 3**

*I examined her and didn't find any abnormalities of her chest or cardio-vascular system, or her abdomen or her neurological system.*

Dr Katherine Mitchell confirms that she wrote that "the patient's abdomen was SNT which is soft and non-tender and there was no obvious abdominal injury and no abdominal pain. That would involve pressing on the front of the patient's tummy, putting one hand underneath and then sort of squeezing the kidney area between two hands to see if it elicited any tenderness."

**9<sup>th</sup> June, page 45, line 3**

**Dr Katherine Mitchell**

*3 you have seen the demonstrations that were given in 4 evidence. Now, doctor, I'm going to ask you some 5 questions about that, and if you feel that these 6 questions take you out of your field of expertise, then 7 please just tell me, but would you have expected a stamp 8 or stamps as demonstrated there to have caused injury?*

*9 A. I think you probably are taking me a little bit out of 10 my field of expertise for a proceeding such as this and 11 maybe a sort of forensic expert might be more 12 appropriate to provide a more definitive answer, but on 13 the first page of my medical notes I have written that 14 the patient's abdomen was SNT which is soft and 15 non-tender and that there was no obvious abdominal 16 injury and no abdominal pain. That*



would have involved 17 pressing on the front of the patient's tummy, putting 18 one hand underneath and then sort of squeezing the 19 kidney area between two hands to see if it elicited any 20 tenderness.

21 Q. Squeezing the kidney area?

1 A. So, the flank, yes.

2 Q. And had there been any tenderness would you have made 3 a record of that?

4 A. I don't see any reason why I wouldn't have done.

Leigh Ann McLaughlin was a Staff Nurse with NHS Fife working within A&E and saw PC Nicole Short on the morning of 3<sup>rd</sup> May 2015

**PIRC-00302 - Leigh Ann McLaughlin, page 2, paragraph 4**

*She said that they got their batons out – that her partner had got his baton out so she got hers out. She said he (meaning the person who was to be arrested) was coming for her so she swung her baton but didn't know if she hit him or not. Then she said that she just turned and ran. She said that she had then been punched five times to the back of her head.*

**PIRC-00302 - Leigh Ann McLaughlin, page 2, paragraph 9**

*I remember her brother coming in before this... she told me that was her brother.*

Dr Gillian Norrie attended Kirkcaldy Police Station at 1545 hours on Sunday 3<sup>rd</sup> May 2015 and examined PC Nicole Short to compile a forensic medical report

**PIRC-01310 – Forensic Medical Report Nicole Short, page 3, paragraph 2**

*PC Short was called to the incident at 0715. She reported that she approached but ran away as she felt threatened by this individual who proceeded to chase after her, shouting expletives. She was hit on the back of the head with fists and fell forward to the ground onto her hands and knees. Her back was then stamped on, she thinks several times. Her colleagues arrived and helped her to the police van to safety and then proceeded to restrain the individual.*

Dr Gillian Norrie confirms that she had “no concerns” about PC Nicole Short’s neurological condition when she saw her at 1545 on the 3<sup>rd</sup> May 2015.

**9<sup>th</sup> June, page 94, line 15**

**Dr Gillian Norrie**

*So as you note there, neurological symptoms can 15 evolve and things can change over time, but when you saw 16 her at 3.45 on 3 May 2015 you did not have any concerns?*

*17 A. No concerns.*

*18 Q. No concerns. And if you had had concerns, you would 19 have sent her straight back to A&E?*

*20 A. Absolutely.*

Dr Zoe Smeed was a senior Doctor within A&E of Victoria Hospital who saw PC Nicole Short on the 4<sup>th</sup> of May at 1540pm.

**PIRC-00259 - Zoe Smeed, page 2, paragraph 3**

*I saw this patient who provided her personal details to me and presented as a police officer who had been chased the previous day (3.12.15) and stated she sustained an assault. She said she had received a blow to her head (back of head) and her back had been stamped on. She informed me that she wasn’t sure if she had lost consciousness. [REDACTED]. She had mild headaches which was resolved with analgesia. There had been no vomiting or nausea, but she felt intermittently lightheaded.*

Dr Erica Ellison is PC Nicole Short’s GP and saw PC Short on the 5<sup>th</sup> of May 2015 at 0850am

**PIRC-00320 - Erica Ellison, page 2, paragraph, 1**

*She said that she had been involved in an incident at work and had been attacked by a man. She said she ended up on the ground and he had jumped on her back and that she had sustained injuries to her knees and her neck.*

Dr Christopher Speakman was a Junior Doctor who saw PC Nicole Short when she was admitted after contacting NHS24 at 1944pm on the 10<sup>th</sup> of May 2015

**PIRC-00319 - Christopher Speakman, page 2, paragraph 3**

*So she told me she had been violently assaulted during the arrest of a suspect and had been punched to the back of her head and that after being punched she fell to the ground and that the suspect had stamped on her head.*

**PIRC-00319 - Christopher Speakman, page 3, paragraph 2**

*On balance the subtle facial droop could have occurred as a result of a punch to the back of the head although her CT was normal. I felt that there was enough clinical suspicion to have a CT scan in light of her story however these were ruled out by the CT scan.*

Arsalan Ali Siddiqui is an A&E Doctor that saw Nicole Short at 0850am on the 11<sup>th</sup> of May 2015 after Nicole Short had contacted NHS24 at 1944pm on the 10<sup>th</sup> of May 2015.

**PIRC-00288 - Arsalan Ali Siddiqui, page 2, paragraph 2**

*She told me that she had been involved in an assault whilst on duty when she had been kicked and punched on the right side of her head.*

**PIRC-00288 - Arsalan Ali Siddiqui, page 3, paragraph 1**

*When examined, when admitted at 0330 hrs there was no evidence of facial droop, and this is recorded by the junior doctor. I did not find any evidence when I examined her. The doctor (junior) (SPEAKMAN) who originally saw Miss Short actually documented that there was a subtle facial droop which is very mild and would be insignificant.*

Dr Katherine Jean Pollok is a doctor that saw PC Nicole Short at 1130am on the 11<sup>th</sup> of May

**PIRC-00303 - Katherine Jean Pollok, page 2, paragraph 1**

*She told me that she was a police officer and also that she had been assaulted. I presumed that this was in relation to her employment. I don't remember if she described the assault to me, but I do remember that she had had blows to the head.*

**PIRC-00303 - Katherine Jean Pollok, page 2, paragraph 7**

I didn't notice any facial swelling or droop. She had a neurological examination a few hours prior and this would have picked up any facial droop or other neurological damage.

**PROPOSITION:** The evidence of PC Ashley Tomlinson in relation to the alleged assault is not credible and reliable and she ought not be believed. The forensic evidence does not support a stamp of the type demonstrated.

Paul Ryder the tread analysis expert said that there was no correlation between deposits on PC Nicole Short's vest having resulted from contact with the sole of either Sheku Bayoh's boot or PC Walker's boot and no features were present that could satisfy the geometric shapes you would expect to see in relation to an item of footwear being brought down in forceful contact with the vest. He goes on to say "if someone was to be laying on the ground and a mark was to be deposited on top of them on the opposite side to where they were laying on the ground, you would expect deposits from the shoe but you would also expect deposits from the ground at the same time if they were in contact with it"

**8<sup>th</sup> December, page 62, line 10**

**Paul Ryder**

10 Q. *And you say that:*

11 *"No such correlation was found that I would consider*  
12 *to be indicative of these deposits having resulted from*  
13 *a contact with the sole of either of these pairs of*  
14 *boots."*

15 A. *That's correct, yes.*

16 Q. *And was that the boots of Mr Bayoh?*

17 A. *Yes.*

18 Q. *And PC Walker?*

19 A. *Yes.*

20 Q. *Thank you. So you couldn't find any items in the*

21 *transparency and from the sole of the boots that*

22 *corresponded with the vest?*

23 A. *I couldn't find a correspondence, no.*

**8<sup>th</sup> December, page 63, line 1**

**Paul Ryder**

1 Q. *Thank you. And you have also mentioned there that -- to*

2 *go back to the second line:*

3 *"No features were present that I can be satisfied*

4 *are geometric shapes that I would expect to see if they*

5 *were related to an item of footwear being brought down*

6 *in forceful contact with this vest."*

7 *I'm interested in the use of that "in forceful*

8 *contact". What were you thinking of when you described*

9 *"in forceful contact"?*

10 A. *Well, I understand that -- from the instruction*

11 *provided -- that we were investigating the potential*

12 *that someone had stamped on this vest, so I understand*

13 *a stamp to be someone bringing down the under surface of*

14 *their shoe in a forceful way, which increases the amount*

15 *of pressure that is applied when the shoe makes contact*

16 *with the surface it's coming into contact with.*

**8<sup>th</sup> December, page 66, line 15**

**Paul Ryder**

15 Q. *Thank you. Now, you have mentioned the forceful dynamic*

16 *motion. Again, if the marks were caused not by*

17 *a forceful dynamic motion such as a stamp, but perhaps*

18 a less forceful dynamic motion, would that cause you to  
19 alter any of the views you expressed?

20 A. You would take it into account, but it doesn't alter the  
21 opinion that there's nothing within those marks that  
22 I can see that would allow me to form a view that they  
23 have been made by either of those pairs of shoes, or  
1 indeed that it's a footwear mark.

**8<sup>th</sup> December, page 69, line 13**

**Paul Ryder**

13 A. In terms of that it's sort of equal and opposite forces,  
14 in that if someone was to be laying on the ground and  
15 a mark was to be deposited on top of them on the  
16 opposite side to where they were laying on the ground,  
17 you would expect deposits from the shoe but you would  
18 also expect deposits from the ground at the same time if  
19 they were in contact with it.

**PROPOSITION:** PC Ashley Tomlinson delivered one blow to Sheku Bayoh's head after witnessing 'the stamp', when there was no reaction from Sheku Bayoh, he decided to deliver two further blows with his baton. The "stamp" that was described was a retrospective justification for the potentially lethal baton assault on Sheku Bayoh : PC Ashley Thompson was particularly anxious about having hit Sheku Bayoh to the head and he is the first to describe the stamp. This explains why Nicole Short did not think she had been knocked unconscious, had no memory of being stamped on and why there is no forensic support for the stamp nor any injuries which are likely to have been associated with a full force stamp assault by Sheku Bayoh.

**25<sup>th</sup> May, page 98, line 21**

**Ashley Tomlinson**

21 Q. What did you do?

22 A. I honestly thought he had killed her, or was in the  
1 process of killing her, so -- because I had my baton out  
2 I used my baton to deliver a blow. The only -- I deemed  
3 that the only option I had was to use my baton because  
4 if I'd have ran (inaudible) ended up -- my fear was if  
5 I had fallen I'm on the floor as well and the floor is  
6 not a safe place to be when you're dealing with  
7 something like that, you know, you can't run away, and  
8 trying to strike a leg isn't an option because that's  
9 moving about again, the arms are moving about and I want  
10 him to stop, so I struck him in the head area.

11 Q. Right. And you struck him with your baton?

12 A. Yes.

13 Q. Where in the head area did you strike him?

14 A. I remember initially the first blow was from back of  
15 head to what would be, if you imagine drawing a line  
16 through someone's head, it would have been from the back  
17 to the jawline area.

18 Q. Do you want to show us on your own head?

19 A. Yes, so sort of from that to kind of jawline

20 (indicating).

21 Q. So that's behind your left ear towards your jaw?

22 A. Yes, somewhere in that area, but the reason I say  
1 diagonally is because that would have been, like, the  
2 way my body would have moved, do you know, it would have  
3 been a natural diagonal sort of down.

4 Q. And once you had done that, what happened?

5 A. It didn't stop him, so I delivered two more baton

6 strikes to that general area, but I don't know where  
7 they would have connected, or if they did connect,  
8 I couldn't say. I would have to rely on my original  
9 statement, but that stopped him.

10 Q. When you say the first strike didn't stop him, what was  
11 he doing at that point?

12 A. Well, I think the first strike obviously it was timed so  
13 that -- just a coincidental timing that he wasn't  
14 actually stomping on her, but it didn't move him away  
15 from her, it didn't cause him to fall, it didn't cause  
16 him to turn around and my fear was that he was going to  
17 do it again, so I didn't want to gamble on the "What  
18 if", so I delivered two more strikes and that was enough  
19 to cause him to basically turn around and look at me and  
20 do that (indicating).

PC Nicole Short did not remember being stamped on or unconscious, she was told this in the canteen by PC Ashley Tomlinson.

**24<sup>th</sup> May, page 106, line 20**

**PC Nicole Short**

20 Just before I leave this, could we look at paragraph 30, please, of your Inquiry  
statement. Now, 21 this relates to a later period when you have gone back 22  
to the canteen, and I will come back onto this in 1 a while, but it says: 2 "At some point,  
I had asked PC Ash Tomlinson what 3 happened back there, and he told me, 'Nicole, he  
was 4 stamping on you'. He told me that he thought I was dead 5 after being hit by Mr  
Bayoh..." 6 And then he went on to describe the sound. 7 And is that the first time in  
the canteen that you 8 were told Mr Bayoh had stamped on you?

9 A. Yes, yes, that's the first time I found out I was 10 unconscious as well.



PC Craig Walker understood ABD or excited delirium however did not consider observing or seeking medical assistance for Sheku Bayoh.

**19<sup>th</sup> May, page 146, line 9**

**PC Craig Walker**

8 Q. Okay. Did you -- on 3 May in Hayfield Road, did you 9 consider seeking medical assistance for the man that you 10 saw when you first arrived?

11 A. When we first arrived? 12

Q. Yes.

13 A. No.

14 Q. Did you consider the possibility of drugs or alcohol, 15 intoxication with excited delirium or psychiatric 16 illness?

17 A. Not initially because you need to contact him and speak 18 to him and try -- and that's not something you could 19 diagnose from 100/200 metres away.

20 Q. How would you diagnose that? How would you go about 21 doing that?

22 A. Extremely erratic behaviour would be the only thing that 1 you could maybe call out early from a distance.

2 Q. But that's not what you had here?

3 A. That's not what we had here.

4 Q. So how would you go about assessing whether that is 5 a factor?

6 A. You would need to try and engage with the male first of 7 all. There's only so much you could do from within 8 a van.

9 Q. Absolutely, so your engagement would be communicating 10 with the person?

11 A. Yes.

12 Q. Observing what you see?

13 A. The reaction that you get from him, yes.

14 Q. And their reaction to any communication?

15 A. Mm-hm.

16 Q. And do you have any -- of your experience how long would 17 you say that that process takes to communicate and 18 observe the person?

19 A. It's an ongoing thing. You get to them, you try and 20 speak to them, do they speak back to you, do they make 21 eye contact with you, do they acknowledge your 22 existence. There's many factors that you do throughout, 1 so it's not just a case of turning up, run through 2 a tick box and then come to a decision. You've got to 3 judge it as you go.

4 Q. So it would take time and you would spend some time with 5 them to make that assessment?

6 A. To see what sort of reaction, yes.

**PROPOSITION** The lack of injury to Nicole Short supports the proposition that the stamp did not occur.

**PROPOSITION** It is likely that the breakage of Sheku Bayoh's first rib was not from resuscitation but from falling as a result of being charged by PC Walker, the injury being sustained as he put out his arm and PC Walker fell on top of him

Dr Gillian Pickering who treated Sheku Bayoh on the 3<sup>rd</sup> of May 2015 stated it would be "very unlikely to break a higher rib" using the LUCAS machine or through CPR. Dr Pickering confirms that a more likely cause of fracture of the first rib would be being restrained in the prone position by three officers.

**1<sup>st</sup> June, page 87, line 1**

**Dr Gillian Pickering**

1 Q. If you work with that hypothesis, what impact, if any,  
2 would that have on the likelihood of higher ribs being  
3 broken during (over speaking)?

4 A. It would make it very unlikely to break a higher rib.

5 Q. Okay. In paragraph 57 you say:

6 "It would not be common for rib 1 to fracture in  
7 the course of chest compressions. In CPR you're talking

8 ribs 4, 5, 6 and further down. To break up at rib 1 you  
9 have to press higher up at the top. It's not  
10 inconceivable because you can't say in medicine that  
11 anything is absolute, apart from death. Realistically  
12 you can't say breaking rib 1 in CPR is not  
13 a possibility."

14 A. So what I mean by that is if you've got a little old  
15 lady who is osteoporotic and you're doing CPR, which is  
16 a pretty aggressive procedure, then it's not totally  
17 inconceivable that you might crack a whole load of ribs  
18 that you don't necessarily expect to. On a gentleman  
19 like this patient, it's very unlikely to cause  
20 a fracture of the first rib.

**1<sup>st</sup> June, page 110, line 18**

**Dr Gillian Pickering**

18 Q. Moving on then to the next issue.

19 The next issue is in relation to the breaking of  
20 the rib, and we've heard your evidence about  
21 the breaking of rib 1 and the likelihood of Mr Bayoh  
1 having suffered that breakage as a result of CPR.

2 A. Mm-hm.

3 Q. And I think you gave us the example that if you've got  
4 an older woman who osteoporotic and you've got  
5 aggressive CPR, then it's not inconceivable, but your  
6 view was, on a gentleman like this patient, meaning  
7 Mr Bayoh, it's very unlikely to cause a fracture of  
8 the first rib.

9 The Inquiry has already heard evidence that there  
10 were three police officers on Mr Bayoh when he was in

11 a prone position restraining him, pressing him to  
12 the ground. These three officers were 13.5 stone,  
13 20 stone and 25 stone, so a considerable weight was  
14 involved. Might that be a more likely cause of  
15 the fracture of the first rib?  
16 A. It could, yeah.

Dr Ian Anderson states “the police vest is designed to prevent penetrating trauma, not to mitigate blunt trauma, but it will indirectly do so because it’s a heavy, thick piece of kit, so you wouldn’t expect scuff marks particularly, but you would still expect to see quite marked localised tenderness and developing bruising.”

**9<sup>th</sup> June, page 121, line 11**

**Dr Ian Anderson**

Q. That will be very helpful. So can we look first of all 11 at paragraph 39 of your Inquiry statement, and you 12 said -- so this is given before you saw anything that 13 I just showed you: 14 “I have been asked how long it would take to develop 15 visible injuries to the torso in these circumstances. 16 That’d happen pretty soon. Certainly in the hours and 17 by the day following an injury you would expect to see 18 something. If she’d had bruising at the site of blunt 19 force trauma, it would be visible, certainly by the next 20 day, certainly by the time she had been seen several 21 times in the hospital, if anybody had looked at them. 22 If she’d had blunt force injury at that site, they would 23 have seen bruising.” 24 And I suppose my first question is if the Chair 25 accepts the evidence of those officers that Nicole Short 1 was stamped, as they demonstrated, with that level of 2 force onto the back, lower back of Nicole Short, perhaps 3 in her kidney area, would you have expected there to be 4 some visible signs of that on her body? 5 A. Yes. 6 Q. You would. 7 A. Yes. 8 Q. What sort of visible signs would you expect? 9 A. I think she would have had -- if somebody had had -- if 10 I could use the Glasgow parlance -- a kicking, and as 11 you might imagine, I was involved in a lot of such cases 12 during my NHS clinical career, the first thing a

patient 13 complains about is exquisite pain at the impact site, 14 such that they have real difficulty even standing 15 straight up, so you can actually see a patient who has 16 had a kicking, being extremely uncomfortable and then of 17 course if the clothing is removed, then you can see 18 external evidence of bruising, scuff marks -- although 19 that would be mitigated by the fact that she has been 20 wearing a protective vest. I have to say, the police 21 vest is designed to prevent penetrating trauma, not to 22 mitigate blunt trauma, but it will indirectly do so 23 because it's a heavy, thick piece of kit, so you 24 wouldn't expect scuff marks particularly, but you would 25 still expect to see quite marked localised tenderness 1 and developing bruising. 2 I'm relying on my colleagues who had three or four 3 times the opportunity to assess Nicole at the hospital. 4 I cannot believe that they wouldn't have been directed 5 to looking and listening and feeling her chest in such 6 circumstances as was demonstrated. 7 Q. So if that had -- if that level of force and that type 8 of stamp had occurred, you would expect that to be 9 something that would be drawn to the doctors' attention? 10 A. I mean, Nicole is a small lady, she is 5 foot 2 inches, 11 and she is only 7.5 stone in weight. She is a very 12 small target area for anybody stamping on her loin or 13 chest wall. 14 Q. And we have heard that Mr Bayoh was 5 foot 10 in height 15 and 12 stone 10 and -- 16 A. He is not a huge man at that, but even so, he is 17 a youngish male and she is a very lightly built lady. 18 Q. Thank you. And is that the sort of thing that we have 19 seen that would cause pain to somebody? 20 A. Oh, yes.

Dr Gillian Norrie did not find any bruising, marks, discomfort, or tenderness on PC Nicole Short's back.

**9<sup>th</sup> June, page 62, line 2**

**Dr Gillian Norrie**

Q. That was your registration. So there was no reference 2 in those notes of your examination of an injury having 3 been noted by you to her back? 4 A. That's correct.

5 Q. Right. And does that mean that you didn't see or find 6 an injury to her back? 7

A. Yes. 8 Q. And can you tell us how your examination was conducted 9 please?

What's your normal practice? 10 A. Normal practice is to take some vital signs, some 11 observations, so blood pressure, temperature, things 12 like that, heart rate, obviously obtain consent first 13 and then conduct a general physical examination which 14 would entail, you know, checking their understanding, 15 their neurological status, certainly if there was a head 16 injury, listening to their chest, listening to their 17 heart and lungs, feeling their abdomen, and then in 18 terms of the injuries, what we do is a very systematic 19 approach, so we start from the head and work down to the 20 feet and looking at the surface area and documenting any 21 injuries that are found. 22 Q. We have heard the phrase that doctors do a top-to-toe 23 examination. Is that what you're describing when you 24 say the head to the feet? 25 A. That's right. 1 Q. And can you confirm if you examined Nicole Short's back? 2 A. I did. 3 Q. Did you examine it as far as her lower back into her 4 kidney area? 5 A. Yes, I did, as I say, a top-to-toe examination, so 6 I worked systematically down from the head to the bottom 7 of her body to her feet. 8 Q. Had you found any injury, bruising, marks, discomfort, 9 tenderness, is that something that you would have noted? 10 A. Yes. 11 Q. If PC Short had complained of pain in a particular area 12 of her body, including her back, or to her right side, 13 is that something that you would have noted? 14 A. It is. That was the purpose of my being there, to 15 document the injuries, so yes.

Dr Crawford acknowledges there was no injuries related to the stamp documented in her accident and emergency notes.

**9<sup>th</sup> June, page 157, line 9**

**Dr Rudy Crawford**

Q. And you also acknowledge that there were: 9 "... no specific injuries related to that cause 10 documented in her accident and emergency notes." 11 What did you mean by that, "related to that cause"? 12 A. There was no specific information in the accident and 13 emergency records documented at the time of either 14 a history that she had been stamped on, or of symptoms 15 complained of that would indicate an injury to the chest 16 or back area that -- to suggest that she had been 17 stamped

*on, and that's what I mean -- so it wasn't 18 documented. That -- I would have to say that that 19 doesn't necessarily mean that she didn't report some of 20 these things, or all of these things, it just means that 21 the doctor who examined her at the time has not recorded 22 or documented any of these symptoms. 23 Q. I see. So there was no recorded history of a stamp, 24 there was no recorded injury suggestive of a stamp, and 25 there was no record of any symptoms that might have been 1 suggestive of a stamp? 2 A. Correct.*

**CONCLUSION:** The Chair is invited to conclude that the stamp did not take place: the quality of the evidence, the lack of credible/reliable evidence in support of it, the lack of medical evidence in support of it, the lack of forensic evidence in support of it.

## **CHAPTER 5 – RESTRAINT**

### **INTRODUCTION**

This Chapter will consider the restraint of Sheku Bayoh including the number of officers involved in the restraint, the method and position of restraint, the management of ongoing restraint at the scene, Mr Bayoh's actions during restraint, and the call for ambulance assistance. The Audio & Video Timeline records that the first police vehicle carting PC Paton and PC Walker arrives on Hayfield Road at 07.20.23. The second police vehicle containing PC Short and PC Tomlinson arrives at 07.20.30. At 07.20.56 an emergency button is activated and at 07.21.02, an airwave transmission "Officer's injured PC Short male) is made by PC Paton. At 07.21.38 an airwave call from PC Smith is made "Control Bravo one officer's been punched to the back of the head no obvious injuries, male secured on the ground". So a period of 1 minute 15 seconds passes between the first police vehicle arriving on Hayfield Road and Sheku Bayoh being secured on the ground.

### **PROPOSITIONS**

- (a) Within 1 minute and 15 seconds of the police arriving at Hayfield Road, Sheku Bayoh was being restrained on the ground.
- (b) Sheku Bayoh, who was 5 foot 10 inches and weighed 12 stones and 10 pounds (80.7KG), was restrained by up to 6 police officers, 2 of whom (Paton and Walker) had a combined weight of 42 stones (266.7KG) – of the total combined weight of 6 officers would be 546.7 KG .i.e. 86 Stones 2 lbs
- (c) The use of restraint carries with it a foreseeable risk to the life of the individual being restrained.
- (d) Mr Bayoh was restrained in the prone position with excessive weight being employed on his body.
- (e) Officers failed to properly monitor the restraint and Mr Bayoh's breathing.



(f) Mr Bayoh died whilst being restrained and his restraint contributed to his death.

(g) The restraint measures deployed by the officers in their restraint of Mr Bayoh did not comply with Police Scotland's Use of Force Standard Operating Procedure.

## **EVIDENCE**

### **(a) THE USE OF RESTRAINT CARRIES WITH IT A FORESEEABLE RISK TO THE LIFE OF THE INDIVIDUAL BEING RESTRAINED.**

House of Lord & House of Commons Joint Committee Report, Deaths in Custody 2003 – 2004 states that restraint carries with it a foreseeable risk to the life of the individual being restrained.

The question of what training officers had and whether their actions complied with that training will be considered at a later hearing.

### **(b) USE OF FORCE SOP**

Any restraint should follow the relevant Police Scotland Use of Force Standard Operating Procedure (PS 10933). This provides that the right to life and maintenance of public order are paramount whilst any use of force must be legal, proportionate, reasonable and with minimum necessary to accomplish the lawful objective.

Reference is made to pages 1 – 16 of Use of Force SOP:

- Action must be proportionate in relation to the competing rights of individuals and any force used should be no more than is absolutely necessary.
- In **no circumstances** must a prisoner be harshly treated or have a greater force used towards them than is absolutely necessary to restrain them.
- Indiscriminate or unnecessary use of force is unacceptable. The two criteria for **any** use of physical force is (i) justification, where the force used is reasonable and proportionate to the perceived threat and (ii) preclusion, where other

reasonable options have either been attempted and failed or considered inappropriate.

- The overriding principle is that **any** force used by Police Officers and Police staff must never be excessive. Any force must be reasonable based on the individuals persons' perception of the threat they are immediately facing.
- When engaged in confrontational circumstances Police Officers must at all times consider the force continuum with regards to escalation and de-escalation. This assists officers in determining the appropriate level of force to be used and this should be referred to in any reports that require to be completed in relation to the use of force.
- Before using **any** force an officer must consider: **the impact factors** affecting the situation, such as;-

A the availability of police officer support in the form of other officers and whether this is available – for example the availability of other units nearby, the support from Senior Officers in the control room, the availability of dog units and whether a call has also been made for the presence of an armed response vehicle;

B location, and the presence of and risk posed to other members of the public the physical, mental and sensory condition of the assailant,

C the seriousness of the imminent risk of attack and,

D the presence of weapons.

In considering **impact factors** any response to this must not be excessive.

### **(c) THE METHOD AND POSITION OF RESTRAINT –**

Mr Bayoh, who was 5 foot 10 inches and weighed 12 stones and 10 pounds was restrained in the prone position with excessive weight being employed on his body. The suggestion in evidence that he was lifting the officers who were restraining him is undermined when the relative weight of the officers restraining him is considered.

**OFFICER WEIGHT AND HEIGHT**

<b>NAME</b>	<b>WEIGHT STONE</b>	<b>WEIGHT KG</b>	<b>HIGHT FT</b>	<b>HEIGHT M</b>
PATON	17 stones	108kg	6ft 4 inches	1.93m
WALKER	25 stones	159 kg	6ft 4inches	1.93m
TOMLINSON	13 ½ stones	85kg	5ft 11inches	1.8m
SHORT- not involved in 'pile up'	8 stones	50.8 kg	5ft 1inch	1.55m
GIBSON	12 stones	76. 2kg	5 ft 11 inches	1.8m
MCDONOUGH	10 stones 2lbs	64.5kg	5 ft 6.5 inches	1.69m
GOOD	8 stones 7lbs	54kg	5 ft 3 inches	1.60m
<b>TOTAL</b>	<b>94 stones 2lbs</b>	<b>597.5 KG</b> <b>PATON +</b> <b>WALKER</b> <b>(266.7kg)</b> <b>(42 Stones)</b>		

### METHOD OF RESTRAINT – “A PILE UP”

Eyewitnesses reported that up to five or six officers were involved in holding Mr Bayoh down. One witness described it as a “pile up”, “None of these officers were standing, they were all on top of the male. It really just looked like a pile up” (Psychiatric Nurse Christopher Fenton, PIRC-00251, p.3 para 1) and another stated, “I could see between 4 or 5 police officers restraining someone. I think they were all male. I could tell the person they were restraining was black but I didn’t know who it was. I could see part of his legs and part of his body. I couldn’t see his face. I could see one male officer holding down the person and using his knee to hold him down. .. the person being arrested was chest down on the ground” (Abdelouhab Guessoum, PIRC-00075, p.1 para 1).

An attending paramedic also reported that, “ one of the male officers who was kneeling down told me that the patient had to be restrained and a number of officers had been lying on the patient ... I anticipated a chest injury” (Alan Finlayson, PIRC – 020220, p.3, para 5). These reports are consistent with further eyewitness accounts including the witness who stated, “I saw the black man in the street. He was nearly on the ground. He was surrounded by police officers. **There was at least six surrounding him. I saw the police officers all over him. What I mean is they were all holding him to the ground... There was at least six police officers lying on top of him. They were crossing over him from both sides. They pretty much covered his whole body.** It was only when they moved that I could see his arm and definitely knew that he was a black man. It looked like one officer was using a baton to hold the man down. It was on his upper chest towards his throat” (Ashley Wyse, PIRC 00043, p.2 Para 5).

Other evidence also reveals that whilst Mr Bayoh was face down on the ground, two of the officers, PCs Paton and Walker, involved in the restraint, and who had a combined bodyweight of over 40 stones, had placed their full body weight on the highly vulnerable area of his upper trunk. Mr Bayoh was also struck with police

batons; leg and ankle restraints and handcuffs were used. He was unconscious within minutes of the restraint being affected and was pronounced dead at the hospital an hour and a half later. CCTV recordings and Audio and Video Timeline reveal that the time that had elapsed between Mr Bayoh's first engagement with the police and the police radio report made that, "he was secure on the ground", was a period of approximately 55 seconds. As Mr Bayoh was positioned lying on the ground face downwards a high degree of pressure was applied to his trunk. This would have resulted in the induction of a serious and life-threatening degree of asphyxia.

*Alan Paton confirms that he was on the ground involved in the restraint with PC Ashley Tomlinson, PC Craig Walker and PC Alan Smith. Paton states he used a baton across Sheku Bayoh's bicep (contrary to the eye witness evidence of Ashley Wyse, referred to above), "holding both ends of the baton... in a push up position" with his "whole body weight with the pressure on the baton."*

**PIRC-00262 – Alan Paton, page 6, paragraph 1**

*I had got down on the ground to help restrain the **boy** as he was still struggling. The officers were struggling to keep him on the ground. There were no punches from what I could see. Ashely and Alan Smith, incidentally he was at the muster, I forgot to mention him; I think it was Alan Smith, I was still a bit disoriented, they were at the guy's feet/legs end of his body. The guy was still struggling at this point. Ashely, Alan and Craig are big guys and they were struggling to control him. I remember hearing the guys talking about trying to get control enough to try and get handcuffs onto him. I remember saying " link the handcuffs" or something like that. I am still struggling at this point. My eyes were still streaming and my nose was running. I remember that Craig was still at the top end (chest) of the guy. I saw Craig get lifted by the guy. He was lifting Craig with his body weight. Craig is about 25 stones. I cannot emphasise the strength of this guy. Alan is an ex-marine. Ashley is a big guy as well. I'm thinking to myself if he gets back onto his feet then we've got real problems as well.*

**PIRC-00262 – Alan Paton, page 6, paragraph 7**

*I picked up the baton and put it across the boy's bicep. I had the baton across the boy's bicep. I was holding both ends of the baton and I was in a push up position with my whole-body weight with the pressure on the baton over the boy's bicep but he was still struggling. I know that this is not a trained method of restraint but in the circumstances, I was trying to bring him under control to assist with keeping in control and for handcuffs to be put on him."*

*PC Craig Walker ran towards Sheku Bayoh pulling his right arm across his chest leading with his right shoulder and jumping up just before he made contact with him, shoulder charging him to the ground. Once on the ground Walker threw three punches to the left side of Sheku Bayoh's face with his right hand.*

**PC Craig Walker 20<sup>th</sup> May, page 19, line 14**

*Q. And then can we look at PIRC 264, please, so this is the  
14 actual statement that you gave to PIRC on 4 June 2015,  
15 and we're looking at page 7, please, and paragraph 2,  
16 and there you say in line 3:*

*17 "So I just brought my left arm across my body and  
18 shoulder-charged him with my left shoulder, with a fair  
19 bit of force."*

*20 So in front of the Chair we have your descriptions  
21 of this and it's -- you took him to the ground by bodily  
22 force, you charged him striking his chest area with your  
1 forearms, and you shoulder-charged him with [your] left  
2 shoulder, and I just wondered if you could maybe  
3 demonstrate to the Chair what you actually did because  
4 I'm wondering about charging him to his chest area with  
5 your forearms and shoulder-charging; they sound slightly  
6 different.*

*7 A. Basically running towards him, I just dropped my arm*

8 down and went through him like -- to take him to the  
9 ground, just to continue the momentum.

10 Q. Could you stand up and just show the Chair what you're  
11 doing with your arm there?

12 A. Yes, so just running towards him and just dropped the  
13 shoulder.

14 Q. Right, so you're pulling your right arm across your own  
15 chest –

16 A. Yes, to go in shoulder-first.

17 Q. And then leading with your right shoulder?

18 A. Yes.

19 Q. Thank you. When you did that, what part of  
20 Sheku Bayoh's body did you connect with, with your right  
21 shoulder?

22 A. It would be his right side upper torso. As I was  
1 running towards him I was aware that PC Short was on the  
2 ground so I could remember just before contacting with  
3 Mr Bayoh I had actually jumped up, so I was off the  
4 ground as I made contact with him, and obviously just as  
5 a natural reaction before I hit him I closed my eyes, so  
6 I'm not 100% sure, but yes, it has been the upper part  
7 of his body with my shoulder.

**PC Craig Walker 20<sup>th</sup> May, page 23, line 19**

5 A. Yes, basically so Mr Bayoh's on his back, he has reached  
6 across -- the whole point was to try and reach across,  
7 get a hold of his hands and just pin them down, and then  
8 from that point, get cuffs on him.

9 Q. Is that pinning him down to his chest?

10 A. Just any way possible, just to get hold of both of his

11 arms so that we could arrest him at that point. It was  
12 just -- there were no plan at that point, it was just a  
13 case of get a hold of his arms and try and get him  
14 handcuffed.

15 Q. And where were his arms when he landed on his back?

16 A. By his side. 17

Q. Both arms down by his side?

18 A. Yes.

**PC Craig Walker 20<sup>th</sup> May, page 26, line 9**

8 Q. And where did your punches connect?

9 A. The three punches that I threw was to his face, to his  
10 right side -- left side of his face.

11 Q. The left side of his face?

12 A. Yes.

13 Q. Was that with your right hand?

14 A. Yes.

On the ground PC Craig Walker tried to get "over the top of his shoulders". Sheku Bayoh tried to punch PC Walker so he "then struck him a couple of times with a clenched fist in my right hand somewhere around his left cheekbone area". PC Walker believes he was "pinned on the pavement... for a maximum of 30 seconds."

**PIRC-00264 – PC Craig Walker, page 7, paragraph 3**

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



*then struck him a couple of times with a clenched fist in my right hand somewhere around his left cheekbone area. He continued to struggle and lashed out with his arms. He also tried to punch me again.*

**PIRC-00264 – PC Craig Walker, page 7, paragraph 3**

*While I had the man in the form of ground, pinned on the pavement, when pressure was being applied to his left shoulder, I would say I held him in that position for a maximum of 30 seconds, until he broke free, after the handcuffs had been placed on him. There was no similar restraint holds on the man (deceased) after that part.*

*PC Craig Walker tries to get handcuffs on Sheku Bayoh by first getting a cuff on his right arm and trying to secure it on his left. They “tried to get cuffs to the back, failed, got cuffs to the front” and also leg restraints.*

**PC Craig Walker 20<sup>th</sup> May, page 38, line 9**

*8 Q. Can we go back to the image that we have on the screen.*

*9 So you have described how you were struggling and trying  
10 to secure Mr Bayoh’s hands. Did you manage to get  
11 handcuffs on him at that point?*

*12 A. At one point I managed to get -- well, the next stage  
13 that I could remember was I got a cuff on his right arm  
14 and then when I went to try and secure it onto his left  
15 hand he broke free because obviously I want to release  
16 the pressure to apply the cuffs and he managed to break  
17 free.*

**PC Craig Walker 20<sup>th</sup> May, page 47, line 13**

*You know, we got him to the  
13 ground, there was a struggle, we tried to get cuffs on,  
14 tried to get cuffs to the back, failed, got cuffs to the*

15 front, got him under control and then by that point  
16 I realised that the whole station was there and that he  
17 had leg restraints on him.  
18 Q. When you got the cuffs on him to the front, was it you  
19 that applied both cuffs?  
20 A. Yes.

PC Ashley Tomlinson witnesses PC Craig Walker take Sheku Bayoh to the ground and joins to attempt to restrain his legs, he said "I have used my baton to deliver I think two or three strikes to the achillies area, so the heal area, with the intention that that might elicit some sort of pain compliance." PC Tomlinson then took up a position "straddling Mr Bayoh's legs" and attempts to handcuff him.

**PC Ashely Tomlinson 25<sup>th</sup> May, page 132, line 8**

7 Q. -- there continues to be movement, you've described.  
8 Tell us what you saw -- how long you watched that.  
9 A. I was already making my way from -- as soon as I had  
10 seen basically Craig come in and move Mr Bayoh with his  
11 bear hug, I had already started making my way towards  
12 where they were going to land, so that's -- I've  
13 basically kind of almost followed them, so I've been  
14 maybe a second or two behind from where I was, like it's  
15 taken me that amount of time to get over to kind of  
16 their position.  
17 Q. And what did you do?  
18 A. So my fear was that the legs -- Mr Bayoh's legs would  
19 have came up and been used as leverage to get up off the  
20 floor again, so what I've done when I've gone over is  
21 I've used my baton to deliver I think two or three

22 strikes to the Achilles area, so the heel area, with the  
1 intention that that might elicit some sort of pain  
2 compliance and what I mean by that is to get a person to  
3 comply to instruction through the use of pain and that  
4 is a technique -- pain compliance is a technique that's  
5 taught in OST, so that was -- you know, I'm working  
6 through my NDM again to assess the risk of if Mr Bayoh  
7 gets up, it's significant, again a risk to us and again  
8 with reduced numbers we were trying to bring him under  
9 control.

10 After I've delivered those strikes, they have not  
11 been effective, so I changed my kind of approach.

12 Q. Right. Let me take you through that again. You have  
13 used your baton two or three times to the Achilles area.

14 A. Yes.

15 Q. Is that the Achilles tendon on both legs?

16 A. I don't know which -- I don't know if it would have been  
17 on both legs or what, but I went for the Achilles  
18 because having hit that area myself I know it's quite  
19 painful and if a person was to then obviously have  
20 a strike delivered to that area and stand up again, it  
21 would maybe prevent them from running around so fast, or  
22 prevent them from stomping with as much force.

1 Q. And did you get any reaction to that?

2 A. No.

3 Q. So you were at Mr Bayoh's feet at that moment?

4 A. Yes.

5 Q. And was PC Walker towards the upper half of Mr Bayoh's  
6 body?

7 A. Yes.

**PC Ashley Tomlinson 25<sup>th</sup> May, page 135, line 16**

15 Q. *And after you struck with your baton to the Achilles*  
16 *area and there wasn't a reaction, what did you do then?*

17 A. *I basically -- from that position I just -- I think*

18 *I either dropped or just threw my baton to one side. As*

19 *an option it wasn't just -- it didn't seem to be having*

20 *any effect and what I did was I took up a position*

21 *whereby I was straddling Mr Bayoh's legs, so if you*

22 *imagine mounting a horse and Mr Bayoh's legs being the*

1 *horse, so I would use my knees to balance on the road,*

2 *so his legs would have been running under my bum and*

3 *from there I basically remained kneeling on the roadway*

4 *and tried to -- because, as I have described it,*

5 *Mr Bayoh obviously had his right-hand like that*

6 *(indicating), so I have tried to at that point apply*

7 *a single cuff, so a single handcuff, and again that's*

8 *a technique used because, as I mentioned earlier, my*

9 *preference would always be in relation to males -- or*

10 *anybody, males/females, in possession of a knife or*

11 *a weapon, would be to cuff to the rear, so from that*

12 *position I could get my hand and effectively use my left*

13 *hand to control the wrist and my right hand to reach*

14 *around, get my cuffs and apply, so apply a single cuff*

15 *to Mr Bayoh's wrist. That was basically my attention.*

16 *As I'm kneeling, I have grabbed control of the wrist*

17 *and I have gone in like that (indicating), but as I'm*

18 *trying to do that Mr Bayoh was basically pulling his*

19 hand forward or lifting up. Whatever he was doing with  
20 his hand, it was dragging me towards him, like further  
21 in towards like his arm, so I just -- I was thinking  
22 I need to get the cuff on and as I've gone to get my  
1 cuff he's flicked his legs so it's been a judd(?) to me,  
2 which has caused me to lose control of my cuffs and  
3 they've bounced out of my reach. At which point  
4 I thought "This is like" -- I now don't have my  
5 handcuffs so I moved from a position where I was  
6 straddling with Mr Bayoh's legs between my legs and  
7 under my bum, I basically then moved to a lying position  
8 across diagonally which -- it is probably easier if  
9 I again demonstrate probably both moves.

PC Ashley Tomlinson was controlling Sheku Bayoh's legs using a fast strap. Craig Walker, Alan Paton and Alan Smith were also involved in the restraint.

**PIRC-00263 – PC Ashley Tomlinson, page 4, paragraph 8**

*When he was on his side, I took hold of the fast strap to control his legs.*

*I was there with Craig to my left controlling his upper body. I was controlling his legs.*

*Alan Smith and Alan Paton were at his head area.*

PC Daniel Gibson assisted with restraining Sheku Bayoh's legs by using the right side of his body to drop down onto Sheku Bayoh's legs making contact above his knees and then rolling or shuffling down to allow fast straps to be applied. PC Gibson believes PC McDonough and Smith may have put the fast straps on.

**PC Daniel Gibson 1<sup>st</sup> June, page 137, line 3**

2 Q. Right, thank you.

3 And you've told us in your statement that you then

4 decided to become involved –

5 A. Yes.

6 Q. -- or to assist. So tell us, as you decided to assist,

7 what was your first thing that you did?

8 A. Some from what I recall, the first thing I did was

9 assist with restraining Mr Bayoh at his legs.

10 Q. Tell us how you did that?

11 A. So what I did was, at the time, I recall that I didn't

12 see anyone on his legs, so there's a recognised OST

13 technique where officers can restrain the legs. They do

14 that by dropping down onto, in this case Mr –

15 Mr Bayoh's legs. You don't go down on your elbow, but

16 it's on the flat side, depending if you're right-handed,

17 left-handed, etc, of your body –

18 Q. And what are you?

19 A. I'm right-handed.

20 Q. You're right-handed?

21 A. Yes.

22 So I dropped down on the right side of my body.

23 The elbow would effectively go on the ground, but your

24 kind of weight here (indicates) lands on the kind of

25 thigh area before you would then make contact with

1 the ground, okay? It's a recognised technique. Then

2 what you would do is you would almost -- the best way

3 I can describe it is either like a kind of barrel roll

4 or sausage roll kind of down the legs so that you've

5 done a full kind of turn down, and then you'd then be

6 facing the feet, at which point you can cross over

7 the legs to get a hold of the feet so that if Fast

8 Straps need to be applied, they can be, by another  
9 officer.

**PC Daniel Gibson 1<sup>st</sup> June, page 139, line 2**

1 Q. And where did that contact with Mr Bayoh?

2 A. So that would have been contact on kind of upper legs.

3 Q. Above his knee?

4 A. Yeah, or in that general area, yes, but it would be kind

5 of thighs, back of thighs, front of thighs, whatever, or

6 near the knees, and then rolled down or instead of

7 rolling down, sometimes you're not able to, you might

8 just kind of shuffle down, so ...

9 Q. And what did you do on that day, on 3 May? Was it

10 a roll or was it a shuffle?

11 A. I can't recall if it was a roll or a shuffle but those

12 are the two things that could only have been done.

**PC Daniel Gibson 1<sup>st</sup> June, page 149, line 12**

11 Q. "I do not know whether I rolled or slid down but I ended

12 up further down his legs closer to his feet."

13 And again, that's what you have said today. And

14 then:

15 "At some point other officers put 'Fast Straps'

16 on Mr Bayoh while I was restraining his legs."

17 Do you know who the other officers were?

18 A. I don't know if I mentioned it. I seem to think –

19 I kind of recall that it might have been Alan Smith and

20 PC McDonough.

21 Q. Right, James McDonough?

22 A. Yes. I remember PC McDonough at one point when I was  
23 down on Mr Bayoh's legs, PC McDonough was down near  
24 the feet, so ...

PC James McDonough confirms that there were four officers restraining Sheku Bayoh before he and PC Daniel Gibson also got involved. This meant there was six officers actively restraining Sheku Bayoh.

**PIRC-00273 – James McDonough, page 4, paragraph 3**

*Alan Smith was on his knees and he was attempting to control the male's legs as he was struggling and it looked like the male was attempting to evade detention.*

*Craig Walker as also on his knees and he was facing towards me. I can't recall exactly what Craig was doing but he was at the male's waist area.*

*Alan Paton was also on his knees and was next to the male's head and he was attempting to control the male's left arm and the male was struggling violently as if attempting to escape. Ashley Tomlinson was also kneeling at the male's head but with his back to me. He was attempting to control the male's right arm.*

*Even although there were four officers dealing with the male it still looked like they were struggling due to the male's muscular and aggressive manner so I decided to go and assist them. I did not speak to Daniel about my thoughts and I just assume he was thinking the same as myself as we both got out of our vehicle at the same time and went to the assistance of our colleagues.*

PC James McDonough gives description of who was doing what in the restraint of Sheku Bayoh. PC Walker was on his knees at Sheku Bayoh's waist. PC Paton was near the head kneeling down. PC Alan Smith was at Sheku Bayoh's legs and PC Tomlinson was kneeling down at the head area. PC McDonough sees that his legs need to be restrained and announces that he will do that. PC McDonough, PC Smith and PC Gibson worked together to get the leg restrains on above the knees and at the ankles.

**PC James McDonough 7<sup>th</sup> June, page 32, line 9**



8 Q. Tell us where the four officers were.

9 A. So I remember seeing PC Walker on his own knees, round

10 about his -- waist of Mr Bayoh, facing Gallaghers, so he

11 would have been kind of facing towards me and Dan

12 essentially, me and PC Gibson.

13 I remember seeing PC Paton near to his head, again,

14 just kneeling down, and I saw, or my recollection is

15 that PC Alan Smith was at Mr Bayoh's legs and 16 PC Ashley Tomlinson was  
kneeling down round about his

17 head area as well, facing sort of Craig Walker,

18 PC Walker.

**PC James McDonough 7<sup>th</sup> June, page 42, line 10**

9 Q. Tell us what you did.

10 A. So I've got out of the car. I can see what I have just

11 described in front of me and I've went to get my leg

12 restraints from -- that were carried on my vest, so they

13 were here (indicating) on like a (inaudible

14 over speaking) --

15 Q. Your left-hand side?

16 A. Yes, so they were there. I think I maybe said in my

17 statement that I have announced that I'm going to do

18 that, but -- that may be the case, that's my

19 recollection anyway, but I have seen the legs need to be

20 restrained so I have taken my leg restraints out of the

21 holder.

**PC James McDonough 7<sup>th</sup> June, page 43, line 25**

25 Q. What did you do with Mr Bayoh's legs? A. So I think I have come round to the other side, so that

1 I'm on the same side as PC Walker.

2 Q. Right.

3 A. And he is still kicking out at this point, so I'm trying

4 to make -- put his legs into a position that's safer, so

5 that it's harder for him to kick out and I think

6 I remember tilting his ankles slightly -- to a slight

7 angle so that his toes are kind of pointing towards the

8 roundabout and that's purely just so that it's more

9 difficult to get any strength because your muscles

10 are -- muscles in your legs, they're kind of at an

11 angle, it's harder to get more strength, it's more

12 difficult to get the strength to be able to kick out so

13 that's what I remember doing.

14 Q. So his knees weren't facing the ground at that point,

15 you have tilted them?

16 A. Yes. It's just really his ankles that I have kind of

17 tilted using, like, the natural movements of, like, your

18 ankle just to tilt them to the side.

19 Q. And they're facing towards Gallaghers pub?

20 A. Yes, more or less, yes.

21 Q. And you're on Walker's side this time?

22 A. Yes.

23 Q. And what was PC Smith doing?

24 A. PC Smith was assisting me with placing the leg

25 restraints on, but I think he was still -- beforehand

1 still moving -- he's helping me positioning his legs

2 essentially to -- so we can get the Fast Straps on

3 effectively.

4 Q. And how did you go about trying to get the Fast Straps 5 on?

6 A. So I remember putting them under his legs just above the

7 knee so you put one leg restraint above the knee to

8 basically control sort of your strongest muscle in the

9 leg, the sort of thighs, so it went underneath his legs

10 so that they come up over the top of the legs.

11 Q. How difficult was that getting it under his legs?

12 A. That's -- that was quite difficult because there was

13 still a lot of movement in his legs. You're trying to

14 obviously not get your fingers crushed or kind of stuck

15 in-between the pavement and his legs, so it was quite

16 difficult to do that, but we got there and I remember

17 sort of pulling him round or PC Smith pulled the other

18 end round and I think it was actually PC Smith that

19 I remember tightening the leg restraints.

20 Q. Right. So you got the leg restraint under his -- the

21 lower part of his thigh above his knee, did you say?

22 A. Yes, yes, that's correct.

23 Q. But it was PC Smith that pulled them together?

24 A. Yes.

25 Q. And when you say "We got there", are you talking about

1 you and PC Smith?

2 A. Yes.

3 Q. What did you do then?

4 A. I have then moved down to his ankle. I remember

5 PC Gibson, he was sort of lying across his legs and he

6 has shuffled down as I've got the leg restraints on and

7 then we went to his ankles and just done the exact same

8 procedure, but I think possibly it was -- yes,  
9 I remember it being me that's tightened them round his  
10 ankles at that point.  
11 Q. I wonder if you could explain: you have talked about  
12 PC Smith and what he was doing and moving the leg straps  
13 under Mr Bayoh's knee -- legs; where was PC Gibson when  
14 you were trying to do that?  
15 A. So PC Gibson would have been -- he is sort of lying  
16 across his legs, using his sort of torso, so PC Gibson's  
17 legs are out to the side, so they're nowhere near  
18 Mr Bayoh, it is just his torso, and you kind of -- when  
19 you're lying across somebody you almost, like, cuddle  
20 the legs in, and then once that leg restraint has went  
21 on, he has moved down the body to then bring in the  
22 lower part of -- like his shins, that area, to bring  
23 them in closer, the exact same procedure.

*PC Kayleigh Good states when she joined officers were putting fast straps on Sheku Bayoh's legs who was chest down towards the pavement.*

**PIRC-00274 - PC Kayleigh Good, page 9, paragraph 2**

*At this time I left Nicole standing on the north foot path and I immediately ran across the road to assist my colleagues. I went to Shek's left hand side first, and then I went round his head to his right hand side where Ashley Tomlinson was kneeling down next to Shek. I actually think he had one knee on Shek's leg, again attempting to pin it down. So when James got his leg fast straps out he attempted to apply them to Shek's legs, just below the knee cap, but due to Shek struggling, violently, James was struggling to get the straps under his legs. Ashley and James were trying to feed the straps under his legs, but they were not able to do this. As I have smaller hands and arms I got down on my knees and pulled the straps through under Shek's legs and then Alan Smith fastened*

*them at the top side of his legs, effectively at the back of Shek's legs, who was still chest down.*

*PC Kayleigh Good believes PC Craig Walker was lying across Sheku Bayoh's back "effectively to assist in pushing him to the ground", "to assist pushing him back down".*

**PC Kayleigh Good 31<sup>st</sup> May, page 157, line 20**

*19 Let's consider Constable Walker. You said in your*

*20 Inquiry statement:*

*21 "He had the top part of his body over the top of*

*22 the male's back."*

*23 And in your PIRC statement you said:*

*24 "Constable Walker was lying across the top of*

*25 Mr Bayoh's back in an effort to stop him forcing himself*

*1 to his feet. This was effectively to assist in pushing*

*2 him to the ground. He only had the top half of his body*

*3 over Sheku Bayoh."*

*4 Can you help me to understand precisely what*

*5 position Constable Walker was in. I wonder again if it*

*6 might be easier for you simply to demonstrate*

*7 the position he was in.*

*8 A. So if the male's been lying there, I think he was kind*

*9 of lying like this (indicates) across his back.*

*10 Q. Sorry, where was the male in relation to the –*

*11 A. So the male would be here, and he would have had this*

*12 part over his back so kind of like that, I think.*

*13 Q. So you're indicating the side of his torso –*

*14 A. Yeah. 15 Q. -- across Mr Bayoh's back. And an arm. Can you say if*

*16 it was his right arm?*

17 A. I can't remember.

18 Q. An arm outstretched going to the other side of his body?

19 A. Yeah.

20 Q. All right, thank you.

21 You said in your PIRC statement:

22 "This was an effort to stop him forcing himself to

23 his feet. This was effectively to assist in pushing him

24 to the ground."

25 How did that position that you demonstrated for us

1 assist in pushing Mr Bayoh to the ground?

2 A. I think, because when I looked across, Mr Bayoh's been

3 trying to use his arms to push himself up, so I think

4 when PC Walker doing that it's to push him back down.

5 Q. Okay. Could you say how much force PC Walker was using?

6 A. No, just the top half of his body.

7 Q. Where were his legs?

8 A. I can't remember exactly, but I think they would have

9 been out to the side.

10 Q. So not on Mr Bayoh?

11 A. I don't think he was flat on him, no.

PC Alan Smith states PC Paton, PC Walker and PC Tomlinson were all restraining Sheku Bayoh when he arrived at the scene. PC Smith is unable to comment on how much weight was on Sheku Bayoh during the restraint, however, he believes a downward force was used to stop Sheku Bayoh pushing himself up.

**PC Alan Smith 27<sup>th</sup> May, page 81, line 14**

What was PC Paton doing?

14 A. To the best of my recollection he was reaching over him

15 and trying to control the man's arms, so if the man was  
16 on his side, which he was, moving from his side and  
17 prone, PC Paton was almost leaning over and trying to  
18 get control of the arms.

19 Q. How was PC Paton positioned himself?

20 A. I think -- again my recollection is not perfect, but  
21 I think he was kneeling.

22 Q. Kneeling?

23 A. Kneeling on the ground.

24 Q. Kneeling on the ground?

25 A. Yes.

1 Q. And leaning over the male's upper body?

2 A. I think so, yes.

3 Q. And reaching for his ..?

4 A. Arms.

5 Q. Arms. Where were the male's arms?

6 A. Again, he was moving, so he seemed to be trying to free  
7 himself by getting himself in the prone position, maybe  
8 pushing himself up, so there at some points and then  
9 other points when he was further over onto his side  
10 again up to his front with PC Paton trying to get  
11 control of them.

12 Q. So as you were approaching, how was the male on the  
13 ground positioned? You have described it --

14 A. I couldn't say. He was --

15 Q. You couldn't say.

16 A. No.

17 Q. And as PC Paton was reaching for his arms, were his arms  
18 on the other side as you approached, the other side of

19 his body from where you were approaching?

20 A. They could well have been. As I said, there was a lot  
21 of movement. It wasn't just sort of one move between,  
22 there was continual movement and struggling, so ...

23 Q. So it wasn't -- it wasn't a static scene?

24 A. No he wasn't being held in a fixed position. He was  
25 moving and PC Paton was trying to adapt I think and  
1 trying to keep control of him.

2 Q. Where was PC Walker?

3 A. Further down, so the -- next to PC Paton effectively.

4 Q. PC Paton at the head?

5 A. PC Paton at the head, PC Walker a little bit further  
6 down so level with the chest area.

7 Q. You're pointing to your right side there?

8 A. Yeah, okay, it would be the right side if he was in the  
9 position where he was leaning up, yes.

10 Q. So you're talking about Mr Bayoh's right side, are you?

11 A. Yes, yes.

12 Q. So PC Paton was in that position. How was PC Paton  
13 positioned when you approached?

14 A. Sorry, PC Walker?

15 Q. Sorry, yes, PC Walker, sorry.

16 A. He was leaning over Mr Bayoh. I can't recall exactly  
17 what he was doing with his hands. I think he was trying  
18 to keep him in position, prevent him from getting onto  
19 his front and lifting himself up.

20 Q. And when you say he was leaning over, over what?

21 A. Over Mr Bayoh.

22 Q. Right. Were you able to tell at that point if he was



23 *putting weight on Mr Bayoh?*

24 *A. No, it's difficult to tell. He could well have been,*

25 *but I couldn't tell. It certainly wasn't a case of he*

1 *had all his weight just on top of the man. I would*

2 *think he was trying to use his weight to –*

3 *Q. I don't need you to speculate about that. So you see*

4 *PC Walker as you approach. Is it the back of PC Walker*

5 *that you can see?*

6 *A. Yes.*

7 *Q. And he is leaning over and then where was PC Tomlinson?*

8 *A. Down at Mr Bayoh's legs.*

**PC Alan Smith 27<sup>th</sup> May, page 88, line 11**

10 *Q. So are you able to help us in any way with the weight*

11 *that was on the male on the ground from any of the*

12 *officers?*

13 *A. I'm not sure. As I said, PC Walker was leaning over*

14 *him, so he may well have been putting weight on but*

15 *I couldn't say for definite how much he was.*

16 *Q. And Tomlinson?*

17 *A. Tomlinson is down at the legs and again I can't remember*

18 *if he's got his weight on the legs or he is kneeling*

19 *beside him. I'm aware he is down there, I'm aware*

20 *there's a lot of movement in my peripheral vision but*

21 *I wouldn't like to say I saw him lying on his legs or*

22 *otherwise.*

23 *Q. And PC Paton?*

24 *A. I don't think PC Paton had any weight on him. I think*

25 PC Paton was kneeling and just -- there may have been  
1 a little weight if he's trying to lean over him, but I'm  
2 almost starting to speculate there I think.

**PC Alan Smith 27<sup>th</sup> May, page 118, line 16**

Can I ask you about the comment "the other officers  
16 were at times having to exert some direct downwards  
17 force onto his body with theirs". So that was a direct  
18 downward force, using their bodies?

19 A. Yes.

20 Q. Not just their hands?

21 A. No.

22 Q. And are you able to give us any assistance with that  
23 level of downward force that was being used?

24 A. Sufficient to stop him pushing himself up and able to  
25 get him back into a safer position, not like a prolonged  
1 level of downward force with some -- as far as I could  
2 tell all of somebody's body weight. It was to stop the  
3 person managing to push himself up and free himself, so  
4 to match the level of force he is pushing back with.

5 Q. So was that downward force being applied when the man  
6 was struggling to push himself up?

7 A. Yes.

PC Alan Smith was involved in applying the handcuffs and then getting the fast straps on Sheku Bayoh's legs.

**PIRC-00278 - PC Alan David Smith, page 7, paragraph 9**

*Between myself, PC Walker, PC Paton we managed to apply the handcuffs however as previously stated I do not know who's handcuffs were applied or who actually got them applied. I did not use my handcuffs at that stage, or my baton.*

**PIRC-00278 - PC Alan David Smith, page 8, paragraph 2**

*I then attempted to get the male's legs straightened out to apply the fast straps, in the confusion I took a hold of PC Tomlinson's boot and started to pull his leg to straighten it out, I immediately realised it was not the male and let his boot go. I then took a hold of the subject's ankles and pulled his legs toward me to straighten the legs and get them together, all the while the subject resisted this, and tried to curl his legs up and move them to prevent me straightening them. I succeeded in keeping both his ankles together and turning his feet sideways, so they were facing down towards Hendry Road, preventing him from bending his legs at the knees and getting more control. Myself and PC McDonagh then succeeded in applying fast straps round the ankles, subject was still attempting to move his legs about, causing my hands to be trapped underneath his feet causing cuts to my fingers on my right hand. I got examined by a Dr (police doctor at Kirkcaldy Police Office - not photographed). Myself and PC McDonagh did manage to get a second fast strap applied to just above the subject's knees. I assume the second set were also PC McDonagh's, they come in pairs. The fast straps were applied to the knees and ankles as they should be applied.*

**POSITION**

*Alan Paton in his original PIRC statement said Sheku Bayoh was lying face up however has admitted to the inquiry due to being disorientated he thinks he is wrong.*

**PIRC-00262 – Alan Paton, page 5, paragraph 10**

*"The boy was face up. He was always lying on his back face up. Craig was lying on his left hand side facing the boy's feet. Craig was lying across the chest of the boy.*

**PC Alan Paton 21<sup>st</sup> June, page 51, line 3**

2 Q. Right. How was Mr Bayoh lying at the time when you went  
3 over?

4 A. My perception was that he was on his back at all times.

5 Bearing in mind that I'm disorientated and eyes are  
6 streaming, not thinking straight.

7 Q. So you could be wrong about that?

8 A. Certainly. I think I am wrong.

PC Craig Walker states Sheku Bayoh was on his back after he tackled him to the ground.

**PC Craig Walker 20<sup>th</sup> May, page 23, line 19**

18 Q. Okay. And you have said in paragraph -- we will just  
19 remain at the image, but in paragraph 53 of your Inquiry  
20 statement, you say after tackling Mr Bayoh to the ground  
21 you landed on the pavement next to him:  
22 "I was on my knees while he was on his back and  
1 I made an attempt to get over the top of his shoulders  
2 and hands to get him under my control."

PC Craig Walker refutes that Sheku Bayoh was ever on his back during the restraint.

**PC Craig Walker 20<sup>th</sup> May, page 39, line 12**

11 Q. Where was PC Paton in relation to you? You have  
12 described your position –

13 A. He was on my left-hand side.

14 Q. He was on your left?

15 A. Yes.

16 Q. Was he closer to Sheku Bayoh's head?

17 A. Yes.

18 Q. *And what was he doing?*

19 A. *He was assisting in the restraint. He had got  
20 a baton -- I'm not sure if he just picked up his own  
21 baton, but when he arrived, he had a baton in his  
22 possession and he passed it through Mr Bayoh's left arm  
1 and was trying to assist -- because like I say,  
2 initially we were trying to get him handcuffed to the  
3 back so he was trying to assist in getting the hand out  
4 from underneath, so we could get both hands to the back 5 to apply handcuffs.*

6 Q. *Right. I thought you were holding Mr Bayoh's hands to  
7 the front?*

8 A. *Yes, over his body.*

9 Q. *Yes. But you just said there that you were trying to 10 handcuff him to the back?*

11 A. *Yes, that was -- once we had him we were trying to  
12 get -- once we had his hands under control, we were  
13 trying to get his hands out from under him so we could  
14 handcuff him to the back.*

15 Q. *I see. And when you say his hand out from under him, do  
16 you mean his left hand?*

17 A. *His left hand that he was lying on, yes.*

18 Q. *So you were trying to move his left hand out from under  
19 him; how were you doing that?*

20 A. *I can't mind if I had the cuff on the right-hand at that  
21 point or no, but then it was a case of just try to pull  
22 the arm out from underneath him and get it round to his  
1 back.*

2 Q. *So you were pulling his left hand out under his body?*

3 A. *Yes, and we couldn't get it.*

4 Q. *At that point, was he moved into a prone position?*

5 A. No, he was still on his side.

PC Ashely Tomlinson states Sheku Bayoh was in the prone position, lying on the ground "face down".

**PC Ashley Tomlinson 26<sup>th</sup> May, page 25, line 11**

10 Q. "I do not know how long Mr Bayoh was in this position  
11 and to state a time would be guesswork and this is both  
12 unprofessional and unhelpful in terms of the public  
13 enquiry. I do recall that due to the level of  
14 resistance being issued by Mr Bayoh his body position  
15 changed several times. Mr Bayoh was able to take  
16 a bench press type position and lift himself from the  
17 ground whilst attempts were being made to restrain him  
18 by PC Walker and I."

19 Now, you say there that he was in the prone  
20 position?

21 A. Yes.

22 Q. And as I understand the definition of prone, that's  
1 lying flat, especially face downwards?

2 A. Yes.

3 Q. And there may be some questions as to whether that  
4 differs from the demonstration you gave us yesterday, so  
5 this is at the point that PC Walker has brought Mr Bayoh  
6 to the ground and Mr Bayoh is on the ground at that  
7 point?

8 A. Yes.

9 Q. And so what was your -- when you used the words "He was  
10 in the prone position" in paragraph 31, what was your

11 understanding of that word "prone"?

12 A. That he was lying on the ground, but like sort of face  
13 down, if that makes sense.

14 Q. So that was your understanding as well?

15 A. That would be my understanding, yes.

16 Q. And you say the position changed a number of times?

17 A. Yes, so that position is obviously the position that  
18 initially would have been I suppose the fall position,  
19 if I could call it that, but then that -- because of  
20 Mr Bayoh struggling, that position very quickly changed,  
21 like almost instantly, from being flat on the ground to,  
22 as I kind of demonstrated yesterday, having like that  
1 (indicating) and being able to lift himself up and that  
2 was the opportunity for me to try and take control of  
3 the rest. I don't know how long that all took because  
4 it seemed to -- in my mind it just seemed to last  
5 forever, but I know in reality it was going very fast.

PC Daniel Gibson states Sheku Bayoh was on his front when he stopped struggling and PC Alan Smith asked people to get off of Sheku Bayoh.

**PC Daniel Gibson 1<sup>st</sup> June, page 163, line 11**

Q. "The next thing I heard was someone saying 'Get off  
11 him'. I think it was PC Alan Smith. I got off  
12 the male's legs and got to my feet, the male was not  
13 struggling or anything then. I got up and stood at  
14 the male's feet facing him, the male was on his front,  
15 the left-hand side of his face was on the pavement  
16 facing down to Hendry Road."

17 So is this the point you got off the male's legs,  
18 was this after the ankle straps -- the Fast Straps had  
19 been applied to the ankle?

20 A. Yes.

21 Q. And it says:

22 "The male was not struggling or anything then."

23 So at that stage, when you got up, he wasn't  
24 struggling?

25 A. Correct.

1 Q. And at that point he was on his front:

2 "... the left-hand side of his face [that's  
3 Mr Bayoh's face] was on the pavement ..."

4 A. Yes.

PC Alan Smith states that it was only when he had concern for Sheku Bayoh's breathing that he was moved onto his back so he could "check more thoroughly."

**PC Alan Smith 27<sup>th</sup> May, page 149, line 11**

down to listen for breathing again and there was  
11 nothing obvious. Due to my concern I moved the male  
12 onto his back so I could check more thoroughly."

13 So until you have noticed he is not breathing, he  
14 has remained on his left-hand side?

15 A. Yes.

16 Q. It was only after you noticed he wasn't breathing –

17 A. Yes.

18 Q. -- that you move him onto his back?

19 A. Yes.

20 Q. "Due to my concern I moved the male onto his back so



21 I could check more thoroughly. I put my ear over his  
22 mouth, looking down the line of his chest, and within  
23 a few seconds determined that I couldn't feel, see or  
24 hear breathing."

25 Is that the sort of technique that you used to  
1 determine whether he was breathing?

2 A. Yes.

3 Q. And is that something you have learned in first aid  
4 training?

5 A. Yes.

## MANAGEMENT OF THE RESTRAINT

**The Independent Advisory Panel on Deaths in Custody for England & Wales (March 2014)**, re-stated that physical restraint can result in the death of the individual being restrained and also provided guidance on the management of a restraint if three or more staff are actively involved in a restraint, reporting that complications of restraint were increasingly common as more officers are actively involved. In this connection the 2014 report provided that *inter alia*:-

- (a) one of the staff must be in control of the restraint,
- (b) that at the start of the episode of restraint, the staff member responsible for protecting the detainee's head, neck and breathing will assume the role of Controller regardless of rank, and
- (c) the vital signs (Airways, Breathing, Circulation) of the restrained individual must be assessed as soon as possible after the commencement of restraint by a member of the team nominated to do so by the Controller.

During Mr Bayoh's restraint the officers failed to have an officer act as Controller, failed to protect his head and neck and failed to assess his vital signs.

*PC Alan Smith took responsibility for checking Sheku Bayoh's head and monitoring his breathing once he was restrained.*

**PC Alan Smith 27<sup>th</sup> May, page 139, line 24**

23 Q. *Okay. Can we look at paragraph 43 now please. It says:*

24 *"He was lying on his left hand side with his*

25 *handcuffed hands to the front, other officers had hands*

1 *on him I am not sure of the level of force being used*

2 *but I do not recall having any concerns about it. I do*

3 *not think I was in physical contact with him but was*

4 *very close. Once I established he was breathing*

5 *I closely monitored him. I was not restraining him at*

6 *this time. At this point PC Tomlinson made me aware he*

7 *had struck the subject to the head with a baton.*

8 *I checked his head for signs of any serious injury but*

9 *could not find any."*

10 *I would like to ask you some questions about this.*

11 *When you say you checked his head for signs of any*

12 *serious injury, how did you do that?*

13 *A. Visually having a look and just running my hands over*

14 *his head.*

15 Q. *So you have told us that you had been standing?*

16 *A. Yes.*

17 Q. *You had been at his feet area?*

18 *A. Yes.*

19 Q. *Where did you move to in order to allow you to check his*

20 *head?*

21 *A. Directly in front of him.*

22 Q. *To his front?*

23 A. Yes, to his front, so the way he was facing and close to  
24 his head.

25 Q. So we have heard he is on his left-hand side?

1 A. Yes.

2 Q. And his head is nearer to the hedge on Hayfield Road  
3 that you pointed out earlier?

4 A. Yes.

5 Q. So you went to his head. Round the officers or round  
6 the front?

7 A. I can't remember.

8 Q. And you have said:

9 "Once I established he was breathing I closely  
10 monitored him."

11 What does that mean?

12 A. Just kept an eye on him, just watched him.

13 Q. What were you looking for?

14 A. Changes in his pattern of breathing.

15 Q. So you could see he was breathing?

16 A. Yes.

17 Q. Could you see his chest moving?

18 A. Yes.

19 Q. Could you see his breath -- his mouth open or closed?

20 A. I can't remember if his mouth was open or not.

21 Q. And was there at that stage, or at any stage,  
22 a nominated safety officer to monitor breathing?

23 A. I wouldn't say nominated but I had taken on that role.

24 Q. Or appointed?

25 A. I think it would be clear that I was doing that to any  
1 person that was there, so I wouldn't say nominated as

2 such but ...

3 Q. You had adopted that role?

4 A. Yes.

5 Q. Would you explain what that role is?

6 A. I'm not familiar with that phrase, to be honest.

7 I would suggest it's somebody whose sole role is to

8 monitor somebody's breathing.

9 Q. But whatever the title, you were the person there

10 monitoring breathing?

11 . Yes.

## **RESISTING RESTRAINT**

*PC Ashely Tomlinson states that Sheku Bayoh was in the prone position, he was resisting and adopted a bench press position despite Tomlinson and Walker restraining him.*

**26<sup>th</sup> May, page 25, line 10**

10 Q. "I do not know how long Mr Bayoh was in this position

11 and to state a time would be guesswork and this is both

12 unprofessional and unhelpful in terms of the public

13 enquiry. I do recall that due to the level of

14 resistance being issued by Mr Bayoh his body position

15 changed several times. Mr Bayoh was able to take

16 a bench press type position and lift himself from the

17 ground whilst attempts were being made to restrain him

18 by PC Walker and I."

*PC Ashely Tomlinson states Sheku Bayoh was in the prone position*

26<sup>th</sup> May, page 26, line 19

19 if I could call it that, but then that -- because of  
20 Mr Bayoh struggling, that position very quickly changed,  
21 like almost instantly, from being flat on the ground to,  
22 as I kind of demonstrated yesterday, having like that  
1 (indicating) and being able to lift himself up and that  
2 was the opportunity for me to try and take control of  
3 the rest. I don't know how long that all took because  
4 it seemed to -- in my mind it just seemed to last  
5 forever, but I know in reality it was going very fast.

**PC Alan Paton stated he did not hear Sheku Bayoh speak or scream throughout the incident.**

**PIRC-00262 – Alan Paton, page 7, paragraph 2**

*It was whilst I was still holding his bicep with the baton I noticed there was no resistance with regard him trying to lift up his arm. I am only really conscious of his arm. I could not really see the rest of the torso because of Craig's back. The guy did not speak or scream throughout the incident.*

*PC Ashley Tomlinson states Sheku Bayoh was overpowering him, PC Craig Walker and PC Alan Paton and "started to bench press" him and PC Craig Walker.*

**PIRC-00263 – PC Ashley Tomlinson, page 4, paragraph 2**

*He started to bench press both of us and was incredibly strong. I tried to pull his right arm to stop him doing this and he started to pull me in. He was overpowering us and we were struggling to keep him on the floor. I would say Craig is about 20 stones, and he was still too powerful for us. He kept pulling me in and I pushed the emergency button for assistance.*

*PC James McDonough states Sheku Bayoh was actively resisting by kicking out and pulling against being handcuffed and aggressively groaning. He explains Sheku Bayoh was groaning as if he was lifting something at the gym.*

**PC James McDonough 7<sup>th</sup> June, page 57 line 5**

4 Q. *Can we look at paragraph 26 of your Inquiry statement,*  
5 *please, and you were asked about Mr Bayoh's reaction to*  
6 *the restraint and at what point he stopped breathing and*  
7 *you say:*

8 *"Mr Bayoh was actively resisting by kicking out and*  
9 *pulling against being handcuffed. I cannot recall him*  
10 *saying anything, however I vaguely remember him*  
11 *aggressively groaning whilst kicking out and lifting his*  
12 *body."*

13 *What did you mean "lifting his body"?*

14 A. *So with his -- his right arm that I have described*  
15 *PC Tomlinson trying to restrain, using that as leverage*  
16 *to try and lift his upper body up.*

17 Q. *Lift his chest, trying to lift his chest off the ground?*

18 A. *Yes.*

19 Q. *And you're gesturing again -- you're putting your right*  
20 *palm down on the desk and moving your right shoulder in*  
21 *an upwards direction?*

22 A. *Yes.*

**PC James McDonough 7<sup>th</sup> June, page 69, line 12**

11 *"Mr Bayoh was actively resisting by kicking out and*  
12 *pulling against being handcuffed. I cannot recall him*  
13 *saying anything, however I vaguely remember him*  
14 *aggressively groaning whilst kicking out and lifting his*  
15 *body."*

16 *And you describe him as "groaning". Can you just*  
17 *give us a little more description of the groaning?*

18 *A. Yes. I was probably -- I would probably say the best*  
19 *way to describe it would be if you are lifting something*  
20 *heavy, like a piece of furniture, or at the gym working*  
21 *out, and to assist you lifting whatever it is that*  
22 *you're lifting, you would generally sort of exhale or*  
23 *give out a little bit of a groan to sort of assist you*  
24 *with lifting. So that's probably how I would describe*  
25 *it.*

## **LOSS OF CONSCIOUSNESS**

*PC Alan Paton states that he was still on the ground and PC Craig Walker was still lying on top of Sheku Bayoh when PC Alan Smith noticed that he had lost consciousness.*

### **PIRC-00262 – Alan Paton, page 7, paragraph 4**

*I could see movement in his skin. I just thought that he was still conscious, I did not get down and check for breaths. Craig was still lying on top of the guy at this point. I was still on the ground with the guy."*

*PC Craig Walker remembers that he, PC Alan Smith and PC Alan Paton "raised at the same time that the male appear to sort of become unconscious". Once Sheku Bayoh was unconscious*

he witnesses that PC Alan Paton "slapped him a couple of times to see if there was any reaction".

**PC Craig Walker 20<sup>th</sup> May, page 79, line 17**

16 When was it you noticed that he was unconscious, so  
17 he had stopped struggling and become unconscious?

18 A. It would be about the same time because the three of us,  
19 Alan Smith, Alan Paton and myself, sort of all raised at  
20 the same time that the male appeared to sort of become  
21 unconscious at that point and unresponsive.

22 Q. And at that moment when you noticed that, what position  
1 was Sheku Bayoh in?

2 A. He was on -- at that point he would be on his back.

**PC Craig Walker 20<sup>th</sup> May, page 189, line 10**

9 "PC Smith knelt down beside the man at his left-hand  
10 side. He leaned down with his ear to his face, looking  
11 down onto his chest. PC Smith said 'he is still  
26 breathing'."

27 And you have recorded that you recall:

28 "... PC Paton then still kneeling beside the man's  
29 face, slapped him a couple of times to see if there was  
30 any reaction. He didn't move."

31 Is that a recognised way to ascertain if there's  
32 a reaction to someone who you have come across who is  
33 perhaps unconscious?

34 20 A. A pain reaction, just to see if there's any sort of –  
35 I want to say I don't know if it would be recognised



36 or -- I can't answer on behalf of PC Paton.

1 Q. I'm asking whether or not if that would be something

2 that you would do to test for a reaction? Is that, for

3 example, something that you're trained to do?

4 A. I mean part of the OST training is to see if there's

5 a pain reaction in somebody, to see if they could -- and

6 then ...

7 Q. And as part of that training, do they suggest slapping

8 a person?

9 A. I think it was done with the best intentions to see if

10 the male was conscious.

11 Q. Are you able to answer the question

PC Ashley Tomlinson states PC Alan Smith confirms Sheku Bayoh is breathing but shortly after that PC Alan Paton notices that Sheku Bayoh is no longer breathing.

**PC Ashley Tomlinson 26<sup>th</sup> May, page 67, line 16**

17 Q. Right. And then can we turn on to page 5 of your PIRC

18 statement please, just at the top, paragraph 1 and you

19 say:

20 "The man had calmed down and wasn't moving or

21 struggling. Alan Smith went down and put his ear to the

37 man's mouth and confirmed he was breathing. He wasn't

1 responding so Alan Smith or someone asked for an

2 ambulance. Shortly after that Alan Paton said that the

3 wasn't breathing", maybe the man wasn't breathing.

4 "Alan Smith checked and confirmed this so we rolled him

5 onto his back to carry out CPR."

6 So this is the point at which from his -- he is on

- 7 *his side and then he has moved on to his back?*
- 8 *A. Yes, that's correct.*
- 9 *Q. So by this time he had calmed down, he wasn't moving or*  
10 *struggling by this stage?*
- 11 *A. Mm-hm.*
- 12 *Q. And it's at that point PC Smith bends down, put his ear*  
13 *to Mr Bayoh's mouth and he confirms at that point he*  
14 *wasn't breathing.*
- 15 *A. No, I think initially Alan -- PC Smith bent down and put*  
16 *his ear to the man's -- sorry, Mr Bayoh's mouth and he*  
17 *confirmed he was breathing.*
- 18 *Q. Sorry, he was breathing.*
- 19 *A. Yes.*

*PC Kayleigh Good suggests that PC Alan Paton tapped Sheku Bayoh as he believed he was 'faking it, as if he was faking that he was unconscious' but recognises that tapping the face to look for a pain response is not part of their training.*

**PC Kayleigh Good 31<sup>st</sup> May, page 189, line 12**

- 11 *"At that point I saw Alan Paton pat him on the cheek*  
12 *with his hand. I thought that Shek was faking it, as if*  
13 *he was faking that he was unconscious, as it is not*  
14 *unusual for people to do that when they are being*  
15 *arrested."*
- 16 *Now, can I ask you, when you saw Alan Paton pat him*  
17 *on the cheek looking for a pain response, was it because*  
18 *-- did you link that with the idea that Sheku Bayoh*  
20 *might be faking it?*
- 21 *A. I -- I don't know. I can't remember why I've -- why I've said that*

- 22 Q. Well, you say that you saw Alan Paton pat him on  
23 the cheek with his hand?
- 24 A. Yeah.
- 25 Q. Was that a gentle pat?
1. A. I think it's just been like a tap.
2. Q. The Inquiry has heard evidence from another witness  
3. who's given evidence that PC Paton slapped Sheku Bayoh.  
4. Did he slap him?
5. A. Not that I can remember. I can only go on what I've  
6. said in my statement, and I think it was a pat.
7. Q. So he patted him, is your evidence, and he tapped him?
8. A. Yeah.
9. Q. And you're suggesting that that would be enough to  
10. exhibit a pain response?
11. A. Yeah, I think so.
12. Q. Is that the way that you would check someone for a pain  
13. response?
14. A. I think I would do the way I've been taught to: rub  
15. the collar bone.
16. Q. And have you been taught any other ways other than  
17. rubbing the collar bone?
18. A. No, I think that's the only way I've been taught.
19. Q. So you haven't been taught to pat or tap or slap  
20. someone's face to check for a pain response?
21. A. No.

*PC Alan Smith used his knuckles against the bone in the top of Sheku Bayoh's chest as a physical stimulus before realising he was unconscious. He cannot remember anyone slapping*

Sheku Bayoh. PC Smith monitored Sheku's breathing for about 3 minutes before realising he was no longer breathing.

**PC Alan Smith 27<sup>th</sup> May, page 145, line 20**

"When I went down to the male I saw that his eyes  
20 were closed. I've initially tried to get a response to  
21 verbal stimulus, saying 'Are you all right, can you hear  
22 me?' I think PC Paton also tried to speak to him. That  
23 produced no response. I then tried physical stimulus,  
24 putting my knuckles in the bone in the top of his chest  
25 to see if I got a response but I didn't get a response.  
1 At that point the male appeared to be unconscious.  
2 I checked his breathing by putting my face towards his  
3 mouth and heard and felt breath and could see his chest  
4 move consistent with normal breathing."

5 So at this stage you have gone down -- you see his  
6 eyes are closed, you have tried to speak to him and you  
7 realised that he is breathing at that point?

8 A. And unconscious, yes -- well.

9 Q. But unconscious. This is the point you realise he is  
10 unconscious?

11 A. Yes.

1 Q. His eyes are closed but he is breathing?

2 A. Yes.

3 Q. So this is the initial moment when you realise he is  
4 unconscious. Can I ask you about "PC Paton also tried  
5 to speak to him". Did anyone try and slap his face?

6 A. Not that I recall.

7 Q. Do you recall PC Paton doing anything like that?

8 A. No.

9 Q. *Did you try and slap his face at all?*

10 A. *Not that I recall, I don't –*

11 Q. *Would you have done that?*

12 A. *No, I wouldn't.*

13 Q. *You talk about physical stimulus, putting your knuckles*

14 *in the bone in the top of his chest. Is that what you*

1 *attempted to do –*

2 A. *Yes.*

3 Q. *-- to see if you could get a reaction?*

4 A. *Yes.*

5 Q. *And did you get a reaction?*

6 A. *No.*

**PC Alan Smith 27<sup>th</sup> May, page 148, line 21**

20 *How long did it take you to notice that his chest*

21 *as not moving?*

22 *. From what point, where I became concerned that –*

23 Q. *After you made the call, the Airwaves transmission.*

24 A. *About three minutes*

**FIRST AID**

*Alan Paton confirms that PC Alan Smith was in charge at the point of resuscitation, that PC Craig Walker was doing all the chest compressions until Alan Paton took over until the ambulance arrived.*

**PC Alan Paton 21<sup>st</sup> June, page 133, line 9**

8 Q. *"I identified that I was going to hold the mask. I am*

9 *talking about the mask with the one-way valve thing and*

10 *I took out the face mask from my vest."*

11 *Can I ask you just about this paragraph. It appears*

12 from what you're describing there that everybody had  
13 a role, a role identified. Who was it that was in  
14 charge of that -- of things at that time?  
15 A. Alan Smith, closely followed by Craig Walker and myself.

**21<sup>st</sup> June, page 137, line 7**

6 Q. It then says:

7 "I then took over chest compressions..."

8 That's from PC Walker: "

9 "... and I kept going until the ambulance arrived

10 a couple of minutes later."

12 o really it's PC Walker first of all doing the

12 compressions and then you, and you continued until the

13 ambulance arrived at the scene?

13 . Yes.

14 Q. "When the ambulance arrived I gave the paramedic

15 technicians an update of what had happened and went back

16 and sat in the van."

17 Is that your van, the Transit?

18 A. Yes.

*PC Craig Walker started chest compressions, after two or three compressions he heard the sound of a rib breaking in the chest area (later disputed by medical experts). He swaps with Alan Paton until the ambulance arrives. When the ambulance arrived one technician put a breathing bag on Sheku Bayoh's face while the other got a stretcher.*

**PIRC-00264 – PC Craig Walker, page 9, paragraph 2**

*PC Smith then checked the man (deceased again) to check for breathing and he said "He's no breathing". I said to PC Smith "Will I start chest compressions" and he replied "Yes". I started chest compressions. I placed interlocked hands on the centre of the chest and started compressions in line with the training I've had. After two or three compressions I heard the sound of a rib breaking in the chest area. In my training I was told if you were doing it right you might break a rib, don't worry and don't stop.*

*PC Smith went back on the radio and updated the control room that the male was in cardiac arrest. I have no idea of the time at this point. I continued chest compressions for as long as I could until I was tired. PC Smith brought out a one way valve face shield which he carries with him and tried to get the valve into his mouth but couldn't get it past his teeth. PC Paton tried to help him get the valve in but they couldn't get it in properly. He got it in partially and PC Smith tried a few breaths but said it was ineffective and it would be chest compressions only.*

*PC Paton took over chest compressions from me, I don't know after how long but it felt like forever. We continued with chest compressions until the arrival of the ambulance. During that time I think I swapped over with PC Paton again doing chest compressions.*

*When the ambulance technicians came over PC Paton was doing the chest compressions. One of the technicians had a breathing bag and he put it onto his face. The other technician went and got a stretcher from the back of the ambulance and brought it over next to the man (deceased). At the request of the ambulance technician, I assisted to lift him onto the stretcher. Hands came in from everywhere to lift him. They then wheeled him into the back of the ambulance. At that point I heard someone say "Smithy, they need you to drive the ambulance" and he went round to the driver's door of the ambulance and he drove it away. I didn't see any police officers get in the ambulance.*

*PC Alan Smith confirms that first aid only commences after they realise Sheku Bayoh is no longer breathing, roughly four minutes after they realise he is unconscious. In that time there was no attempt to remove handcuffs or leg restraints*

**PC Alan Smith 27<sup>th</sup> May, page 153, line 13**

12 Q. -- to Sergeant Maxwell and his Airwave transmission,  
13 .29.30, that he is now not breathing and CPR is  
14 commencing, so that's a period of around -- well, over  
15 four minutes, I would like to know what's happening  
16 during that four minute period. So he is unconscious  
17 but breathing, you have told us you're monitoring, but  
18 for that four minutes what's happening?

19 A. I'm keeping an eye on him and watching his breathing  
20 and, as I said, that -- that's my sole focus, so other  
21 than that I don't know.

22 Q. What's everyone else doing?

23 A. I don't know.

24 Q. Right, okay. We have heard that day that it had been  
25 raining, it's 3 May, he is in a T-shirt. He has been  
1 restrained, he has had PAVA spray and CS spray and 2  
2 a head strike with a baton and to his body. Was there  
3 any attempt during that period to perform any first aid,  
4 or to make him more comfortable?

5 A. No.

6 Q. Was there any attempt during that period to remove his  
7 handcuffs?

8 A. No.

9 Q. Was there any attempt to remove his leg restraints after  
10 he was unconscious --



11 A. No.

12 Q. -- before he stops breathing?

13 A. No.

*PC Alan Smith tried to use a face shield to deliver breaths but it did not work properly.*

**PC Alan Smith 27<sup>th</sup> May, page 157, line 4**

3 Q. Can I ask you about paragraph 48 of your Inquiry  
4 statement please. And then there's mention in this  
5 paragraph 48 "difficulties administering breaths" and  
6 I would like a little bit more information -- 48 please,  
7 that's it:  
8 "There were difficulties in administering breaths to  
9 [Mr] Bayoh. It was initially very difficult to fit the  
10 valve into his mouth and once this was done the breaths  
11 did not appear to be going in. PC Walker carried out  
12 further chest compressions while I tried to ensure the  
13 airway was not obstructed and re-fitted the mask.  
14 I tried further breaths but these too seemed not to be  
15 working. Air seemed to be escaping around the side of  
16 the mask and the chest was not rising. I made similar  
17 attempts with the same result. It seemed to me that the  
18 breaths were not being effective and were preventing  
19 chest compressions from being carried out. As such  
20 I made the decision that we would continue to carry out  
21 chest compressions only."  
22 So if we could go back to the beginning of  
23 paragraph 48. Can you explain to us -- you talk about  
24 a valve and a mask, and explain what was happening at

25 *that point?*

1 *A. So what we were trying to fit was a face shield that can*  
2 *be used to safely administer breaths during CPR. That's*  
3 *a piece of thick see-through plastic around the size of*  
4 *a handkerchief with a non-return valve in the centre of*  
5 *it. It can be placed in the mouth of the subject and it*  
6 *allows you to safely deliver breaths into them through*  
7 *the non-return valve, reducing the risk of contamination*  
8 *for yourself for anything coming back out of their mouth*  
9 *into yours.*

10 *Q. So it allows you to assist the person but protect*  
11 *yourself at the same time?*

12 *A. Yes.*

*PC Alan Smith put his fingers in Sheku Bayoh's mouth to try and open up his jaw and fit the face shield. PC Walker completed chest compressions and after a failed attempt to deliver breaths PC Smith directed PC Walker to continue compressions.*

**PIRC-00278 – PC Alan David Smith, page 10, paragraph 3**

*PC Paton handed me a CPR face shield and myself and PC Paton tried to fit it to the man's mouth. I had initial difficulties in fitting the shield as the teeth appeared to be clenched shut. This required me to put my fingers in his mouth to try and open his jaw up. By this time I had also tilted his head back to ensure his airway was clear. As soon as I said we need to start CPR I recall PS Maxwell went on the radio to give an update to the Control Room.*

*I don't recall DS Davidson having any physical involvement in the CPR.*

*Between myself and PC Paton we managed to get the face mask fitted. It seemed to be fitted correctly. PC Walker indicated he had completed chest compressions and then I attempted to give two breaths. As I was giving the breaths they didn't appear to be going in properly and I was aware of air escaping underneath the mask seal. I*

*told PC Walker to resume chest compressions. I removed the mask and moved the male's head back again, opened his mouth up by putting my fingers in, checked the airway was clear which it appeared to be, and re-fitted the mask. I was aware that the user side of the mask was starting to become contaminated with saliva and mucus and that there was mucus coming out the male's nose. PC Walker again indicated that he had concluded chest compressions and I again tried to administer two breaths and again with the same result, the breaths did not appear to be going in. I repeated the procedure twice more and each time the breath did not appear to be going in and the mask was becoming more contaminated. I also felt a burning sensation in my mouth which I assumed may be from CS Spray. At that point it didn't appear the breaths were being successful and the attempts were interrupting the chest compressions as well as the fact I was getting more and more contaminated from the mask and male's mouth. In view of this I said to PC Walker just to continue CPR. I removed the mask from the male's mouth and the valve became detached from the plastic and it was left on the ground beside the male.*

**(E) THE CALL FOR AMBULANCE ASSISTANCE**

*PC Alan Smith calls for an ambulance as soon as he realises Sheku Bayoh is no longer conscious.*

**PC Alan Smith 27<sup>th</sup> May, page 147, line 8**

8 Q. *Was there any sort of reaction or movement or sound? A. No, I don't -- no.*

9 Q. *So you realised he was unconscious but breathing and you*

10 *have said he is breathing and PC Paton concurred. You*

11 *then say:*

12 *"I immediately passed a radio message stating that*

13 *the male is controlled highlighting the fact that the*

14 *male appeared to be unconscious but breathing, and an*

15 *ambulance was requested."*

- 16 *So as soon as you realise he is unconscious, you*  
17 *call for an ambulance to be requested.*
- 18 *A. Yes.*
- 19 *Q. And was that through an Airwaves transmission?*
- 20 *A. Yes.*
- 21 *Q. And would you look at the Airwaves message 7.25.17.*
- 22 *That's on page 7. 7.25.17 and there's an Airwaves*  
23 *transmission halfway down page 7 of the spreadsheet*  
24 *saying:*
- 25 *"PC Alan Smith: Roger this male now certainly*  
1 *appears to be unconscious, breathing not responsive, get*  
2 *an ambulance for him."*
- 3 *Do you see that?*
- 4 *A. Yes.*
- 5 *Q. That's the message that you just referred to?*
- 6 *A. Yes, it is.*

## **CONCLUSION**

It is submitted that the foregoing evidence demonstrates that the actions of the police officers on Hayfield Rd failed to follow Use of Force Standard Operating Procedures. Within 1 minute and 15 seconds of the police arriving at Hayfield Road, Sheku Bayoh was being restrained on the ground. The officers engaged in using force against Mr Bayoh immediately on their arrival at Hayfield. This use of force, in the form of CS and Pava, was very quickly followed by a physical restraint in the prone position involving 5 or 6 officers with a number, if not all of those officers, lying across Mr Bayoh. The Inquiry is reminded that Sheku Bayoh, who was 5 foot 10 inches and weighed 12 stones and 10 lbs, (80 Kg) was restrained by 5 or 6 police officers, 2 of whom (Paton and Walker) had a combined weight of 42 stones (266.7 Kg) . The

combined weight of six restraining officers would be 546.7 KG (86 stones 2 lbs), i.e. over half a tonne.

Despite the use of restraint carrying with it a foreseeable risk to the life of the individual being restrained, the officers failed to put in place necessary protections to preserve life including the position and monitoring of Mr Bayoh and ensuring that weight was not placed on his body that would interfere with his ability to breathe. Instead, Mr Bayoh was restrained in the prone position with excessive weight being employed on his body whilst officers failed to properly monitor the restraint and Mr Bayoh's breathing.

It is of note that the Audio and Video Timeline, records that following confirmation that the male is secured on the ground at 07.21.38, this is followed by the male being reported as unconscious at 07.25.17 and having stopped breathing at 07.30.05. It is submitted that Mr Bayoh died whilst being restrained and his restraint contributed to his death.

**It is of note that despite no longer breathing, CPR being commenced that the handcuffs were not removed until being asked to do so at the hospital.**

The restraint measures deployed by the officers in their restraint of Mr Bayoh did not comply with Police Scotland's Use of Force Standard Operating Procedure. It is submitted, as discussed in Chapter 4, that there is insufficient evidence to support that PC Nicole Short suffered assault beyond being punched to the head and therefore, there is no murderous attack to justify the restraint used against Sheku Bayoh.

## CHAPTER 6 – PARAMEDICS AND HOSPITAL ATTENDANCE

### **PROPOSITIONS:**

- (a) The presence of handcuffs impeded CPR at Hayfield Rd and should have been removed.
- (b) Police Officers, either via ACR or those officers present at the scene, did not provide paramedics with full and accurate information and this resulted in treating doctors not being given full and accurate information.
- (c) The presence of handcuffs and leg restraints interfere with medical treatment.
- (d) Despite the best effort of the medical team treating Mr Bayoh life was pronounced extinct at

### EVIDENCE

#### **THE ACTIONS OF ATTENDING PARAMEDICS**

*PIRC-00264 – PC Craig Walker, page 9, paragraph 2 – check for the section quoted*

*When the ambulance technicians came over PC Paton was doing the chest compressions. One of the technicians had a breathing bag and he put it onto his face. The other technician went and got a stretcher from the back of the ambulance and brought it over next to the man (deceased). At the request of the ambulance technician, I assisted to lift him onto the stretcher. Hands came in from everywhere to lift him. They then wheeled him into the back of the ambulance. At that point I heard someone say "Smithy, they need you to drive the ambulance" and he went round to the driver's door of the ambulance and he drove it away. I didn't see any police officers get in the ambulance.*

*On attendance Paramedic David Taylor worked through Airwaves, Breath, and Circulation. He "inserted an oropharyngeal airway into [Sheku Bayoh's] mouth" to stop his tongue blocking his airway. It was officers that continued to do chest compressions at the scene. Once in the ambulance and connected to the defibrillator it indicated that there was a heart rhythm*

*therefore they did not shock Sheku Bayoh but instead continued using the bag and mask ventilations in the back of the ambulance.*

**David Taylor 22<sup>nd</sup> June, page 103, line 6,**

*6 A. And circulation.*

*7 Q. -- circulation?*

*8 A. That's right.*

*9 Q. Okay. You explain at paragraph 35:*

*10 "I carried out a primary survey: there was no  
11 catastrophic bleeding at all, there was no obvious  
12 injuries contributing to a cardiac arrest at that point  
13 and his airway was clear. I checked his airway by  
14 looking into the airway to see if there's any blockages  
15 that may stop the oxygen going into his lungs.  
16 I inserted an oropharyngeal airway into his mouth."*

*17 A. That's correct.*

*18 Q. What's that?*

*19 A. It's a plastic tube that goes into the mouth and it  
20 stops the tongue falling onto the back of the airway.*

*21 Q. Why is that important?*

*22 A. It's important because the problem when somebody is in  
1 cardiac arrest, the tongue becomes loose and it just  
2 automatically falls down to the back of the airway and  
3 it eventually occludes the airway and stops any oxygen  
4 getting in.*

**David Taylor 22<sup>nd</sup> June, page 108, line 1,**

*Q. Did you witness the police carrying out chest*

1 compressions?

2 A. It was the police officer that was doing chest

3 compressions, yes.

4 Q. We have heard that Mr Bayoh was handcuffed to the front.

5 A. That's right.

**22<sup>nd</sup> June, page 110, line 14**

15 Q. But having connected the defibrillator has it

16 demonstrated that there was some sort of heart rhythm

17 and therefore there must have been some pulse?

18 A. Yes, it certainly indicated that there could be a pulse

19 there so that's what we just need to check again.

20 Q. And does that mean that you wouldn't then proceed to

21 shock the patient because the heart was functioning?

22 A. The heart was beating, yes.

1 Q. The heart was beating.

2 A. Yes.

3 Q. And you explain at paragraph 45:

4 "This meant that he was in respiratory arrest so we

5 just continued using the bag and mask ventilations in

6 the back of the ambulance."

7 So should we understand that where the patient is in

8 cardiac arrest they need both the breath as well as the

9 chest compressions, but for respiratory arrest, the

10 appropriate management would simply be –

11 A. The bag and mask, yes.

12 Q. -- the simulated breath, in this case the bag and mask?

13 A. Yes.



*Dr Gillian Pickering confirms that handcuffs would have hindered CPR at the scene and had they been removed it may have made a difference to the outcome.*

**Dr Gillian Pickering 1<sup>st</sup> June, page 26, line 9**

8 Q. Doctor, we have heard that CPR was performed at  
9 the scene on Hayfield Road by officers and paramedics,  
10 and this continued in the ambulance on the way to  
11 hospital. Can you comment on whether, if the cuffs had  
12 been removed while CPR was being carried out at  
13 the scene by the police and the paramedics, it would  
14 have made any difference to the outcome here?

15 A. It could have. The gentleman was a big, big guy and his  
16 arms were big and they were across his chest. You -- to  
17 do good, effective CPR, you need to be able to get good  
18 access to the chest to do good compressions. The police  
19 are trained in doing CPR and will be delivering as good  
20 compressions as they can, opposed to someone who is not  
21 experienced in it, so I can only assume they were giving  
22 as effective CPR as they could. Whether the cuffs in  
23 the way, it would have -- it would have hindered giving  
24 really good compressions.

25 Q. Can we look again at paragraph 49. Halfway through, you  
1 say:

2 "If the hands are over the body, and they're a big  
3 person who has got big hands, you might not get your  
4 full hand in over the area you need to compress."

5 A. The -- from what I remember, he had a big chest and his  
6 hands were right across and over his -- the front of his

7 body. So that space there where I need to put my hand  
8 to compress (indicates) would be small, and if the hands  
9 are cuffed, you might not be able to get your hand in  
10 there very well.

11 Q. So when you're talking about hands in that sentence, are  
12 you talking about the hands of the patient or the person  
13 who's giving the CPR?

14 A. So the person who's got big hands is the patient who –  
15 if they've got big hands and big arms -- I suppose arms  
16 is more what I mean -- is in the way and if the person  
17 who is giving CPR has a big hand, they're going to  
18 struggle to get their hands into that space as well.

19 Q. I see. So if the person giving CPR has large hands –

20 A. Mm-hm.

21 Q. -- then that might also hinder giving –

22 A. Yeah.

23 Q. -- effective impression compressions –

24 A. Mm-hm.

25 Q. -- in circumstances where the patient is cuffed?

1 A. Yes.

*PC Alan Smith drove Sheku Bayoh in the ambulance to the hospital at the request of the paramedics with DC Connell in the back with them. Once at the hospital it was PC Smith that removed the handcuffs and leg straps when requested to do so.*

**PC Alan Smith 27<sup>th</sup> May, page 165, line 2**

Q. And then what did you do when they left?

2 A. I went with them.

3 Q. Why?

4 A. *I was driving the ambulance.*

5 Q. *And why did you drive the ambulance?*

6 A. *They asked me to. The impression I got was they were*  
7 *both wanting to go into the rear of the ambulance to*  
8 *continue the care for the subject.*

9 Q. *So they continued to work on the man themselves in the*  
10 *rear of the ambulance –*

11 A. *Yes, that would –*

12 Q. *And you drove to the hospital?*

13 A. *Yes.*

14 Q. *And we have heard that was Victoria Hospital and that's*  
15 *quite nearby?*

16 A. *Yes.*

17 Q. *How long did it take you to get there?*

18 A. *Probably three or four minutes.*

19 Q. *Right. And did you go straight to A&E?*

20 A. *Yes.*

21 Q. *And then once you had arrived at the hospital -- you*  
22 *mentioned earlier that you had removed handcuffs.*

23 A. *Yes.*

24 Q. *Can you tell us what you did when you arrived?*

25 A. *My memory is quite vague. We went quite quickly into*  
1 *the A&E department –*

2 Q. *Were you with another officer or were you just on your*  
3 *own?*

4 A. *DC Connell was in the back -- I think it was DC Connell,*  
5 *yes, was in the back with the ambulance crew. There was*  
6 *a request to take the handcuffs off around about that*  
7 *point.*

8 Q. Who made that request?

9 A. I think -- I don't know. It was either the ambulance  
10 crew or a doctor.

11 Q. Right. Did you remove the handcuffs yourself?

12 A. I did, yes.

13 Q. And that's when you noticed they were double-locked?

14 A. Yes.

15 Q. So you removed those. What about the leg straps?

16 A. The same. There was a request for one of the medical  
17 personnel to remove them, so we removed them.

18 Q. A different person or the same person?

19 A. I don't know.

20 Q. Can't remember. So they hadn't been removed in the  
21 ambulance?

22 A. No.

23 Q. You removed them when you were actually in the hospital?

24 A. Yes, definitely removed the handcuffs and I was there  
25 when the restraints were coming off but I can't even  
1 remember whether that was definitely me or not.

DC Connell travelled in the back of the ambulance with Sheku Bayoh to hospital.

**SBPI-00107 Witness Statement – Hearing 1 – Derek Connell, page 5, para 17**

17. I went in the back of the ambulance with the paramedics. Both of the paramedics in the back of the ambulance. One of the paramedics asked me to give chest compressions during the journey to the hospital. I don't recall anything during that period other than doing the CPR at that time. When I was looking down, I think all my attention was focused on that.

18. I continued with the chest compressions until the paramedic took over from me. I couldn't say how long I was doing that until the paramedic took over. I remember he placed defibrillator pads on the chest of the male.

19. I then accompanied the paramedics into the A&E department with the male. I remained with the male for a short period of time before being relieved by DCs Brown and Balsillie. I have been asked about the removal of handcuffs from Sheku Bayoh. I have no recollection of this or who removed them.

## **ATTENDANCE AT HOSPITAL**

### **NO ACCURATE ACCOUNT OF EVENTS PROVIDED TO TREATING MEDICAL STAFF**

*Dr Gillian Pickering explains that Sheku Bayoh "came in unconscious with not really any hint of what has caused him to arrest"*

#### **Dr Gillian Pickering 1<sup>st</sup> June, page 33, line 19**

18 Q. Before we discuss the treatment that was given in terms  
19 of the CPR algorithm, I want to ask you some questions  
20 about your differential diagnosis, if that's the correct  
21 term, in terms of the potential causes of the arrest,  
22 and if we can perhaps turn to page 60 -- sorry,  
23 paragraph 60 of your statement. You say:  
24 "For the assessment of cardiac arrest, there's  
25 a list of things that you would think about when someone  
1 comes in. He came in unconscious with not really any  
2 hint of what has caused him to arrest. I had a list of  
3 things in my head to think about."  
4 If I can pause there, you said earlier in your  
5 evidence that when you get a history from

6 the paramedics, it's to give you an idea of the  
7 potential causes or the range of potential causes?

8 A. Mm-hm.

9 Q. And the history that you received on this occasion  
10 was –

11 A. Mm-hm.

12 Q. -- fairly limited, would that be fair?

13 A. It was more of what had happened before he just came in  
14 with -- with the police and the paramedics. It didn't  
15 -- I didn't have an idea of what happened leading up to  
16 the encounter with the police and the paramedics before  
17 he came to us. So as much as it told me that he'd had  
18 pepper spray or -- and had been put to the ground, it  
19 doesn't necessarily tell me a lot about what has led up  
20 to the event in the first place.

*Dr Gillian Pickering was not told that Sheku Bayoh had been lying on the ground unconscious wearing only a t-shirt in the rain for about 8 minutes.*

**Dr Gillian Pickering 1<sup>st</sup> June, page 48, line 16**

16 Q. We've heard evidence that Mr Bayoh was lying on the ground unconscious  
wearing a T-shirt on his upper  
17 half, only a T-shirt, and that it had been raining –

18 A. Okay.

19 Q. That he lay there for about 8 minutes –

20 A. Okay.

21 Q. -- between falling unconscious and the ambulance  
22 arriving?

23 A. Mm-hm.

24 Q. Did you have that information?

25 A. No.

1 Q. Would that be sufficient to cause hypothermia?

2 A. It would cause his temperature probably to go down to

3 about maybe 35/35.5, that kind of thing. If it's been

4 about 8 minutes outside. The difficulty is he was in

5 cardiac arrest which sounds like he did get CPR on

6 the scene which again, I didn't know that. If he had

7 CPR on the scene, his body will cool down because he's

8 not -- he's in arrest, he's not regulating, he's not

9 pumping blood. So it's difficult to say exactly what

10 his temperature would be, but I don't think it would be

11 low enough for me to be thinking about hypothermia as

12 a cause.

13 Q. The information that I've just shared with you, would it

14 have been helpful for you to have that information at

15 the time?

16 A. It would have been useful in a way to know that he'd had

17 a little bit more CPR before he'd come in. 8 minutes or

18 so isn't a lot really, often we have patients that come

19 in who have had about 45 minutes of CPR before they've

20 come to me. It would be useful just to know he had

21 actually been in arrest before they got -- he came in,

22 but it wouldn't have changed what I did.

*Dr Gillian Pickering was not told about the restraint "it could have been useful because it depends if he was pinned down face down or on his back... sometimes if you're pinned face down, that can cause asphyxiation... it would be useful to know that".*

**Dr Gillian Pickering 1<sup>st</sup> June, page 48, line 16**

look again at the medical records, please,  
13 page 7. So the clinical examination hasn't revealed an  
14 obvious cause for the respiratory or cardiac arrest and  
15 there's a limited history available to you. Let's  
16 remind ourselves of the information that you had:  
17 "Found by police with knife aggressive attacked  
18 police officer. Pepper gas used and uncooperative, hit  
19 on back of head. Then was in respiratory arrest. With  
20 ambulance crew."

21 Now, I don't see any mention in your handwritten  
22 notes, doctor, of Mr Bayoh having been restrained by  
23 the police.

24 A. I don't think I had been told that at the time. I mean,  
25 I know he was cuffed and he would have had the bands on,  
1 and I presume -- if I'd been told he's been aggressive,  
2 then I presume that's what they have had to do, but that  
3 I don't recall going into detail and to be honest when  
4 he comes in and he's in respiratory arrest, getting  
5 a lot of detail at that time, I'm trying to think of  
6 what other things to do, so I don't -- I don't  
7 particularly want them to give me a hold big long story  
8 because I need to do stuff.

9 Q. You just need the essentials?

10 A. Yeah.

11 Q. But there isn't any mention here of him having been  
12 taken to the ground and restrained for a period time or  
13 the position of the restraint.

14 A. Not at that time. I -- I suspect maybe afterwards



15 somebody maybe told me a bit more, but at that time  
16 I don't recall being told anything other than what I've  
17 written here.

18 Q. And you perhaps have no recollection then of being told  
19 whether he was resisting a restraint or whether force or  
20 weights were being applied to his body on the ground?

21 A. Not that I remember, no. I don't, no. I mean, all I've  
22 been told is that he was aggressive and that's --  
23 I don't -- I don't recall anybody telling me that they'd  
24 had to pin him to the ground.

25 Q. And if you had been told something like that, would you  
1 have written it down?

2 A. Yes.

3 Q. Would you have found it helpful to have had that  
4 information?

5 A. It can be useful because it depends if he was pinned  
6 down face-down or on his back. So, sometimes, if you're  
7 pinned face-down, that can cause asphyxiation. So it  
8 can cause it, if they're been pressed down, so they're  
9 not necessarily getting -- able to breathe properly, so  
10 it would be useful to know that. If he had -- I mean,  
11 I know -- I've documented he got hit on the back of  
12 head, it would be useful to know had he then fallen to  
13 the ground. He was a big guy, that's quite a height to  
14 fall, so yes, it would be useful to have a bit more of  
15 what had happened previously.

*David Taylor states that the police officer who travelled in the back of the ambulance (DC Derek Connell) told them that Sheku Bayoh had brandished a knife, was restrained and had possibly*

*been struck on the head with a baton. The paramedics were not told that Sheku Bayoh had been chasing cars with a knife, that he had ignored police, that he had been sprayed several times with no effect, that he had been restrained by multiple officers in the prone position or that he went into cardiac arrest while being restrained.*

**Paramedic David Taylor 22<sup>nd</sup> June, page 116, line 4**

3 Q. *And that bag and mask ventilation continued en route.*

4 *Can we return to the patient report, please, to the*  
5 *following page, please, to this paragraph at the top on*  
6 *the right. It records:*

7 *"Male who had allegedly brandished a knife at*  
8 *police, was restrained by police, had been possibly*  
9 *struck on the head with a baton."*

10 *Now, who provided you with that information?*

11 *A. That was when we were in the hospital. We had*  
12 *transferred the patient over to the hospital bed and the*  
13 *police officer who travelled in the back of the*  
14 *ambulance, he was on his radio. There was a lot of*  
15 *chatter on the radio and that's when he offered that*  
16 *piece of information, as we transferred the patient*  
17 *over.*

*Sgt Scott Maxwell told ACR Sheku Bayoh was sprayed with CS and PAVA and batoned six minutes before the ambulance arrived but this information was not passed on.*

**Paramedic David Taylor 22<sup>nd</sup> June, page 119, line 7**

6 Q. *Okay. And this is information you say that you received*  
7 *when you got to the hospital?*

8 A. Yes.

9 Q. So were you advised at any point before the ambulance

10 left Hayfield Road to go to Victoria Hospital that

11 Mr Bayoh had been chasing cars with a knife?

12 A. No.

13 Q. That he had ignored the police when they arrived and

14 acted like they weren't there?

15 A. No.

16 Q. That he had been sprayed several times with CS and PAVA 17 spray?

18 A. No.

19 Q. That the sprays had had no effect and he had wiped them

20 off like water?

21 A. No.

22 Q. That he had been struck to the head with a baton?

1 A. No.

2 Q. That he had been restrained by a number of officers?

3 A. Not by a number of officers; we just heard that he had

4 been restrained and went into cardiac arrest.

5 Q. That he had been restrained in the prone position?

6 A. No -- well, just restrained.

7 Q. Just restrained. If the officers at the scene had had

8 the information that I have shared with you, would you

9 have found it helpful to have received that information

10 from them?

11 A. Yes. That would just have been information that would

12 tell us how the event happened and that would be

13 information that we would give to the hospital.

**22<sup>nd</sup> June, page 121, line 2**

**Paramedic David Taylor**

1 Q. Things like being struck to the head, being sprayed with  
2 CS and PAVA spray; are those the sorts of pieces of  
3 information you might have been expected to be passed to  
4 you?

5 A. That would be useful, yes.

6 Q. And why would that have been useful?

7 A. That's just information as to what may have led up to  
8 the event as to cause the cardiac arrest.

**22<sup>nd</sup> June, page 122, line 15**

**Paramedic David Taylor**

Q. Let's look at the spreadsheet again, please, at page 8.

15 There's an entry -- again, it's Acting Sergeant  
16 Scott Maxwell. It's an Airwave entry at 7.26.52. So  
17 that's more than six minutes before you arrive at the  
18 scene, okay:

19 "Just for the log the initial on attendance this  
20 male has attacked PC Short quite violently. As a result  
21 he was sprayed with CS and PAVA and batoned. There may  
22 be a suggestion that he has been batoned to the head  
1 area. 41 over."

2 Do you see that?

3 A. Yes, aye.

4 Q. So it appears from this transcript that that information  
5 which was acknowledged -- do you see at 7.27.10,  
6 "Control room, roger", that information was conveyed by  
7 the police to their control room more than six minutes

8 before your ambulance arrived at the scene.

9 A. Yes.

10 Q. But should we understand from your evidence and from

11 what's recorded in the patient report form that in the

12 intervening six minutes, that information did not make

13 its way into your hands?

14 A. Yes, I didn't get that information.

## HANDCUFFS AND CPR

*Dr Gillian Pickering confirms that Sheku Bayoh was wearing handcuffs "his hands in front of him on his chest" when he arrived at hospital. She states that "handcuffs would hinder CPR because if somebody small like me was standing over him on a stool doing CPR and his arms is in the way then my hand might not get full contact with the chest..."*

### **Dr Gillian Pickering 1<sup>st</sup> June, page 12, line 2**

Q. -- were involved in the resuscitation effort.

2 Doctor, when Mr Bayoh was brought to you on

3 a trolley, can you describe what you saw in front of

4 you?

5 A. Yes, so the patient will come in on the ambulance

6 trolley, I would be standing at the head-end. He would

7 move from their trolley onto our trolley. He was a very

8 -- I remember him being a very big man. I remember him

9 coming across. He had his handcuffs -- his hands in

10 front of him on his chest, cuffed, and I remember there

11 being a mark on his forehead. That's -- yeah, and then

12 he comes over onto our trolley and then we start doing

13 what we have to do.

*What happened was when I said he is in  
8 cardiac arrest, the police officer that was standing at  
9 the end of the bed said "do you want me to take the  
10 cuffs off" and I said yes.*

*11 Q. I beg your pardon.*

*12 A. No.*

*13 Q. If he hadn't made that offer, would you have asked for  
14 them to be removed?*

*15 A. Yes.*

*16 Q. Could we go to your Inquiry statement, please, at  
17 paragraph 49. Again, I'd like to read this out and then  
18 ask you some questions:*

*19 "Handcuffs would hinder CPR because if somebody  
20 small like me was standing over him on a stool doing CPR  
21 and his arm is in the way then my hand might not get  
22 full contact with the chest. You're doing compressions  
23 on the centre of the chest over the middle and over  
24 the sternum. If the hands are over the body, and  
25 they're a big person who has got big hands, you might  
1 not get your full hand in over the area you need to  
2 compress. Whereas if you've got things away from  
3 the chest, you've got full exposure and you're able to  
4 get proper, decent compressions. It doesn't stop you  
5 doing CPR completely but it can hinder it."*

*6 So you give an explanation there as to how cuffs  
7 might hinder the CPR effort.*

8 If we can scroll down to paragraphs 50 and 51,

9 please:

10 "I have been shown my previous statement to PIRC on  
11 15 June ... on page 2 I said 'The male was lying on his  
12 back and was handcuffed. He did have a large chest and  
13 his arms were positioned lower on his stomach. This  
14 would not have impeded in any way attempts to perform  
15 CPR as this requires work on the sternum'.

16 "I think what I was saying in the statement was that  
17 they wouldn't have impeded CPR because they were off  
18 straight away. Had they stayed on then they would have  
19 been in the way. The CPR would not have been as good.  
20 If his hands were down towards his stomach then his  
21 upper arms would have been across the chest a bit and  
22 impeded CPR."

23 If we could very quickly fast-forward to  
24 paragraph 123. This, doctor, you'll recall is  
25 the paragraph in which you said that you told the PIRC  
1 the truth and your memory was better then than now. If  
2 there's an inconsistency your previous statements should  
3 be preferred, aside from the point about whether  
4 the handcuffs hindered the CPR.

5 A. Yeah.

6 Q. And you've given a clear explanation in your Inquiry  
7 statement as to what had been said to the PIRC and what  
8 you in fact meant by what you said to the PIRC?

9 A. Yeah.

10 Q. And you're very clear in your inquiry statement that CPR  
11 would have been hindered by the cuffs?

12 A. Yes.

13 Q. *And you also have given evidence that if the police*

14 *hadn't offered to take them off –*

15 A. Yes.

16 Q. *-- you would have asked for them to be removed?*

17 A. Yes.

*Linda Limbert a Staff Nurse in A&E states that handcuffs had to come off "so that we could get access."*

**17<sup>th</sup> May, page 71, line 7**

6 A. *Because I did -- I remember that he did have handcuffs*

7 *on but I didn't remember what they were until I read my*

8 *statement.*

9 Q. *Where was he handcuffed?*

10 A. *His hand -- at the front.*

11 Q. *To the front?*

12 A. *On his -- you know.*

13 Q. *Did you have any discussions about the handcuffs when he*

14 *arrived at the hospital?*

15 A. *Not that I -- I wouldn't remember. No, I mean you had*

16 *to get them off, obviously, so that we could get access.*

17 Q. *Did the handcuffs interfere in any way with the*

18 *treatment that was provided at the hospital?*

19 A. *No, they had to be removed, but I wouldn't say they*

20 *interfered but for the -- they had to come off.*

## **HANDCUFFS AND IV ACCESS**



*Dr Gillian Pickering explained handcuffs would hinder access to veins. Having IV access would have allowed Dr Pickering to administer drugs earlier such as naloxone, adrenaline and amiodarone. "The idea is giving adrenaline early will help to restart the heart and amiodarone helps to restabilise a heart that's in an irregular rhythm."*

**Dr Gillian Pickering 1<sup>st</sup> June, page 25, line 19**

18 Q. *Can we return to paragraph 52:*

19 *"It would be very difficult to get IV access in*  
20 *the arms if the arms were cuffed. It's very difficult*  
21 *to get into that area. We usually go for the anterior*  
22 *cubital fossa, on the inside of your arm where the elbow*  
23 *bends. We usually go there in resus because the back of*  
24 *the hand is usually very shut down. If the person's in*  
25 *cardiac arrest they're going down in their extremities*  
1 *first, so the veins are not going to be easy to see.*

2 *You want access quickly so you can start giving drugs."*

3 *So you explained there another reason why cuffs*  
4 *might get in the way?*

5 A. *Yes.*

6 Q. *And it's to do with access to veins?*

7 A. *Yes.*

**Dr Gillian Pickering 1<sup>st</sup> June, page 91, line 4**

3 Q. *And what I was wondering was, when you get the IV in,*  
4 *what are the first drugs that are being put in?*

5 A. *So, for -- if he was still in respiratory arrest and not*  
6 *in cardiac arrest, I probably would have given naloxone*  
7 *fairly quickly to see if I could reverse the effects of*

8 whatever had potentially -- if it had been opioids that  
9 had caused the respiratory depression.

10 In a cardiac arrest it would be adrenaline. In  
11 the non-shockable rhythm, it would be every two minutes;  
12 in the shockable rhythm, it would be after the third  
13 cycle along with amiodarone.

14 Q. I think the first two of the drugs that you've spoken  
15 about are in fact ones that again the Inquiry will come  
16 to hear were considered by the paramedics.

17 A. Mm-hm.

18 Q. You explained that you want access quickly so you can  
19 start giving the drugs. What is the effect in each of  
20 those circumstances on delay in giving those drugs?

21 A. So, it means it just makes it harder to get the heart to  
22 restart. You want to give adrenaline early. There's an  
23 ethical debate over doing studies where you give  
24 a placebo or give adrenaline to find out whether it does  
25 do the job that we think it does, obviously that hasn't  
1 necessarily been approved yet, but the idea is giving  
2 adrenaline early will help to restart the heart and  
3 amiodarone helps to restabilise a heart that's in an  
4 irregular rhythm. So it is important to give them  
5 early, but if it's a shockable rhythm, the shocking is  
6 more important.

7 Q. And if it's not a shockable rhythm?

8 A. Then it's getting the drugs in as quickly as you can,  
9 and that's why you give them every second cycle.

10 Q. And do we take from that that the faster the drugs are  
11 in, the more likely it is? To help...

12 A. Yes, it will help. It does help.

*Paramedic David Taylor said the handcuffs would have got in the way of IV access and had they needed to administer drugs they "would have had the handcuffs removed at that point."*

**22<sup>nd</sup> June, page 115, line 10**

Q. In the event, you didn't consider that you needed to  
10 give any drug so you didn't need IV access, but if you  
11 had required IV access, would the handcuffs have got in  
12 the way at all?

13 A. Yes, they would have done. We would have had the  
14 handcuffs removed at that point.

#### LEG STRAPS HINDERING EXAMINATION

**Dr Gillian Pickering 1<sup>st</sup> June, page 53, line 10**

9 Q. We've heard evidence that Fast Straps, long Velcro  
10 straps were used to bind Mr Bayoh's legs at  
11 Hayfield Road.

12 A. Mm-hm.

13 Q. Were they present when he was brought into A&E?

14 A. I don't recall, but I know my statement has said –  
15 the first one has said that there were straps on his  
16 legs, but I think I took them off.

17 Q. You think you took them off?

18 A. Yeah, I'm pretty sure I would have taken them off to  
19 look at his legs.

20 Q. Would they have got in the way of you examining his legs  
21 for injury?

22 A. They're usually at the feet, and I'm looking more at

23 the thigh. That's where I'm going to be seeing if  
24 there's any blood loss, but I would want to look in  
25 between the legs to see if there's any bleeding from  
1 there as well, so yes, they would get in the way for  
2 looking properly at the body.

3 Q. We may have heard they were applied either just above or  
4 just below the knee.

5 A. The knee, okay.

6 Q. If that was so, would they have got in your way?

7 A. Yes.

8 Q. So you might not recall this now, but you say you saw it  
9 in your PIRC statement and you removed them?

10 A. Yeah.

## **LIFE PRONOUNCED EXTINCT**

*Dr Gillian Pickering explains that Sheku Bayoh's heart's rhythm was not shockable so they continued with CPR and administered adrenaline every second cycle, after a certain period of time if the heart does not start you have to make a decision that it is time to stop and that is what happened in this case. Blood results taken were not compatible with life and the team made a decision to stop resuscitation.*

### **Dr Gillian Pickering 1<sup>st</sup> June, page 66, line 4**

3 Q. If the rhythm isn't shockable, is there anything more  
4 that you can do for the patient?

5 A. If it isn't shockable then we go down a different  
6 algorithm where we continue CPR, you give adrenaline  
7 every second cycle, and you then think about your  
8 reversible causes, and you try and see if you can get

9 the heart to restart. After a certain period of time,  
10 you have to then make that decision to say it's time to  
11 stop.

12 Q. Okay, and is that -- we will look at this in more detail  
13 but that is essentially what happened in this case?

14 A. Yes.

**Dr Gillian Pickering 1<sup>st</sup> June, page 77, line 21**

20 A. If I remember rightly, Sophie got access very quickly  
21 and I would have asked for a gas straight away because  
22 it gives me an idea ie for the potassium. And then  
23 I think we repeated his gas later on a couple of times  
24 just to see how things were going.

25 Q. And certainly by the time that the patient had an  
1 unshockable rhythm the information that you also had was  
2 that the lactate suggested a poor prognosis and –

3 A. Hydrogen ions of over 200 and a lactate of 18 is not  
4 compatible.

5 Q. Not compatible with life.

**Dr Gillian Pickering 1<sup>st</sup> June, page 83, line 7**

6 Q. Finally, doctor, I'd like to ask some questions about  
7 the decision to pronounce life extinct.

8 A. Mm-hm.

9 Q. How was that decision taken?

10 A. So that decision is based on the amount of time that  
11 you've been working on the patient, it's based on

12 the acidosis and the lactate from the gas, it's based on  
13 the reversible causes or what we think might have  
14 happened to cause the cardiac arrest and it's made as  
15 a team.

16 Q. So it's a team decision?

17 A. Yes.

18 Q. Who's involved in making that decision?

19 A. So it's usually the leader of the team will bring up the  
20 subject -- will say, "I think we're at the point where  
21 we're not getting anywhere, we're not able to restart  
22 the heart, there's no reversible cause, are we all in  
23 agreement that we should stop?"

24 Q. Can we look at the medical notes, please, page 10. If  
25 we can scroll to the bottom of page 10, please, do we  
1 see "PLE team agreement at 09.04"?

2 A. Yes.

3 Q. PLE is short for?

4 A. Pronounced life extinct.

5 Q. So the team reached that agreement at 9.04 --

6 A. Yes.

7 Q. -- in the morning?

8 Now, doctor, when we looked at page 7 we saw that  
9 you had written up the notes retrospectively at 0900 --

10 A. Yes.

11 Q. -- hours.

12 A. Mm-hm.

13 Q. Were you still at the bedside --

14 A. So --

15 Q. -- at this point in time?

16 A. No, what had happened was, about ten minutes before  
17 pronouncing life extinct, at this point my consultant  
18 was in the department and was -- I'd handed over to him  
19 and the day team registrar was there, Dr Anderson, and  
20 there was the ITU consultant and the anaesthetic  
21 consultant. So just before 9 o'clock, I had said to  
22 Dr Surinder Panpher, who is the consultant, A&E, and  
23 had said I think we're at the point where I think we  
24 should stop, we had been going for over an hour and a  
25 half in theory, he had come in about 7.30, we've not got  
1 any reversible causes, we're now at acidosis of 213,  
2 I think we should stop. He agreed, however Dr Clark,  
3 the anaesthetist, did not want to stop at that point, he  
4 wanted to keep going for a bit longer, and I understood  
5 why, it's a young man, we wanted to see what we can do  
6 to do our best, so at that point I decided to step out  
7 and go and write the notes and let Surinder and Dr Clark  
8 decide when to stop.

## CONCLUSION

The evidence before the Inquiry indicates a number of failures by the police officers attending Hayfield Road. **First, despite Mr Bayoh losing consciousness, his handcuffs are not removed. When he stops breathing his handcuffs and leg restraints are not removed. Medical evidence confirms that the presence of handcuffs would have interfered with the effectiveness of the CPR being delivered.**

The Paramedics who attend are not given full and accurate information of the circumstances leading to Mr Bayoh requiring medical attention. This failure is by both the ACR and the officers at the locus. Mr Bayoh is transported in the ambulance with

the handcuffs and leg restraints in place. Once again, this will have interfered with the effectiveness of the CPR being administered.

The evidence demonstrates that the medical staff at the hospital did not have full and accurate information on what had occurred at Hayfield Rd. In particular, the restraint and the methods used were not communicated. This impacted on the understanding of the treating medical staff as to why Mr Bayoh had suffered a cardiac arrest. Dr Pickering has confirmed that both handcuffs and leg restraints required to be removed for appropriate medical assessment and treatment to be carried out. Despite the best efforts of the medical staff, Mr Bayoh's life was pronounced extinct at 9.04am.



## Chapter 7 Cause of Death

### PROPOSITION:

- (a) Mr Bayoh's cause of death is "*Sudden death in a man intoxicated by MDMA (ecstasy) and alpha-PVP, whilst being restrained*".
- (b) Mr Bayoh died because of the method of restraint employed by the police.
- (c) Examination of Mr Bayoh's body revealed that he had petechial haemorrhages in both of his eyes, demonstrating that he had suffered asphyxiation, facial injuries that demonstrated he had been involved in a physical struggle, and a collection of several lacerations to his lips and inside his mouth.
- (d) Mr Bayoh had consumed MDMA and Alpha-PVP prior to his death and was alive until he came into contact with the police officers at Hayfield Road.
- (e) Mr Bayoh was made profoundly hypoxic and acidotic by the struggling and restraint and this could provide for the blood cell sickling that was found.
- (f) Steroid use did not contribute to Mr Bayoh's death.
- (g) Excited Delirium was not a cause of death in respect of Mr Bayoh.
- (h) Excited Delirium is not used in British practice, is highly controversial, discredited and has been criticised.
- (i) Mr Bayoh's rib fracture was not caused during CPR and was most likely caused during the restraint process.

### EVIDENCE

#### CAUSE OF DEATH

Eyewitness evidence describes Mr Bayoh being restrained by six officers during which time he was face down on the ground, had hand and leg restraints applied, and that the six officers lay on top of him, crossing over him from both sides and covering the whole of his body. Taking all of the evidence, along with the findings at post-mortem, there is ample admissible and powerful evidence available to support the assertion that Mr Bayoh died because of the method of restraint used by the police.

**SBPI-00304 - Dr Nat Cary Report (COPFS 00196) statement – p.6 Para 5**

*“In terms of the possible role of restraint, I support the opinions expressed that petechial haemorrhages in the eyes may indicate a degree of asphyxia, in this case most likely originating from compression of the trunk in a face down position rather than any compression of the neck for which there was no evidence. In terms of any role for restraint, this cannot be separately considered from struggling. As is commonly the case in acute behavioural disturbances, the deceased displayed remarkable strength and stamina. Ongoing restraint and struggling in these circumstances is very likely to lead to significant metabolic disturbances .... Which can precipitate the development of metabolic acidosis. Indeed, in my opinion given the presence of a background of potent stimulant drugs, this case cannot be viewed simply as an example of a case of sudden death during restraint. I therefore entirely support the cause of death proposed, **“Sudden death in a man intoxicated by MDMA and alpha-PVP, whilst being restrained”**.. persons displaying acute behavioural disturbances of the kind described, whether due to stimulant drug abuse or underlying psychiatric disorders, or indeed a combination, constitute an acute medical emergency which is often extremely difficult to deal with. In ideal circumstances struggling and restraint needs to be minimised and the person needs to be transported to an accident and emergency department.”*

**SBPI-00304 - Dr Kerryanne Shearer statement - 21102022 & 13012023, page 28, paragraph 81**

*81. Finally, in the report the cause of death is a narrative cause of death: “1a Sudden death in a man intoxicated by MDMA (ecstasy) and alpha-PVP, whilst being restrained”. The drugs taken, Alpha-PVP and MDMA have cardiac toxic effects. Alpha-PVP is similar to MDMA in that they both cause you heart rate to increase, (they cause your blood pressure to go up, and they increase the rate or the force that your heart has to beat. The Alpha-PVP would have worked synergistically with the MDMA with all of that happening to the heart in addition to the acid that’s circulating from the restraint and the struggle. All of those factors together would have accentuated*

*each other, and hence why the cause of death is given as a long narrative that encompasses all those factors.*

## **THE EFFECT DRUGS PLAYED**

Prof Michael Eddleston said that he doesn't "consider MDMA to be a drug which commonly causes cardiac dysrhythmias and death."

**SBPI-00317 - Professor Michael Eddleston - Final Statement signed 04.05.2023, page 26, para 111**

*111. I have been referred to a consultation note (COPFS-04194(a)) from Dr Kerryanne Shearer, who was the lead pathologist and performed the original post-mortem. The note is dated 4 June 2018.*

*112. At the bottom of page 1 of the note, it states:*

*"A toxicologist is the best person to speak to the effects of MDMA and Alpha-PVP. MDMA is ecstasy and makes people 'happy' and Alpha-PVP can make an individual agitated and hallucinate. Both drugs can cause sudden death due to cardiac arrhythmias. Either drug could have killed the deceased. Taking both drugs would have caused compounded effects."*

*113. This comment is talking about the cardiac effects. We know that drugs cause cardiac arrhythmias; cocaine has a particular problem with this. Any stimulant can cause the heart to go very fast and sometimes into chaotic rhythms. MDMA is a less severe stimulant and from a clinical toxicology perspective, I don't consider MDMA to be a drug which commonly causes cardiac dysrhythmias and death, which I would consider cocaine to be.*

*114. The sentence "either drug could have killed the deceased", yes that's true but it's much more likely to be alpha-PVP because sudden death is not a common problem with MDMA.*

*115. The sentence, "taking both drugs would have caused compounded effects", well we know with psychosis that's probably not the case as a result of the Russian research*

*study but that's looking at one particular problem. I don't know the data for cardiac dysrhythmias. Without having this particular data, I can't give you a precise answer, but I still think it's more likely to be alpha-PVP than MDMA.*

*116. I have been referred to the first paragraph on page 2 of the consultation note, where it states:*

*"The level of the drugs present is not necessarily significant and toxicity is not necessarily dose dependent. If you take them there is always a chance they will cause death. It is their presence that is significant."*

*117. A better word for 'level' would be concentration. The concentration of the drug in the body, it's very difficult to be precise about what that means. Where the note says, 'it is their presence that is significant', I agree with that. You get some information from the concentration. If it's a very, very low concentration of the blood, which is not consistent with other cases in literature, you would have to say on the balance of probabilities perhaps that probably wasn't the important drug. The note says that the concentration is "not necessarily significant". It can be significant, and I've tried to show that the alpha-PVP concentration measured in Mr Bayoh was similar to what we found in the literature, so I think that's consistent.*

*118. The "toxicity is not necessarily dose dependent" is absolutely true because some people we think are probably sensitive and some people are not sensitive, but we don't know because we haven't done the studies to evidence this. We can't do the studies really; we can just think that's probably the case.*

*119. "If you take them, there's always a chance they will cause death." Yes, but I think with MDMA, it's much less likely to cause death than alpha-PVP. There are very large numbers of people taking MDMA in the UK and there are relatively few deaths from MDMA. There are very few people taking alpha-PVP that I'm aware of, and there are cases in the literature of death. Anyone who's severely agitated is a higher risk of death than someone who's not severely agitated and we know that alpha-PVP causes a very high rate of severe agitation and psychosis.*

Dr Shearer explains steroids is “not something that we see as acutely causing people to die.”

**Dr Kerryanne Shearer 9<sup>th</sup> May, page 156, line 13**

*13 Steroid use is not something that we see as acutely  
14 causing people to die. We see it as a more of  
15 a confirmation that they have been taking it. What we  
16 can see is long-term effects of it, chronic changes  
17 where we can get heart damage -- which we didn't see in  
18 this case -- but the only real reason for doing it in  
19 this case was to confirm or exclude if he had it in his  
20 system or had taken it recently.*

#### **THE EFFECT SICKLE CELL PLAYED**

Prof Lucas believes the sickle trait should be moved “down in the cause of death list from being in part 1 to part 2”, he would put it at “the end as a small extra factor” that may have “shortened his life expectancy by a couple of minutes, given the stresses he was under at the time.” Lucas also confirms that the restraint could have caused sickling.

**SBPI-00314- Final Statement - Professor Sebastian Lucas signed 28.04.2023, page 5, paragraph 18**

*18. It obviously happens much more commonly in people with sickle disease, and what it means is that in the lung blood vessels, the cells sickle, and they simply can't move. If you can't have blood moving through the lung, the lung stops, the heart stops, and you die. It's called a crisis due to Acute Chest Syndrome. Mr Bayoh has some aspects of the Acute Chest Syndrome, which is why I think sickle contributed. Having thought this through, I would now say my bottom line is that I think we should probably move*

*sickle trait down in the cause of death list from being in part 1 to part 2, as a contributor but not the main cause. Exactly the extent to which it contributes is entirely subjective. There's no absolutes here.*

**SBPI-00314- Final Statement - Professor Sebastian Lucas signed 28.04.2023, page 7, paragraph 25**

*25. Reflection on my report four years on, I don't think sickle cell trait is quite as important as I thought it was perhaps back in 2018. That's partly influenced by lots of discussions I had with coroners in England about how we should be phrasing causes of death; what is important and what is less important, what goes into part one, which is the main thing, and what goes into part two as a contributor. If I was doing this case again now, I would move the reference to sickle cell trait part 2 of the death certificate. I would not frame the entire story of his death around sickle cell trait. I would just simply put that in on the end as small extra factor; as explained earlier, that it may well have shortened his life expectancy by a couple of minutes, given the stresses he was under at the time.*

**SBPI-00314- Final Statement -Professor Sebastian Lucas signed 28.04.2023, page 14, paragraph 54**

*54. I have had sight of Dr Nat Cary's report.*

*55. I have been referred to the findings of Dr Cary's report indicating that Mr Bayoh was made profoundly hypoxic and acidotic by the struggling and restraint, and that he wonders whether that would, or could, provide for sickling. Yes, this is correct.*

**THE ISSUE OF EXCITED DELIRIUM**

Professor Eddleston states excited delirium is not used in British practice, is controversial and has been criticised.

**SBPI-00317 - Professor Michael Eddleston - Final Statement signed 04.05.2023, page 15, para 62**

*62. I am referred back to my report at paragraph 11, where I state:*

*“This is similar to the diagnosis of ‘excited delirium’ that is used in the USA. The term ‘excited delirium’ is not used in British clinical toxicological practice, being absent for example from TOXBASE, the NPIS database used by clinicians from primary care, ambulance services, and hospitals across the UK to guide management of poisoned patients.” The use of the term excited delirium has been criticised and is controversial. The Royal College of Psychiatrists published a position statement in 2022 on the use of the terms ‘acute behaviour disturbance’ and ‘excited delirium’ in clinical settings.*

**MR BAYOH’S RIB FRACTURE**

Professor Freemont does not believe the rib fracture was caused by PC Walker performing CPR.

**SBPI-00310 - Final Statement Professor Anthony Freemont Signed 20.04.20223 v2, page 4, para 15**

*15. I have been asked if this would have been the case for the type of fracture that I saw in this case. That’s a difficult question to answer in the sense that I don’t believe that this fracture was caused by CPR. Were the fracture to have occurred during CPR, you would have heard it, but did it occur during CPR and was it what was heard by the person performing CPR? I think the answer to both is “no” in the sense that I don’t think this fracture was caused by CPR.*

Professor Freemont believed the rib fracture was “more likely to be an indirect injury, so not due to somebody actually physically hitting that bone” more like “a fall on to an outstretched arm.”

**17<sup>th</sup> May 2023, Page 126, line 21**

**Professor Anthony Freemont**

Q. Then can we look at your final slide please. This is  
21 your views on the fracture from this year and I wonder  
22 if you can just take us through those bullet points  
23 please.

24 A. All the evidence points towards this gentleman having  
25 a solitary left first rib fracture and that has a lot to  
26 say about mechanism.

1 I have no doubt that this occurred in life and that  
2 is evidenced by osteocyte necrosis and by the presence  
3 of haemorrhage, which I demonstrated with the  
4 Glycophorin A staining.

5 It must have occurred less than six hours before  
6 death and I have timed death at 09.04 for the reasons  
7 I have given and we have already discussed the fact that  
8 six hours is probably too far, now we know the  
9 circumstances, but again that's not my decision to make  
10 as to when that occurred. But I was not told and  
11 I don't think the Inquiry has heard of anything that  
12 happened that could have led to the sorts of events that  
13 we have talked about for this fracture occurring before  
14 the fight with the friend.

15 The nandrolone effects and the data from infants –  
16 and I hadn't analysed my data until late 2018, early  
17 2019 -- would indicate that the certainty that I had  
18 that the fracture had occurred more than two hours  
19 before death must now be looked at differently because  
20 there is -- the effects of nandrolone could have moved  
21 the osteocytes back to a similar timeframe in terms of  
22 osteocyte apoptosis caused by fracturing, could have



23 moved that back before two hours.  
24 And the -- we have discussed the mechanisms by which  
25 this could have occurred and I can see that there would  
26 be events that occurred during the altercation with the  
1 friend and with the police, which I have timed at  
2 roughly 2.5 and 1.75 hours prior to death, which could  
3 have led to the sorts of forces that are necessary to  
4 fracture his bones. I felt from what I had heard and  
5 read and been told that this was more likely to be  
6 an indirect injury, so not due to somebody actually  
7 physically hitting that bone, and from everything that  
8 there was and the descriptions that we have seen of what  
9 happened all in the heat of the moment and so on,  
10 I still favoured a fall on to an outstretched arm, again  
11 because of the absence of soft tissue injuries in a lot  
12 of these places and the situation of fractures that are  
13 associated with muscular activity, but again not from my  
14 experience, from the limited amount of material in the  
15 literature.

## CONCLUSION

Examination of Sheku Bayoh's body revealed that he had petechial haemorrhages in both of his eyes, demonstrating that he had suffered asphyxiation, facial injuries that demonstrated he had been involved in a physical struggle, and a collection of several lacerations to his lips and inside his mouth. Sheku Bayoh's cause of death is "*Sudden death in a man intoxicated by MDMA (ecstasy) and alpha-PVP, whilst being restrained*".

Mr Bayoh had consumed MDMA and alpha-PVP prior to his death, however, he was alive until he came into contact with the police officers at Hayfield Road. Sheku Bayoh was made profoundly hypoxic and acidotic by the struggling and restraint and this

could provide for the blood cell sickling that was found. Steroid use and excited delirium did not contribute to nor are they a cause of Sheku Bayoh's death.

## RACE

**We highlight the following matters in relation to race. As we have stated from the outset, the issue of race runs through this whole Inquiry**

### **HIGHLIGHTS**

- Initial call to officers described Sheku Bayoh as African looking
- Both PC Craig Walker and PC Alan Paton stated that they considered this may be a terrorist incident or related to the “Severe Threat Level”
- PC Alan Paton and PC Kayleigh Good stated they thought it could be a terrorist event, both referencing Lee Rigby. PC Good stating “mainly due to the fact of the coloured male and the potential terrorist connotations.” Sheku Bayoh was 5ft 10 and 12 stones 10 pounds. PC Alan Paton was 17 stones (108KG) and 6ft 4. PC Craig Walker was 25 stones (159KG) and also 6ft 4. PC Alan Paton describes Sheku Bayoh as a “large black male”. PC Nicole Short called him a “huge, very muscular black guy around 6ft tall”. “deranged with superhuman strength and in my mind intent on killing someone” “he was the most muscular man I have ever seen” PC Alan Smith described him as being of “very large build”. PC Kayleigh Good described him as “he's the biggest male I've ever seen
- Nicole Short describes a doctor as a “wee Pakistani doctor” in her initial PIRC statement
- Officers refer to Sheku Bayoh as “the black man”, “black male” and “the boy” throughout their PIRC statements.
- Officers all state they would challenge racist behaviour if they witnessed it but only PC Smith said he would refer it to management.
- DI Colin Robson speaks to a culture where discriminatory comments were present.

### **INITIAL AIRWAVE CALL**

*The initial call that directed police to Sheku Bayoh described him as “African looking” and “big with muscles, about 6 foot”.*

**PIRC-01396 - PIRC010515 585 Combined Airwave Call Activity Data (Kirkcaldy 01) and Transcription, page 4**

*“Control for 4-1C [ASHLEY TOMLINSON and NICOLE SHORT]: I need you to divert to Hendry Road, disturbance ongoing, male armed with knife, African looking chasing someone maybe carrying a knife, described as big with muscles, about 6 foot, wearing white T shirt, dark coloured jeans, there’s another job coming in about it standby”*

**PIRC-01396 - PIRC010515 585 Combined Airwave Call Activity Data (Kirkcaldy 01) and Transcription, page 4**

*“That’s another Grade 1 call coming in for the Victoria Road, Kirkcaldy – male armed with a knife – in possession of a large knife, a black male wearing white t shirt and jacket walking along the street with a knife in his right hand, about a 9-inch blade”*

**TERRORISM**

*Both PC Craig Walker and PC Alan Paton stated that they considered this may be a terrorist incident or related to the “Severe Threat Level”.*

**PIRC-00264 - PC Craig Walker, page 4, paragraph 7**

*During the journey to Hayfield Road I had a brief discussion with PC Paton on tactics and worst case scenario. I was very concerned about the nature of the incident and the number of calls made by the public and the apparent level of violence being shown, were reports that he was attacking passing vehicles and he might be prepared to attack us in the car when we arrived. It did cross my mind that he was doing this to get the police there, bearing in mind we are on a ‘Severe Threat Level’ for an attack on the police. PC Paton also mentioned the mental health hospital in Whiteman’s Brae was also nearby and he could have been from there, or the main hospital, the Victoria Infirmary, but PC Paton and I did not discuss the hospitals.*

**PIRC-00262 - PC Alan Paton, page 4, paragraph 6**

*Straight away I remembered that there had been the rumour going about Kirkcaldy*

*Police Station that somebody intended to cause harm to a female cop. Numerous officers had asked managers to confirm if there was any known truth in the rumour. But this had never been confirmed to my knowledge. The rumour still remains strong and it is believed by the officers that this had contributed to all officers in Kirkcaldy being double crewed whilst on patrol. For a number of months checks have also been getting carried out by officers at a number of identified locations in Kirkcaldy due to increased terrorist risk. It also ran through my mind that this male could be part of a terrorist plot.*

*One the incident is ongoing both PC Alan Paton and PC Kayleigh Good stated they thought it could be a terrorist event, both referencing Lee Rigby. PC Good stating "mainly due to the fact of the coloured male and the potential terrorist connotations."*

**PIRC-00274 - PC Kayleigh Good, page 7, paragraph 5**

*At that point my immediate thought was that PC Nicole Short had potentially been stabbed. It is rare that an emergency button is pressed, so when they are pressed you take it seriously, and because of the nature of this call, I made the conclusion that she may have been stabbed. **I was also thinking at that point of the Lee Rigby incident in London, mainly due to the fact of the coloured male and the potential terrorist connotations.** In addition, I recall that there were many emotions going through my mind and I reminded myself of the briefing of when I first started at the turn of the year, where intelligence had been received by the police that there would be a potential attack on female police officer. I was actually shaking physically, it was uncontrollable. You don't really get training to deal with this sort of incident. It was fair to say that I was panicking at that point and was fearful for my own safety.*

**PIRC-00262 - PC Alan Paton, page 5, paragraph 4**

*With the effect of PAVA and CS on me I could not keep my eyes clear and I was very vulnerable. I went to the back of the police van. I basically curled up, braced*

*myself. I was probably rubbing my eyes. I was expecting to feel pain of some sort. It felt like slow motion. But I felt that I would get plunged (stabbed) or struck to the head. That's what was going through my head. I kept thinking about the Lee Rigby boy, the soldier who was killed. That's what was in my head. I must have been at the back of the van for seconds. I did not actually get touched at all by the guy.*

**21<sup>st</sup> June, page 45, line 20**

*Q. Okay. What was going through your mind at that time? 19 A. I thought I was -- I thought I was going to die at that 20 stage. I had visions of the Lee Rigby incident, just 21 blood everywhere. I thought -- I was -- I was curled up 22 waiting for something to come down on the back of my 1 neck, or something to get stabbed in my neck. 2 I thought -- I genuinely thought I was a goner, ey.*

*PC Daniel Gibson never believed the incident was terror-related and the threat level made no difference to his assessment of the situation. He did not know Sheku Bayoh's race before attending the incident.*

**1<sup>st</sup> June, page 154, line 4**

**PC Daniel Gibson**

*"What account, if any, did you have to the threat 4 level?" 5 And you say you: 6 "... took no account of the threat level. This was 7 just a knife call." 8 And I'm interested in that. Now, other officers 9 have said they did take account of the threat level. 10 I'm interested in the fact you say you took no account 11 of that. Why was that? 12 A. At first, I wasn't sure if I understood the question. 13 However, I was aware of the threat level. 14 Q. Right. 15 A. However, the threat level made no difference to this 16 call for me, if that makes sense. 17 Q. And why do you say it made no difference to you? 18 A. Because I just thought it was a knife call. 19 Q. Right, and so -- 20 A. I didn't at any point think it was terror-related. 21 Q. But the threat level -- do you remember what the threat 1 level was? 2 A. Severe. 3 Q. Severe. 4 And you say that you didn't think it was 5 terror-related. So would you -- would an officer 6 normally connect the threat level to a terrorist -- 7 potential terrorist, or you don't know? 8 A. I couldn't say. I -- I*

certainly didn't connect that. 9 Q. There was no connection in your mind? 10 A. Definitely not. 11 Q. So did you make any connection at all with the fact that 12 the man said to have the knife was a black man? Did 13 that bear -- have any bearing on the way you were 14 thinking when you approached Hayfield Road? 15 A. No, it didn't have, but I also was -- I don't think 16 I was aware of race before I got there. 17 Q. All right. 18 So you weren't aware that it was a black man? 19 A. No, because I'm sure PC Short had says she was going to 20 a male kicking about with a knife.

DI Robson states that during the first Gold Group meeting ACC Nicholson raised counter-terrorism considerations

**2<sup>nd</sup> March, page 156, line 2**

**DI Colin Robson**

What are CT considerations? 2 A. Counter-terrorism. 3 Q. And raised by the ACC, is that ACC Nicholson? 4 A. It will be, yes. 5 Q. And what's the NIB? 6 A. National Intelligence Bureau, so more the national 7 function I described about the divisional intelligence 8 offices, this is the national function. 9 Q. And was there anything at this stage -- so this is the 10 11.30 Gold Group meeting -- that would explain why 11 counter-terrorism is being mentioned at this meeting? 12 A. No, I think as you say at the outset of any 13 investigation we keep an open mind in terms of motives 14 or how incidents have occurred. I think to consider 15 everything is the right thing to do, and part of the CT 16 consideration, I think, from the ACC's perspective at 17 that time was some form of kind of correlation to other 18 events in the UK at that time and the potential threat 19 level.

DSI Campbell denies that Sheku Bayoh's race was a factor in the hypothesis that this could be a terror related incident and that background checks were routine and requested by ACC Nicholson at the Gold Group meetings.

**9<sup>th</sup> March, Page 84, line 13**

**DSI Patrick Campbell**

Q. You've not mentioned the fact that Mr Bayoh was black. 13 Was that one of the factors? 14 A. No, absolutely not. If it was a white male with a knife 15 restrained by police officers I would still have the 16 same -- I would still have the same hypothesis around 17 let's get the checks done around is he linked to any 18 particular aspect of the terror network as such, around 19 that. So again the -- Mr Bayoh being black had no 20 relevance at all to it. 21 Q. So the -- if it had been a white male involved in those 22 circumstances -- 23 A. Yes. 24 Q. -- would counterterrorism checks have still been carried 25 out? 1 A. Absolutely. 2 Q. Who was it that you instructed or directed to carry out 3 those counterterrorism checks? 4 A. So that would be the intelligence cell that was 5 established to manage that. 6 Q. Is that a separate department, if you like, within the 7 service? 8 A. Yeah, the intelligence cell is linked to the 9 investigation, it's a structure basically that you would 10 ask for the necessary background checks, wider network 11 checks on particular individuals that are involved or 12 come into the incident as such. So they support the 13 investigation. 14 Q. We've heard from DS Dursley that checks were carried 15 out, he invited checks to be done -- instructed, 16 I should say, checks to be done by a member of staff in 17 Kirkcaldy Police Office in relation to Mr Bayoh himself 18 and Collette Bell during the morning. 19 That was just by a member of staff in Kirkcaldy 20 Police Office is that separate from this intelligence 21 cell you are talking about? 22 A. Yeah, I mean, we have a 24/7 capability based within 23 Scottish Crime Campus in Gartcosh that we can link in 24 with around any further more in-depth checks, checks 25 that we would want carried out in respect of anything. 1 So again, there is that local aspect but there's 2 a wider aspect, that we have governance 24/7, 365 days 3 a week -- a year, sorry, around the wider checks across 4 the network within the UK, which links into other law 5 enforcement partners, not just within Police Scotland as 6 such. 7 Q. So UK-wide? 8 A. Yeah. 9 Q. And who was it you contacted in the intelligence cell to 10 carry out these checks? 11 A. So that would have been through discussion with 12 Colin Robson, with the initial stages of the 13 investigation asking for these checks to be carried out, 14 and I think it came as an action from one of the 15 Gold Groups to ensure that that had been done as well.



## **DESCRIPTIONS OF SHEKU BAYOH BY OFFICERS**

*Sheku Bayoh was 5ft 10 and 12 stone. PC Alan Paton was 17 stone and 6ft 4. PC Craig Walker was 25 stone and also 6ft 4.*

**21<sup>st</sup> June, page 180 line 19**

**PC Alan Paton**

*Q. But I would like to ask you some other questions about 19 race, general questions, if you don't mind, before 20 I finish. 21 Can I talk about your perception of events when you 22 arrived at Hayfield Road. We have heard that Mr Bayoh 1 was 5 foot 10 and 12 stone 10. You arrived with 2 PC Walker who is 25 stone. You're 17 stones at the time 3 and you're both 6 foot 4, so Mr Bayoh was shorter and 4 lighter than both of you. 5*  
*A. Yes.*

*PC Alan Paton describes Sheku Bayoh as a "large black male". PC Nicole Short called him a "huge, very muscular black guy around 6ft tall". PC Alan Smith described him as being of "very large build"*

**PIRC-00262 - PC Alan Paton, page 4, paragraph 3**

*I could clearly see a large black male in the street in front of me.*

**PIRC-00253 - PC Nicole Short**

*They were shouting at a huge, very muscular black guy around 6ft tall wearing a tight t shirt and charcoal jeans.*

**PIRC-00278 - PC Alan David Smith**

*When I got to the officers and the male I saw that it was a black male, he had dark shoes, jeans and I think a grey t-shirt. I'm not 100% sure about that. He was very large build.*

*PC Tomlinson refers to Sheku as "the black man" several times throughout his submission to PIRC*

**PIRC-00263 - PC Ashley Tomlinson, page 2, paragraph 6**

*I have also marked on the map where Craig Walker and the black man I now know as Sheku Bayoh were standing as CW and SB, and where I was when I got out the van with Nicole as AT and NS.*

**PIRC-00263 - PC Ashley Tomlinson, page 3, paragraph 2**

*The black man did not say anything and his fists were clenched.*

*Sergeant Maxwell refers to Sheku Bayoh as “the black male” throughout his PIRC statement. He uses the term “black coloured male” in his typed statement. Whilst not replicated below he uses the term “black male” 30 times.*

**PIRC-00267 - PS Scott Maxwell (2), page 2, paragraph 4**

*On arrival at locus I witnessed a black coloured male wearing a white t-shirt and jeans lying on the pavement on the southern side of Hayfield Road with officers trying to restrain him.*

**PIRC-00266 – PC Scott Maxwell, page 4, paragraph 4**

*I drove left out the yard onto St Brycedale Avenue to the traffic lights with Bennoch Road, turned right heading north to traffic lights where I turned left, continued north and as I was approaching the mini roundabout with Hendry Road I was aware that PR41A had arrived or had spotted the black male or had him in sight.*

**PIRC-00266 – PC Scott Maxwell, Page 5, paragraph 1**

*I got out my car and I could clearly see the black male lying on the ground.*

**PIRC-00266 – PC Scott Maxwell, Page 5, paragraph 3**

*He was to Alan’s right and he was also on his knees and he was leaning over the black male’s right hip and buttock area. He was also facing my direction.*

**PIRC-00266 – PC Scott Maxwell, Page 5, paragraph 5**

*I saw PC James McDonough kneeling down at the black male’s feet. He had his arms tuck round the black males feet. This is a trained officer safety tactic to prevent somebody lashing out with their feet until such times as the police have full control of the person. James McDonough maybe looked like he was lying across the black male but I know he wasn’t he was just controlling the movement of the black male’s legs.*

*PC Alan Paton refers to Sheku Bayoh throughout his PIRC statement as “the boy”*

**PIRC-00262 – PC Alan Paton, page 5, paragraph 1**

*At that point Craig had come out of the van and had come round to the front of the van. He would be pretty much side on with the boy on the boy’s left side. Craig also had his spray out. I remember seeing it was PAVA, it had the red top on it, and Craig also discharged it towards the boy’s face. Some of it hit the boy but some of it blew into my face. I remember Craig shouting something like “It’s no fucking working” or “It’s having nae effect”. The boy continued to walk towards me with his palms open facing me, he was smiling at Craig and wiped the CS Spray off his face.*

**FEAR OF AN UNCONCIOUS BLACK MAN & EXCITED DELIRIUM**

**27<sup>th</sup> May, page 154**

**PC Alan Smith**

*Q. Why would these leg restraints not be removed at that point?*

*A. Because somebody is unconscious or apparently unconscious does not necessarily diminish the risk they pose, so people can make a sudden recovery and continue with the behaviour they have had before. People – and I don’t -- no reflection on Mr Bayoh, people can feign unconsciousness, which absolutely happens, and can attack police officers when their guard is down, so it’s required to keep that level of restraint. If it is somebody suffering from ABD or some other medical issue -- Q. We have heard that’s called acute behavioural disorder. A. Or excited delirium, sorry. Q. Or excited delirium and these are conditions you had been trained on? A. Yes.*

**8th June, page 19, line 24**

**Sgt Maxwell**

*There have been instances in the past where---I’m not saying that he was putting that on at the time, but there were occasions where people have been known to feign unconsciousness and then once we remove restraints they kick off again.*

## RESPONSE TO QUESTIONS ON RACE

PC Alan Paton states race played no role in how he decided to handle the situation, "I was taking control of the situation... I wasnae there to have a conversation with him."

**21<sup>st</sup> June, page 184, line 21**

**PC Alan Paton**

Q. Looking back now, what role, if any, do you think his 21 race played in the way you decided how to handle this 22 situation? 1 A. Nothing whatsoever. 2 Q. What difference did his race make, if any, about the 3 choices that you made, tactical choices? 4 A. Nothing whatsoever. 5 Q. Looking back now, do you think he appeared to you to be 6 a greater potential threat because he was black? 7 A. No, because you get muscly, big guys out their face on 8 drugs with knives that are white. 9 Q. If he had been white would you have viewed him as 10 someone potentially less violent or less likely to 11 resist? 12 A. No. 13 Q. Or more compliant? 14 A. No. 15 Q. If he had been white, would you have been willing to try 16 speaking to him, communicating? 17 A. I did try and speak to him. 18 Q. Is that the commands that we have talked about earlier? 19 A. Yes. 20 Q. What I'm thinking is if he had been white, would you 21 have been more inclined to ask him if there was 22 a problem, or how was he, or had he got any sharp 1 implements? 2 A. No. I was taking control of the situation. 3 Q. Right. 4 A. I wasnae there to have a conversation with him.

PC Craig Walker states *race played no role in assumptions* made about Sheku Bayoh's behaviour and the choices he made.

**20<sup>th</sup> May, page 153, line 22**

**PC Craig Walker**

Q. Thank you. I think I have dealt with these other 22 questions yesterday. Looking back now, what role, if 1 any, do you think that Mr Bayoh's race may have played 2 in the assumptions you made about his behaviour and the 3 choices you made as to the best course of action that 4 day? 5 A. I didn't make any assumptions about his

*behaviour. 6 Everything was intelligence-led on what we have seen 7 when we arrived. 8 Q. And what about the choices you made? Looking back now, 9 do you think his race played any basis in that? 10 A. No. The decisions were all based on the threat that was 11 posed to ourselves and the members of the public.*

## **DISCUSSIONS ABOUT RACE IN THE CANTEEN**

*PC Alan Paton states nothing about the incident was racist and there **was nothing discussed about race in the canteen***

**21<sup>st</sup> June, page 190, line 9**

**PC Alan Paton**

*Q. And had any of the colleagues that were with you on 9 3 May 2015 exhibited any behaviour of that sort to you? 10 A. The incident on 3 May 2015 was not in the slightest bit 11 racist. There was nothing done, nothing said, either at 12 the locus, back at the canteen, in the days that 13 followed, in the weeks that followed, in the months that 14 followed, there was nothing at all racially motivated, 15 or said with racial connotations. 16 Q. So even back in the canteen nothing -- 17 A. Nothing at all. 18 Q. -- discussed about race? 19 A. No, nothing at all.*

Not one Officer said race was discussed. It beggars belief that no discussion took place at all about the fact that it was a black person, as opposed to a white person that died in police.

## **RESPONSE TO COLLEAGUES BEING RACIST**

*PC Alan Paton **has never been aware of racism from colleagues and had he witnessed it he would have said it was not appropriate.***

**21<sup>st</sup> June, page 189, line 2**

**PC Alan Paton**

*Q. Had you ever come across any examples of discriminatory 2 behaviour in Kirkcaldy Police Office -- 3 A. No. 4 Q. -- by 2015? 5 A. No. 6 Q. Had you ever heard any racist*

jokes or comments? 7 A. No. 8 Q. By your colleagues? 9 A. No. 10 Q. So one of the -- we have Inquiry statements that people 11 have provided to the Chair, as you have provided one to 12 the Chair, and one of the chief inspectors has given 13 a statement describing having at some time experienced 14 inappropriate racist jokes. Had you ever heard any such 15 jokes in your career in Kirkcaldy? 16 A. Racist jokes by me? 17 Q. No, no, not by you, no. 18 A. No -- 19 Q. Just that he was aware of that in Kirkcaldy in advance 20 of May 2015? 21 A. No, no. 22 Q. You're not aware of that? 1 A. No. 2 Q. If you had come across any behaviour of that type in 3 your working and your dealings with other colleagues in 4 2015, how would you have responded to that? 5 A. I would have said to them. 6 Q. What would you have said? 7 A. It's not appropriate.

PC Craig walker has **never seen any examples of racial discrimination** or heard any racist jokes or comments in Kirkcaldy Police Station.

**20<sup>th</sup> May, page 191, line 12**

**PC Craig Walker**

Ten years. At your time at Kirkcaldy Police Office, you 12 have **never seen any examples of racial discrimination**. 13 A. Correct. 14 Q. You have not come across any racist jokes or comments? 15 A. Not that I could recall. 16 Q. And if you did come across anything like that, you would 17 respond by challenging them? 18 A. Yes. 19 Q. At that particular time we may hear evidence that one of 20 your colleagues used the word "coloured" to describe 21 Mr Sheku Bayoh. If you heard that, what would you have 22 done? 1 A. Corrected them into the use of the word, that he was 2 a black man, and that there was some sensitivities 3 around the use of the word "Coloured". 4 Q. When you say "some sensitivities"; it's not an 5 acceptable term. 6 A. Yes. 7 Q. So you would have challenged them? 8 A. Yes. 9 Q. You indicated that you are not aware of any racist 10 stereotyping that you have yourself been involved in; is 11 that correct? 12 A. Yes.

PC Ashley Tomlinson *never came across* any situations or examples of racial discrimination in Kirkcaldy Police Office, if he had he *would have challenged them*.

**26<sup>th</sup> May, page 193, line 17**

**PC Ashley Tomlinson**

Q. Okay. And had you -- before May 2015 had you ever come across any situations or examples of racial discrimination in Kirkcaldy Police Office? A. No. Q. Any racist jokes or comments? A. No. Q. If you had come across situations like that in Kirkcaldy, how would you have responded to them? A. I would have challenged it. That's -- Q. What do you mean? A. What I mean is you know if somebody uses kind of inappropriate language you would pull them to one side and say "That's not on" and explain the reasons why, but aye, I wouldn't let something like that lie. Q. Okay. And what was your impression of senior officers at the time? Is that how they would have responded if they had heard anything like that? A. Yes. Q. And had any of your colleagues exhibited any behaviour of that sort, racist discrimination or ...? A. No.

PC Nicole Short *had never heard racist* comments or jokes and if she had she would have challenged them.

**24<sup>th</sup> May, page 184, line 19**

**PC Nicole Short**

Q. Can I ask you about Kirkcaldy Police Office in 2015. Had you ever come across any examples in your working life at that time -- I know you said you had only been there two months -- of any racial discrimination there? A. No. Q. Had you ever heard anyone make racist jokes or comments? A. No. Q. If you had come across something like that, how would you have reacted? A. Well, I would challenge them, plain and simple. Q. And when you say "Challenge them", what would you have done? A. Well, whatever it is that they had, you know, maybe said that was incorrect or something, I would point them in the right direction of what is appropriate. Q. And for the senior officers, or the supervisors in Kirkcaldy Police Office at that

time, do you think 13 that's how they would have responded, or -- do you think 14 they would have challenged that type of behaviour, 15 racist comments or -- 16 A. Yes. 17 Q. -- jokes. Had you ever seen any of the colleagues on 18 your team exhibit any behaviour of that sort? 19 A. Never, no.

PC Alan Smith was **not aware of any racial discrimination or racist jokes** or comments in 2015, if he had heard any he would have challenged it or reported it up the line.

**27<sup>th</sup> May, page 185, line 7**

**PC Alan Smith**

Q. Right. And were you aware in Kirkcaldy Police Office in 7 2015 of any examples of racial discrimination? 8 A. No. 9 Q. Or any racist jokes or racist comments being made at 10 that time? 11 A. No. 12 Q. And did any of your colleagues exhibit that type of 13 behaviour as far as you were aware? 14 A. No. 15 Q. If you had seen or heard any behaviour along those 16 lines, how would you have responded? 17 A. It would depend upon the behaviour, but it would 18 certainly be addressed, be that having -- giving 19 somebody some advice or reporting it up the line 20 management. 21 Q. So if there was any racist behaviour exhibited, there 22 would be a range of options for you in terms of how you 23 would respond? 24 A. Yes. 25 Q. And how -- thinking back to 2015 now, how do you think 1 senior officers would have responded if there had been 2 any racist comments or behaviour? 3 A. I don't think they would have tolerated it. 4 Q. What do you think their reaction would have been? 5 A. Again, I would imagine it would be along the lines of 6 what I said. It would depend upon the exact 7 circumstances of it, but I feel sure they would have 8 taken disciplinary action if it was required.

Sgt Scott Maxwell **has never had to deal with issues of discrimination** within his team, if he had he would liaise with the People Direct HR team and his senior officers.

**8<sup>th</sup> June, page 78, line 15**

**Sgt Scott Maxwell**



14 Q. How do you deal in your role as a sergeant with issues 15 of discrimination that appear or appear to exist, say, 16 in attitudes of members of your teams? How would you 17 deal with that? 18 A. Well, I have been fortunate that I've never had to deal 19 with such an incident, but if I have to deal with it 20 it's dealt with by the book. I would seek advice as 21 well from HR, but it would not be tolerated. Depending 22 on the level, it could be education, but then 23 potentially it could lead into disciplinary depending on 24 the level and how much investigation we need, et cetera. 25 Q. And are HR the department that you would seek support or 1 advice from? 2 A. Yes, People Direct -- we've got a People Direct team 3 that they would help us with any HR issue. It would 4 just be for advice initially, but I would also speak to 5 senior officers maybe or officers that had been through 6 a similar process.

PC Daniel Gibson **never encountered anyone making racist comments** or jokes at work and if he had he would educate and address it.

**1<sup>st</sup> June, page 230, line 21**

**PC Daniel Gibson**

Before May 2015, had you ever -- did you ever 21 encounter anyone making racist comments or jokes at 1 work -- 2 A. No. 3 Q. -- in Kirkcaldy? 4 Did you ever encounter any comments or jokes about 5 Islam or terrorists? 6 A. No. 7 Q. Had you ever seen any of your colleagues on your team, 8 your response team, exhibiting behaviour of that type? 9 A. No. 10 Q. Had you ever heard any of them using words 11 like "coloured" in referring to someone who was black? 12 A. Not my colleagues, no. 13 Q. When you say "not your colleagues", do you mean other 14 people? 15 A. Members of the community have said that. 16 Q. Oh, right. So people that you were coming into contact 17 with? 18 A. Yeah. 19 Q. In Kirkcaldy? 20 A. Yeah. 21 Q. In the area? 1 A. Yeah. 2 Q. If you had heard any comments of that nature in your 3 work, how would you react to that? 4 A. I think it's about education and addressing it. So, for 5 example, I know you're asking a question about police 6 officers, but if I just could quickly take it back to 7 members of the public. 8 Q. Please do, yes. 9 A. So I've -- I've seen -- I've dealt

*with incidents where 10 people have made mention a black man, or someone who's 11 Muslim or anything like that, calling him "coloured". 12 Q. Right. 13 A. So I have had to address that before. 14 Q. And what have you done? In your day-to-day work what 15 did you do when you say you addressed it? 16 A. Well, educate them on the fact that "coloured" is not 17 a correct term now. 18 Q. Right. And were you doing that before May 2015? 19 A. Yes. 20 So, the way I see that, right, is "coloured", for 21 me, was used years ago, and I think it's about 1 education, I think a lot of people got confused and seem 2 to think that by referring to someone colour -- of 3 colour was a politer way of addressing that instead of 4 calling someone black. It's definitely not acceptable 5 now, and I think it's almost an educational thing that 6 people aren't aware of it. There's a lot of people that 7 -- I'm aware a black man is a black man, a black woman 8 is a black woman; they're not coloured. 9 Q. Right. 10 A. But it's quite -- I -- I kind of label it as a -- as 11 almost a generational thing.*

*DI Colin Robson was aware of a culture of inappropriate jokes on race, religion, sex and misogyny. He witnessed discriminatory comments about most of the protected characteristics. He would not have challenged these comments in his early years.*

**3<sup>rd</sup> March, page 7, line10**

**DI Colin Robson**

*A. I would agree with -- and again, we joined at a similar 10 age in terms of the culture, in the late '90s it was 11 definitely different. Was there jokes in the workplace 12 that were inappropriate -- not exclusively to 13 potentially race -- religion, sex, misogynistic? 14 Definitely, but they didn't originate within the 15 organisation, they would be brought in from society. 16 Q. So DS Dursley's comments do reflect your own personal 17 experience? 18 A. Yes, I think it would be remiss to say that it didn't -- 19 it didn't exist, but not exclusive to policing.*

**3<sup>rd</sup> March, page 45, line 8**

*Q. So in relation to any comments about racism you say you 8 have not seen that, but what about discriminatory 9 comments? 10 A. Definitely. 11 Q. What type of protected*

characteristics are you talking 12 about? 13 A. From my own experience age, in terms of joining at 17, 14 and again the views of maybe the older generation. 15 Q. These were directed at you? 16 A. Mm-hm. 17 Q. Anything else? 18 A. Probably, and again just on reflection given my recent 19 involvement with the force's efforts in terms of 20 tackling sexism and misogyny, would be misogynistic 21 comments to female colleagues in particular. 22 Q. What about religion? 23 A. I can't say, but if you were to associate religion with 24 potential football, that perhaps – 25 Q. Sectarianism? 1 A. Yes. 2 Q. You have seen that exhibited over the years? 3 A. Yes, and again just within the workplace talking about 4 the football and then religion, sectarianism playing out 5 in terms of comments, and sometimes the terms used for 6 certain teams and -- 7 Q. By officers? 8 A. Yes, who -- again supporting factions in terms of there 9 had been a game and just so ... 10 Q. Any other protected characteristics? 11 A. I would probably include them all in fairness at some 12 point. I can't be specific. 13 Q. When you say you would probably include them all, would 14 you include racism, race? 15 A. But I think we talked about jokes with racial 16 connotations, a lot of stereotypes, yes. 17 Q. You have mentioned I think in another paragraph about 18 old-fashioned jokes about the Englishman, the Scot and 19 the Irishman. Is that the type of thing you're thinking 20 about? 21 A. Yes, and more specific jokes roundabout other religions 22 and race. 23 Q. And would that relate to black men? 24 A. Yes. 25 Q. Muslims? 1 A. Perhaps, yes. 2 Q. Perhaps? You can't remember, or probably but you can't 3 specifically remember anything today? 4 A. Again, I think if we can relate -- not so much with 5 WhatsApp because it was different. Jokes that used to 6 be cascade sent amongst contacts that would involve, as 7 I say, various ethnicities, sexist, misogynistic. 8 Q. Thinking back now, did you challenge those comments? 9 A. No, certainly not in my early years. Again, as I tried 10 to get to grips with an organisation in terms of at 11 17 years old and those -- again, probably not until 12 maybe I was in the kind of supervisory ranks. Again, 13 probably looking at awareness-raising round it, and 14 I certainly wasn't going to adopt some of the practices 15 and that's seen in terms of people's work ethic.

*In 16 terms of, as I say, I took what I thought in my eyes was 17 the good and bad of the people that I worked with to try 18 and -- as I evolved and developed as an officer.*

## **COLOUR BLIND APPROACH- MULTIPLE EXAMPLES**

**1<sup>st</sup> June, page 193, line 8**

**PC DANIEL GIBSON**

Q. And in terms of what you did learn on that course, you've talked about the different elements of it, how were you able to put that into practice in your day-to-day work? A. Well, that was easy for me, because I just treat everyone the same anyway, so ... Q. All right, okay. And have you ever made assumptions about anyone based on the colour of their skin? A. No.

## **TRAINING ON RACE**

Multiple Officers were asked if they were aware of the public concern of the use of force on black men-

**27<sup>th</sup> May, page 186, line 10**

**PC ALAN SMITH**

Q. *Were you aware at that time about any public concern about the use of force by police officers particularly in relation to black men?* A. No.

*PC Alan Paton states training on race could probably be improved.*

*"everybody likes a wee day out course, ey... but not rammed down your throat, not every year, something like every two years would be more than enough, I think"*

**21<sup>st</sup> June, page 192, line 2**

**PC Alan Paton**

Q. *How confident now -- looking back, how confident were 2 you in the training that you had received -- you have 3 made comments earlier today about the training in 4 relation to handling an incident of this sort; how 5 confident were you in the training*

that you had had in 6 equality and diversity, matters relating to race? 7 A. I think it probably could be improved if I'm being 8 honest, ey. Maybe every two years or something like 9 that would be handy. 10 Q. So maybe more than -- 11 A. Done for the right purposes and for the right reasons. 12 I think they probably could do more because -- I mean, 13 I have heard some people that's given evidence saying 14 that their last input was when they were up at 15 Tulliallan. Well, that's not really acceptable in my 16 opinion, and everybody likes a wee day out course, ey. 17 Q. So maybe more regular training? 18 A. But not rammed down your throat, not every year, 19 something like every two years would be more than 20 enough, I think.

PC Craig Walker states his equality and diversity training was up to date and had refreshed E&D training in Feb 2014.

**20<sup>th</sup> May, page 140, line 16**

**PC Craig Walker**

Can you tell us what training you have received on 16 race, in equality and diversity? 17 A. Equality and diversity would be -- the first week or two 18 when I went to the police college was dedicated solely 19 to diversity training and then I think there's ongoing 20 modules, but the majority of it was at the police 21 college. 22 Q. And the ongoing modules, are they refresher training 1 that you continue to get? 2 A. Yes, I mean occasionally you get sort of memos coming 3 out when it is coming up to religious festivals and 4 things like that, to be -- like, extra activity around 5 about mosques and that at certain times of the year, you 6 do get supplied just sort of reminders and refreshers. 7 Q. And then in February 2014, so that's the year prior to 8 this, I think your training log records indicate you 9 received an equality and diversity values and ethics 10 briefing, was that correct? 11 A. I can't recall. 12 Q. But you were getting up-to-date equality and diversity 13 training at that time? 14 A. Yes, yes. 15 Q. And of the training that you had had, what sort of 16 topics did that cover? Do you recall? 17 A. So what it would ... I can't recall the exact, but it's 18 just being aware of other people's cultures and 19 religions and, like, needs that might be required and 20 sudden

deaths that we're dealing with, again religious 21 and cultural beliefs in relation to post mortems and 22 just to be sensitive when dealing with things like that 1 just to take into consideration that there might be 2 religious and cultural needs. 3 Q. And did that include dealing with members of the black 4 community? 5 A. Yes.

PC Ashley Tomlinson cannot remember training on unconscious bias and when asked to explain unconscious bias and how he would guard against it, is unable to do so.

**26<sup>th</sup> May, page 208, line 20**

**PC Ashley Tomlinson**

Q. Were you given any training in relation to guarding 20 against unconscious bias? 21 A. I don't know. I can't remember that. 22 Q. Do you think you would remember had you been given 1 training about how to guard against unconscious bias? 2 A. Not necessarily. My training was like seven and a half, 3 eight and a half years ago. 4 Q. How do you guard against unconscious bias? 5 A. You have an awareness obviously through training, but -- 6 I don't know. I suppose you rely on your own sort of 7 self to pick it up in yourself and be aware of, do you 8 know, if there's anything that -- you know, like, for 9 example, you know you see someone and you decide -- 10 a group of kids for example and you think "I'm going to 11 cross the road there", that would be, you know, an 12 unconscious bias because you wouldn't necessarily have 13 to think about that. But being aware of that you would 14 look into -- like for me I would look into myself and 15 think "Right, that's something I need to be aware of" 16 and you wouldn't act upon that. 17 Q. I think what you're describing there is conscious bias. 18 A. Right, okay. 19 Q. I'm wondering how you would guard against unconscious 20 bias? 21 A. I don't know. We have had training on it but I don't 22 know how to answer that question. 1 Q. Were there discussions about racist stereotyping as part 2 of your training on unconscious bias? 3 A. Again, I would be guessing, do you know, if I said aye 4 or no. I would imagine as part of the syllabus more 5 than likely, but again, you would need to have a look at 6 the kind of college notes that we were provided at the 7 time. 8 Q. And I take it that because you're referring simply back 9 to the time that you

were training -- 10 A. Yes. 11 Q. -- there hasn't been any training in the meantime that 12 you can refer to answer these questions? 13 A. Not that I recall.

PC Nicole Short's training was up to date, she can remember unconscious bias training but never had any unconscious bias herself.

**24<sup>th</sup> May, page 181, line 11**

**PC Nicole Short**

Q. Do you remember now what training, if any, you had 11 received on equality and diversity prior to May 2015? 12 A. Yes. When I was at the police college in my initial 13 training we spent a week at Tulliallan on -- it was 14 diversity training and then throughout my career we were 15 given performance development reviews, whereby if 16 anything -- if you had exhibited any sort of 17 inappropriate behaviour in any way which -- any way, 18 shape, or form, that is when it would be noted and 19 especially in your probation and also throughout your 20 career, working on the shift or wherever you were. 21 Q. And had you ever had that issue raised at these -- at 22 any of these performance development reviews? 1 A. Never. 2 Q. And I understand you were up-to-date on your training -- 3 A. Yes. 4 Q. -- by May 2015. I mean at that time, do you -- was 5 there ever a time when someone's physical 6 characteristics, like their skin colour, or their 7 religion, caused you to make any assumptions so that you 8 put them into some sort of category, for example, 9 "A black person is a terrorist"? 10 A. No. 11 Q. On your training courses that you had done, had you -- 12 what had you learned about unconscious bias? 13 A. I have to say I can't -- I can't recall word-for-word 14 the training we received at Tulliallan now, but I can 15 tell you that the recruitment process to get into what 16 at that time was Fife Constabulary, there were processes 17 put in place, in fact I can't remember if it was on 18 computers, I'm sure it was, but it was designed to root 19 out and identify anything such as unconscious bias. 20 They would give you scenarios and, you know, give 21 different ethnicities in the same scenario and: well, 22 how would you deal with it, for example, if it was 1 a white man and how would you deal with it if it was 2 somebody from a different ethnic

background? And then 3 that was designed, to my knowledge, to root out anybody 4 who did have that unconscious bias. 5 Q. And during that process, were you able to identify any 6 unconscious biases that you had? 7 A. No, no. 8 Q. And when you think about the things you learned on those 9 courses, equality and diversity, how did you implement 10 those learning points into your everyday work? 11 A. Well, I mean as a person anyway I would always treat 12 people as they come type thing, and I would like to 13 think that if I was ever at a call and I maybe didn't 14 know the answer to something, I would take the time to 15 ask the question to the person so that I would get it 16 right, without causing any offence, but ultimately 17 through experience, picking up on different cultures and 18 things like that, you're constantly learning in a job 19 like the police, you're constantly learning and -- yeah.

PC Alan Smith's only equality training was during his first week of training at the Scottish Police College at Tulliallan, he cannot recall any other.

**PC Alan Smith, page 183, line 4**

**PC Alan Smith**

Q. You have obviously had -- you are an OST trainer, you 4 have had a lot of training yourself and you have been 5 trained to become a trainer. 6 A. Yes. 7 Q. Have you received training in relation to race yourself? 8 A. Under the OST training or ..? 9 Q. Yes. 10 A. No. 11 Q. Not under OST training? 12 A. No. 13 Q. What about -- but it sounded like you were going to say 14 you have had training, just not -- 15 A. Yes. 16 Q. What training -- how did you access that other training? 17 A. It's the first week of training at the Scottish Police 18 College when you join the Police Service. 19 Q. Right, so that's at Tulliallan? 20 A. Yes. 21 Q. Any other types of training in relation to equality and 22 diversity that you have had? 23 A. Not that I can recall. 24 Q. So the equality and diversity training was when you 25 started at Tulliallan? 1 A. Yes. 2 Q. None since then? 3 A. Not that I can recall. 4 Q. And was that prior to 2015, or to date? 5 A. To date I think. 6 Q. To date. Do you remember the training you received at 7 Tulliallan? 8 A. Not every detail but I can remember receiving it. 9 Q. Did you learn



*much about unconscious bias? 10 A. I don't think so. 11 Q. Do you know what unconscious bias is? 12 A. Vaguely. 13 Q. Right. Do you want to tell us what you -- 14 A. Having opinions about people that affect your treatment 15 of them without making conscious decisions. Yes. 16 Q. So subconscious -- 17 A. Yes. 18 Q. And were you ever able to identify any unconscious bias 19 in your own perceptions or beliefs? 20 A. No. 21 Q. And in terms of the training you received at Tulliallan 22 were you able to implement any learning points from that 23 into your own everyday practice? 24 A. I think broadly in respect of these things you try and 25 treat everybody fairly and not treat them differently in 1 respect of any differences they might have from you or 2 might have from other people, absolutely you implement 3 that into daily practice, but I would like to think 4 I was doing that prior to being trained in it at 5 Tulliallan in any case.*

*Sgt Scott Maxwell received no extra training in relation to equality and diversity and received no training in this area other than the diversity training at Tulliallan.*

**8<sup>th</sup> June, page 77, line 11**

**Sergeant Scott Maxwell**

*Q. As part of your training to be a sergeant -- 11 A. Yes. 12 Q. -- or to take on the role as acting police sergeant, did 13 you have extra training in relation to equality and 14 diversity? 15 A. No. 16 Q. Have you ever been trained in your current role to 17 potentially -- to identify potential racist attitudes or 18 to identify comments which are prejudicial or 19 disrespectful, that type of thing? 20 A. There's no specific training for that, no. 21 Q. Nothing like that? 22 A. Not to identify, other than the basic training we had 23 at -- or the basic training, 15 weeks we had the 24 diversity training which lasted about a week. 25 Q. Was that at Tulliallan? 1 A. Yes. 2 Q. And how long ago was that for you? 3 A. 14 years ago. 4 Q. And you have had no other training in equality and 5 diversity since then? 6 A. Not official -- we've got an equality and diversity 7 team, inclusion team that liaise with other agencies and 8 pass on messages through our divisional coordination 9 unit, they come out on emails just to keep*

officers' 10 awareness of certain issues. 11 Q. And is that something officers are obliged to read? 12 A. They should be reading it, yes. I can't comment whether 13 they do or not.

PC McDonough had equalities and diversity training very recently, his biggest take away was "never be too scared to ask question if you're unsure about certain things." He would educate colleagues if he heard anything inappropriate and if it was something sinister he would refer to line managers.

**7<sup>th</sup> June, page 103, line 22**

**PC McDonough**

Do you remember if you had had training on equality and 22 diversity? 23 A. Yes, so that's always -- or it's on the first week or 24 two. I can't remember if it is over one week or two 25 weeks, but yes, it's your first one or two weeks of 1 being at the college that you get taught that. 2 Q. Do you remember what the course covered? 3 A. It covered a wide variety of things: ethnicity, sort of 4 disabilities, sex, religions, discrimination, quite 5 a few things, but I .honestly can't remember everything 6 that was taught, but it did cover sort of a wide variety 7 of things. 8 Q. And how did you - - the things you learned on that 9 training, how did you implement that in your day-to-day 10 practice? 11 A. Well, before I went to the college I was always brought 12 up to treat everyone the same anyway, so I feel like 13 I was implementing that into the college anyway. 14 Leaving the college, I think the thing that you take 15 away from the college is never be too scared to ask 16 questions if you're unsure about certain things, 17 especially when it comes to like religion or I don't 18 know, gender equality, that sort of thing, just ask 19 people if you're unsure, because at the end of the day 20 for a police officer you need to have a degree of 21 knowledge to be able to educate other people, whether it 22 be colleagues or members of the public, so that's -- 23 yes. 24 Q. When you say "educate other people, whether that be 25 colleagues", what do you mean? 1 A. Well, you never know when you could ever encounter any 2 situation where something could be said inappropriately, 3 whether it be slip of the tongue, in error, or

as -- in 4 a serious way. You need to be prepared for that. 5 Q. What would you do if you did encounter, for example, 6 racism or a racist comment? 7 A. I would challenge it. Again, you would probably have 8 an idea of how -- in what context it was used in, so you 9 could just be as simple as educating them, making them 10 aware that you can't use that term or -- at all, or if 11 it was something quite sinister or serious you've got 12 line managers, people further up the tree who can take 13 things further, who can take disciplinary action, so you 14 have a couple of options.

DI Samantha Davidson states she was provided with "no tools, there's no specific tools to go by" to guard against bias or prejudice.

**10<sup>th</sup> June, Page 183, line 18**

**DI Samantha Davidson**

Q. I have been asking officers about equality and diversity 18 training, and many of them have spoken about training 19 they had at Tulliallan. 20 A. Mm-hm. 21 Q. And it would appear that many of them have said they 22 didn't really receive any additional equality and 23 diversity training. Is that your experience? 24 A. My experience is obviously the initial -- we had two 1 weeks when we first joined. I believe I also had 2 diversity and equality training locally in Fife in 2014, 3 which is recorded on my SCoPE, and recently we have had 4 further training online which is to do with the 5 competency and value frameworks. Fundamentally that 6 brings in human rights, et cetera, so within that 7 package, online package and testing, there was also 8 aspects to do with diversity within that. 9 Q. And is that training that you have had as part of your 10 role as inspector, or is that just across 11 Police Scotland? 12 A. No, that's across Police Scotland. 13 Q. For all officers, of any rank? 14 A. The competency and value framework? 15 Q. Yes. 16 A. All officers should complete that. 17 Q. Right, thank you. And part of that involves equality 18 and diversity training? 19 A. Yes, within that, yes. 20 Q. Was any of that training in relation to race, 21 discrimination, bias? 22 A. It's about integrity, fairness and respect for all 23 cultures within your community, so it doesn't go 24 specific, it's that kind of fundamental principles, the 1

*overarching principles or values, and how you should, as 2 a person have them personal values as well, on or 3 off-duty, so that's the framework that we as 4 police officers should abide by and we should value, 5 personally and whilst -- as an officer. 6 Q. Right. And was any part of any of the training you have 7 had -- did any of it relate to unconscious bias or 8 recognising unconscious bias? 9 A. I don't believe it was labelled unconscious bias, but 10 I don't recall. 11 Q. Has any of the training ever asked you to self-reflect 12 or consider your own bias, or asked you to recognise any 13 unconscious bias or anything like that? 14 A. Most of the -- even my detective training you have to be 15 self-reflective to learn and develop and evolve, so 16 self-reflection is something that is apparent in most 17 training packages that we do, certainly detective 18 packages, senior investigating officer's training, and 19 the CVF also, to be self-reflective. 20 Q. And have you been taught any tools or skills that would 21 allow you to guard against bias or prejudice or 22 discrimination? 23 A. No tools, there's no specific tools to go by. It's 24 inevitably to be open minded, considerate, and if you're 1 open minded, you will make accurate and informed 2 decisions. If you're not open minded and you're not 3 taking in all accounts, then you will make inaccurate 4 and, you know, poor decisions, essentially, so yes, open 5 mindedness is the main factor for me anyway.*

## **NICOLE SHORT - WEE PAKISTANI DOCTOR**

*PC Nicole Short cannot explain why she used the phrase "wee Pakistani doctor" and cannot remember using the phrase due to 'concussion'.*

**24<sup>th</sup> May, page 204, line 6**

### **PC Nicole Short**

*Q. You will remember the Counsel to the Inquiry asked you 6 a question about a comment you made in your PIRC 7 statement about the "Wee Pakistani doctor"; do you 8 remember that? 9 A. Aye, I remember saying it, yes. 10 Q. And you gave an explanation as to why you had used that 11 terminology and it's something you regretted -- you 12 wouldn't use nowadays. 13 I wanted to ask, what led you to believe*

that the 14 doctor you were dealing with was of Pakistani heritage 15 at all? Was it based on their accent, their name, their 16 skin colour? What caused you to think that they were of 17 Pakistani heritage? 18 A. Well, for a start I want to expand on that in that that 19 to me looks like I have been asked to provide 20 a description and -- of the man. I don't know if the 21 guy noting my statement asked me that. As I said, at 22 the time, I was suffering from concussion and one of the 1 symptoms, one of the many symptoms of that is struggling 2 to find words. I notice that it is not contained in any 3 other statement that I have given, it only seems to 4 appear in this one. Why that is, as I have said, 5 because of my memory I don't know. The only explanation 6 I can give, if indeed those were the words that I have 7 used, is that at the time I was struggling to find my 8 words because of concussion. 9 Q. That was really the question I was asking. What led you 10 to believe at that time that the doctor was of Pakistani 11 heritage? If you were struggling to find words, why was 12 it you thought to yourself "This doctor is of Pakistani 13 heritage"? If you were asked to describe him, for 14 example, you described him as a "Wee Pakistani doctor". 15 Now, I'm not really interested in that, but I'm 16 interested in why you described him as of Pakistani 17 heritage at all? 18 A. Well, that's what I'm saying: because I was concussed, 19 I can't actually tell you right here, right now, if 20 those were indeed the words that I used, but what I can 21 say is that that sort of language and description and 22 things like that doesn't appear in any more of my 1 evidence, any more of the numerous statements that 2 I have given, so I mean, the person noting that 3 statement, I don't know if that was maybe a term that 4 they had used. I realise I have signed the statement, 5 but can I physically sit here and say to you those words 6 came out of my mouth? No, I can't. 7 Q. So in the PIRC statement, which is PIRC 00253, you're 8 not certain you used the words "The wee Pakistani 9 doctor" at all? 10 A. No, no.

**PIRC-00253 – PC Nicole Short, page 5, paragraph 4**

*I was eventually admitted to Kirkcaldy hospital and kept in overnight and given a CT scan I asked the wee Pakistani doctor whose surname began with an S that if the scan came back normal what had caused my face to droop?*

## **KAYLEIGH GOOD – COLOURED MALE**

**31<sup>st</sup> May, page 141, line 7**

### **PC Kayleigh Good**

*Q. Okay. 7 You mention a "coloured male" and "potential 8 terrorist connotations". Can you explain what you were 9 thinking? 10 A. Yeah. First of all, I want to say that when I've 11 said "coloured", I've said that in error. I never meant 12 to, like, cause offence, or ... I've just said the wrong 13 word. I was obviously very young in service. Yeah, 14 I've not meant to cause offence by that, I've just been 15 describing the male, and I know that's not an acceptable 16 word to use. 17 Yeah, but I was just -- I mean, I've said "potential 18 terrorist connotations". I've been trying to explain 19 the memos about, like, the UK terror level that we had 20 received. It's maybe not worded how I would have liked 21 to have in my statement. 22 Q. Right. 23 And was there an association in your mind between 24 the colour of the man's skin and the potential terror 25 connotations? 1 A. No, I think I've just thought of that because 2 I genuinely had a belief that PC Short had been stabbed 3 and I was trying to think that -- it was a Sunday 4 morning, 7 o'clock in the morning, I had -- staying in 5 Kirkcaldy, I'd never heard of anything like this 6 happening before, so yeah, it did go through my mind 7 momentarily. 8 Q. You say that you didn't mean to cause any offence in 9 using the word "coloured". Do you understand now that 10 that's -- 11 A. Yeah, of course. 12 Q. -- a term that's considered to be offensive? 13 A. Yeah. 14 Q. Is that something you appreciated back in 2015? 15 A. I think, back then, I was trying to be polite, I didn't 16 want to say the wrong thing, and I've obviously made 17 a mistake and used the incorrect term.*

## **ISIS IN THE STATION**

**PIRC-01463 – PIRC010515 652 Operation Quoich CCTV Audio and Visual Timeline  
Camera 12 Kirkcaldy Police Office contemporaneous, page 10**

*08:27:17 PC Geddes enters cell corridor.*

*PC Harris, "... (Inaudible)... he was clinically dead for an hour they brought him back, they kept him then twenty four hours and he was... (gestures with his head to the right (ear to shoulder))..."*

*PC Geddes, "Aye, that's what we're wondering now because the ISIS attack and that on a female on Friday big boy... (inaudible)..."*

*PC Harris, "ISIS staying in the station"*

*PC Geddes assists with cell checks*

When asked about this statement PC Geddes said he had no recollection of it, that he didn't believe there way anybody in the station it would be referring to.

**SBPI-00128 – Witness Statement – Hearing 1 PC Brian Geddes – signed 20220524,  
page 16, paragraph 71**

*71. I have no recollection of this. I don't know what the ISIS attack is. That's certainly not a way I would talk, to even say somebody "big boy". It's something that folk would use almost derogatory in terms of a rounder person. I have heard it used, slagging people off. I would say from reading that that there's going to be an attack on the Friday coming up.*

*72. The only thing I can think of, at the time there's been terrorist attacks on the go and it's whether there's some kind of connection between a black male being involved in an incident, and is there anybody going to link it to some sort of terrorist thing.*

*73. I have been asked what I understood the comment "ISIS staying in the station" to mean, and whether that related to somebody who was being kept in the cells. No, I don't get it. I think it comes from something mentioned about the briefing that ISIS was going to attack a female officer. To my knowledge we've not had anybody in the station because, for one, if anybody was linked to that they'd be going straight through to*

*Glasgow. The Anti-terrorism Unit's based through that way, so if anybody was arrested in relation to anything like that they would not be coming to a local station.*

When giving evidence PC Geddes confirms the link to ISIS is because Sheku Bayoh was black.

**22<sup>nd</sup> June, page 174, line 15**

**PC Brian Geddes**

*Q. And when you say "The only thing I can think of", are 15 you saying that that is what you were thinking of, that 16 there was this connection, or is there someone else that 17 was making that connection? 18 A. I would say -- and I don't know -- potentially that's me 19 making that connection because of the intelligence that 20 there's going to be a terrorist attack and connect 21 that -- a black male attacking someone. 22 Q. Yes, so -- I mean this is your Inquiry statement that 23 we're looking at, which was from February of this year, 24 so you think the only thing you could think of was that 25 there was this connection being made between the fact 1 that Mr Bayoh was a black male and possible terrorist 2 attacks? 3 A. Yes.*

After giving evidence PC Geddes made a supplementary statement after he remembered he had mentioned the racist comment to Sergeant Eric Anderson "as soon as I went out of the office" and confirms the comment was about and "Asian gentleman that was in the cells."

**SBPI-00154 PC Brian Geddes – Supplementary Witness Statement 15082022, page 2, paragraph 6**

*6. I have been asked why I didn't remember raising this issue until after giving evidence at the hearing. I couldn't remember everything that happened on 3 May 2015. Over the weekend after the hearing with days off I relaxed a bit more. It was still playing on my mind.*



7. *I remembered that I did do something about the comment. I remember mentioning it to my Sergeant. He was PS Eric Anderson. I couldn't say what triggered it but there was a wee niggle there that's it's not like me to not say something or do something.*
8. *Yes, I never said nothing to they boy at the time however I've went straight out and spoke to my Sergeant as soon as I went out of the office. You see on the footage I've walked past the boy when he's spoke to me because I've just put the male we were dealing with back in the cell and are getting him processed, fingerprints and that. I just walked past the boy and I went straight back to the Sergeant to update on the system that we've processed the boy and I've mentioned to the Sergeant. Just the passage of time, I'd forgotten about it and this is one of the things that came back to me.*
9. *I spoke to the Sergeant in the office. On the floorplan of Kirkcaldy Police Station this is marked "Enquiry Office".*
10. *I cant remember what I said exact word for word, but I just pointed out to him that this guy's made this comment about ISIS being in the building. I just made him aware that the boy's made this comment.*
11. *The Sergeant wasn't very impressed he's made this comment. Straightaway he's mentioned that he's going to be contacting the Inspector. The Inspector was PI Logue or Logie.*
12. *He was going to be making the Inspector aware and saying we want to deal with this because we're not happy that someone's come into the station and making these kind of comments after what had just occurred that day.*
13. *We weren't happy because it was the day Mr Sheku Bayoh had passed away after the incident. Particularly because at that point we're dealing with Mr Bayoh's death and we didn't know at that time if there was nay terrorism elements or anything linked to that. There was still a lot of speculation ongoing because, as an office, we weren't fully aware of the circumstances that went on out on the street, so whether it had been a terrorist incident or not.*
14. *Nobody knew about the situation. There was a lot of the ISIS issues going on in the country. If people were making jokes about ISIS after what was going on outside it*

*seemed inappropriate. Not just because of what was happening that day, but any time it's quite an inappropriate comment.*

*15. I didn't know the officer's name who made the comment. He wasn't a Fife officer. He was one of the Edinburgh officers who were sent to Kirkcaldy. I never worked with him before and never worked with him after. I've never met him since for anything. I don't know where he is now.*

*16. I didn't tell the officer that I'd raise the issue about him. I can't recall any other conversation with that boy on the day.*

*...*

*24. Other than this, I've never made a complaint or raised an issue about another officer. I wouldn't really say it was raising a complaint, I was just making the Sergeant aware of what this person has said, and in light of what was going on at the time with Mr Bayoh, I felt it was an inappropriate comment about, I'm trying not to say the wrong word here, the Asian gentleman that was in the cells. I felt it was an inappropriate comment, the boy said ISIS being in the building.*

*A statement was taken by the Inquiry to confirm or deny PC Geddes having made a complaint on an officer saying 'ISIS in the building'*

**SBPI-00174 Witness Statements - Draft Statement of PS Eric Anderson signed 14 October 2022, page 3, paragraph 8**

*29. That doesn't ring any bells with me. I'm a bit perplexed by some of the comments made there by PC Geddes. I cannot recall PC Geddes raising that with me, on that day on the time or subsequently. It's not to say he couldn't've have said something but the inference from what he's saying is that he sounds like he's quite appalled by making a standpoint from it. I think if that were the case, I would remember that, and the fact that I don't remember, I can only suggest that that conversation didn't take place or didn't take place in the terms that Brian's making out.*

## **SPOKE PAKISTANI**

*PC Daniel Gibson speaks of a time when he used a Pakistani interpreter for a woman that "spoke Pakistani".*

**1<sup>st</sup> June, page 218, line 8**

### **PC Daniel Gibson**

*Q. A couple of things that are noted there is that you  
9 asked the interpreter how you should approach  
10 the female, what wording would be best used, if there  
11 are any cultural issues that you should be aware of or  
12 anything that you should avoid talking about. Why did  
13 you do that?*

*14 A. So the interpreter spoke the language of -- of  
15 the female, so in this case she spoke Pakistani. She  
16 might understand things a little bit better. I'm aware  
17 through training, not necessarily Pakistani people, but  
18 I remember it was some kind of religions that some  
19 females might not want to speak to a male police  
20 officer, they might want to speak to a female, these  
21 kind of things. So I think she would maybe have a -- a  
22 kind of better understanding, so I used that to my  
23 advantage and asked her if she could assist, and, yeah,  
24 basically so I could make the female be at ease and just  
25 have a bit of respect for her, I guess.*

## **NO WARRANT FOR ZAHID SAEED ADDRESS**

*Saadia Rashid stated she had no explanation of why her family needed to vacate the property and asked for a warrant. Saadia Rashid's phone was taken and searched by an officer in attendance.*

**8<sup>th</sup> February, page 10, line 1**

**Saadia Rashid**

Q. What explanation was given to you about why you needed 1 to vacate the property?  
2 A. No explanation. 3 Q. What was your response when he told you this? 4 A. I asked  
for a warrant. 5 Q. What was his reply? 6 A. He didn't have one. 7 Q. Did he explain  
to you what his authority was for asking 8 you to get out of the house? 9 A. No. That -  
- they just said that they had to search our 10 house.

**8<sup>th</sup> February, page 28, line 7**

Q. And I think he: 7 "... asked if they had a warrant. I told them no 8 and he said the  
police can't come in the house without 9 a warrant and consent. I told him they had  
forced their 10 way in and are looking around, I was still on the phone 11 with [him]  
when the tall police officer grabbed my phone 12 and disconnected it." 13 Could you  
tell us what happened? 14 A. I was in the middle of having a conversation with him,  
15 and I think he came up behind me and he just took my 16 phone off of me and cut  
the call, so I couldn't finish 17 off what I was saying, telling my brother. 18 Q. What  
did he say to you, the police officer? 19 A. Nothing, that I couldn't contact anyone. 20  
Q. And when you say, "The tall police officer", is this 21 a reference to the one you've  
described to us earlier? 22 A. Yes, that's right. 23 Q. The one who was at the door? 24  
A. Yes. 25 Q. What did you do? 1 A. I didn't know what to do, I was terrified. 2 Q.  
Right. Then you say in paragraph 16, if we look at 3 that: 4 "The officer looked at it to  
see who I was phoning 5 when it was disconnected. The tall officer listened to 6 the  
whole call before grabbing of it off me." 7 What do you mean by that? 8 A. He was  
hovering around me, so he had -- he had heard me 9 talking. 10 Q. Were you aware that  
he was in your vicinity when you 11 were on the phone? 12 A. He was around me, as  
in he was watching every movement 13 of me, and what I was doing. 14 Q. Where were  
you when you were making that call? 15 A. I think I was -- I can't remember if I was  
in my mum's 16 room at the time or if I was in the hallway. 17 Q. Where was he when  
you were making the call? 18 A. Around me, he was just watching everything that I

was 19 doing. 20 Q. Right. Then you say: 21 "He then started to scroll through my phone. 22 I asked for my phone back. I had to repeat this 3 or 4 23 times before he gave it back [to me]." 24 Did he ultimately give you your phone back? 25 A. After I practically begged him for it. 1 Q. Right. And then you say: 2 "At this point I felt like he was treating me like 3 a criminal who had something to hide." 4 A. That's right. 5 Q. Is that how you were feeling? 6 A. That is exactly how he made me feel.

DS Graeme Dursley stated that because there was "no feedback from occupants and difficulty" he assumed "we have consent to seize the property" but "on the day we never done anything with that house"

**SBPI-00228 – Witness Statement – Statement of DS Graeme Dursley 12 January 2023, page 32, paragraph 153**

153. I think [REDACTED] is Zahid Saeed's address. I don't know who else lived at the property. I know there was other people at the property. I remember when they were securing the house there may have been a relative [REDACTED]. So one of the things that came up with that. I don't know what officers were involved at that address. It would've been the same procedure as the earlier addresses.

154. Again, because no feedback from occupants and difficulty, I assumed we have consent to seize the property.

**SBPI-00228 – Witness Statement – Statement of DS Graeme Dursley 12 January 2023, page 32, paragraph 153**

160. The house was being seized because it's where Zahid Saeed went afterwards. That's where he had gone post his contact with Mr Bayoh. I think that was the reason for that. To be honest, on the day we never done anything with that house. That was one I did speak to Colin Robson about, one that the instruction was to get that house. In terms of what we were going to do with that house I don't know what they were going to do and what they did do.

DC Gordon Miller was asked to secure Zahid Saeed's address "because the MIT team had broadcast over the radio that they had attended that address and that it had to be seized as a secondary crime scene." When Saadia Rashid asked for a warrant "it was explained that we didn't need a warrant."

**SBPI-00315 – Statement of DC Gordon Miller – Signed 4.5.23, page 7, paragraph 24**

*24. I have been directed to the final paragraph on page one of my operational statement from 03 May 2015 (PIRC-00151; "my Operational Statement") which states:*

*"During the course of my shift I was made aware of the circumstances of an incident in Kirkcaldy and as a direct result the requirement to secure an address at [Zahid Saeed home address] in relation to this incident."*

*I am asked to explain what was meant by the need to secure [] being a "direct result" of the incident in Kirkcaldy. It was because the MIT team had broadcast over the radio that they had attended that address and that it had to be seized as a secondary crime scene. I presume that's who it was. I had no idea of the direct connection or anything like that at the time. We just knew that it was secondary and it was on the instructions from the SIO. A decision had been made by the SIO that it was connected and it was to be secured. That's what I mean by that.*

**SBPI-00315 – Statement of DC Gordon Miller – Signed 4.5.23, page 11, paragraph 39**

*39. Mrs Rashid was clearly upset – not emotionally upset but annoyed – that she was being asked to vacate her household and they left albeit begrudgingly, which I fully understand. There was a conversation back and forward. We were trying to explain the process to her. She'd asked for a warrant. It was explained that we didn't need a warrant, that it was an ongoing investigation and that the SIO had made the decision to seize it."*

DC Kevin Petrie states MIT required Zahid Saeed's address to be secured. He cannot recall being invited into the property. He believes he had authority under common

law powers but “there was nothing there that really gave me the power to enter around any disturbance or anything like that that was there.”

**SBPI-00295 - Statement of DC Kevin Petrie - Signed 24 March 2023, page 4, paragraph 11**

11. *I am asked if I recall what was my understanding as to why that address had to be secured. No. It was basically a message that was passed, informing us. I don't even know if they said it was relevant to the incident in Kirkcaldy, but I assumed it was, given it was DS Dursley that passed that. I think it was a message over the police airwave radio from DS Dursley. Either that, or there was a phone call made basically asking for uniformed officers to attend an address in [] as it become relevant to the inquiry that he was involved in. From my recollection, there was mention that Major Investigation Team (“MIT”) officers had been there, attended that address, a male had been taken away, and they were now requiring that address to be secured, and that there was nobody in there. I remember being told there was nobody in that address. As much as I knew it was required to be secured and then that was it, that was all that was passed to us. We weren't directed to go, so Gordon and I remained either out and about in the car or in the station, and uniformed officers attended there.*

12. *A short time later, there was another message passed saying “We've attended that address, however, there are people within”. Uniformed officers had attended and they were looking for a bit of assistance in trying to secure that address. Gordon and I went to that address.*

**SBPI-00295 - Statement of DC Kevin Petrie - Signed 24 March 2023, page 8, paragraph 26**

26. *I am asked if I recall whether I was invited into the property. I don't recall that. I cant even really remember entering the property to be honest. I just know that there were other officers there beforehand, so we would have spoke to them before I went in, but I cant recall.*

27. I am asked whether in May 2015 there were grounds other than the consent of the occupants or a warrant on which an officer could enter a property. There is other grounds that you could enter, but predominantly it would be either consent or a warrant, but we have got common law powers that allow us to enter properties for various different reasons.

28. I am asked whether any of those common law powers would have applied in relation to entering []. That's difficult for me to say because I wasn't the first one that was there but, certainly, when I attend, there was nothing there that really gave me the power to enter around any disturbance or anything like that that was there. Part of the common law powers allows us to go and secure and address if we think there's something relevant forensically in the prevention or detection of any sort of crimes, but when I got there, there was nothing relevant to that, but we haven't entered the property. By the time we got there, there was other officers there. Just walking into an address, that isn't something that we'd done.

29. I am asked whether I recall what was my understanding of the authority that was being employed for officers entering []. The message that was passed was, to my recollection, that address was a crime scene and that they were requiring to secure it, so at that time my belief would be that it was under common law powers in securing the evidence. That's why we were there: to secure that address. Obviously, we didn't have any more information when we initially attended, but that was what came up on the radio, and that's something I've certainly done numerous times before that and numerous times since that. It's not uncommon for us, so it was something I was aware of.

30. I have been referred to paragraph four on page two of the statement Mrs Saadia Rashid gave to the Inquiry on 13 January 2023 (SBPI-00260; "Mrs Rashid's Statement"), in which she states that she told an officer that the occupants of the property would not vacate it unless officers "had a warrant". I am asked if I recall being asked for a warrant at any time. I don't recall. Personally, I don't recall me being asked for a warrant or any mention of a warrant at that time.



PC Jaci Aitken cannot remember anything

**SBPI-00325 - Statement of PC Jaci Aitken - PS PIM - Signed 19-05-2023, page 5, paragraph 24**

*24. I don't remember anything about what's in my statement.*

*25. I don't remember asking the occupiers to leave. The statement states that I contacted the CID so they must've removed the occupiers.*

*26. I have been asked if I recall a legal basis for securing the property. I don't remember. I have no recollection.*

*27. I have been asked if the word "contempt" was used by any police officers in speaking to the occupiers. I have no memory of this.*

*28. I have been asked if I remember anyone saying that if the occupants didn't leave they would be forced out. I don't remember.*

*29. I would take direction from a senior officer. If you're on locus protection generally it's an empty property. This is a different situation. I was young in service and I've clearly asked the people who were in a better position to make decisions like that.*

PC Rhuaridh Fraser cannot "remember a legal basis for securing the property."

**SBPI-00316 - Witness Statements - Draft statement of PC Rhuaridh Fraser signed 04.05.2023, page 8, paragraph 43**

*43. I don't remember a legal basis for securing the property. I'm not sure if there was a warrant. Quite often if there is a warrant then there's a briefing before hand and we sign in our books that there's a warrant.*

*44. If there's no warrant then we can't secure the house. If there's an empty property then I can only surmise that at some point there's been some interaction at the property and it was to be guarded.*

*45. To secure a locus, you could secure it if there's a fire or an incident occurred whereby evidence needed preserved. You wouldn't necessarily have a warrant to secure a locus.*

46. I don't remember anyone at the address asking if we had a warrant. I don't know what details I might've managed to get it English wasn't their first language but I've no knowledge of a warrant or whatever.

## **EXCITED DELIRIUM RACIALISED DEFINITION**

Professor Lipseige states that within the definition of excited delirium there are two terms that were regarded as racialised, "superhuman strength" and "impervious to pain".

### **11<sup>th</sup> May, Page 56, line 23**

Q. It says that there was extensive consultation by the 23 Royal College with stakeholders, including the police, 24 is that correct? 25 A. That is absolutely correct. Within the definition of 1 so-called excited delirium there were two terms that 2 were regarded, and are regarded, as racialised. One is 3 the use of the term "superhuman strength" as 4 a characteristic of excited delirium or acute 5 behavioural disturbance, superhuman strength, and the 6 other is "impervious to pain". In consultation with the 7 community and other stakeholders it was felt that those 8 two terms really resonated with the institution of 9 slavery. That is to say, severe measures to control 10 slaves were often justified by the use of the terms, 11 "oh, they don't feel pain in the way white people do", 12 or, "we have to control them with chains because they 13 have superhuman strength", and those two expressions 14 appear repeatedly in the definition of excited delirium, 15 and indeed of acute behavioural disturbance. And we 16 have felt -- we concluded that this was extremely 17 historically insensitive and -- not just historically 18 but part of racial stereotypes nowadays. 19 Q. So did the Royal College recognise that racially 20 stereotypical language was part of the definitions of 21 excited delirium? 22 A. Yes. Definitely. 23 Q. Was it also connected to ABD? 24 A. Yes. Because both of those terms, the imperviousness to 25 pain and the superhuman strength, are used in 1 descriptions of ABD by, for example, the Royal College 2 of Emergency Physicians -- 3 Q. That is the American -- 4 A. -- as recently as their 2022 edition.

## **POLICE CULTURE**

**1<sup>st</sup> March, page 40, line 18**

**DI Colin Robson**

*Q. There's been quite a lot of media interest recently in 18 relation to WhatsApp messages and text messages in 19 relation to other police forces. You have never seen 20 any discriminatory behaviour in all of those years by 21 any police officers? 22 A. I've never been -- seen or in terms of racist jokes, no. 23 No. 24 Q. What about discriminatory behaviour, not just racist 25 jokes? 1 A. Discriminatory -- it depends what you mean by 2 "discriminatory behaviour", I suppose, ey. You know, is 3 there, over a period of time, you know, things being 4 said in a canteen when I joined in the mid-1990s to what 5 you would say now? Yes, okay. In terms of race, no. 6 Is there -- I'm just trying to think back to when I was 7 young. I was only 17 as a cadet in 1995, you know, it's 8 completely different days. Is there anything I could 9 think about there now going, "Well, that was" -- 10 I cannae put my finger on anything that I could define 11 to you just now, but things have changed.*

**8<sup>th</sup> March, page 128, line 18**

**Ch Insp Conrad Trickett**

*Q. No. I asked about a case that had played out in court 18 from 2019 where a group of ten officers were potentially 19 subject to misconduct proceedings by a Chief Constable, 20 a CC, and they took legal action to pursue an Article 8 21 right to privacy argument in relation to WhatsApp 22 messages that had been shared amongst them. 23 As I understand it, there were two groups, two 24 WhatsApp groups that were sharing messages. They were 25 described by Police Scotland -- by counsel acting on 1 behalf of Police Scotland -- as blatantly sexist, 2 degrading, racist, antisemitic, homophobic and mocking 3 of disability. 4 Were you not aware of any of that going on in the 5 organisation? 6 A. Not the detail of that, no. 7 Q. But did you know anything about -- 8 A. So -- 9 Q. -- the situation? 10 A. I think you -- is this in relation to probationers? 11 Q. Well, there were ten officers, that's what it says in 12 the decision. 13 A. So I think this is a good example of where a misconduct 14 situation doesn't get widely used*

*as a learning 15 opportunity for the organisation. So if it is -- so 16 there was media attention around some probationers and 17 WhatsApp groups, I am making an assumption it's one and 18 the same thing, but it may not be. So ... I mean, 19 I think this is a good example of where things can go on 20 in the organisation -- remember it's 20,000 people 21 strong across the whole of Scotland -- things can go on 22 in the organisation, and because of -- that sounds like 23 it would have gone straight into either a criminal or 24 a misconduct situation. The detail and -- the detail 25 that you've actually shared with me is a greater level 1 of than I've been briefed on as an officer in 2 Police Scotland. 3 So I think that's a good example of where, you know, 4 we need to share that to demonstrate, you know, that 5 wider learning.*

The inquiry has heard questions posed to Mr. Paton in relation to his alleged racism which he denies. Submissions on these matters will be made after members of his family give evidence in relation to these matters.