

## **Submissions by Senior Counsel to the Inquiry**

### **Index**

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The Early Hours of Sunday 3 May 2015

Fight with Zahid Saeed

Journey from Arran Crescent to Hayfield Road

- (1) Sheku Bayoh
- (2) Calls from the Public
- (3) Response by Team 4
- (4) Factors Bearing on State of Mind of Attending Officers
  - Knife Incidents
  - Conversations en route to Hayfield Road
  - Link between Terrorism & Race
  - State of Knowledge
  - Personal Details/Experience/Equipment Available
- (5) Management of Incident – Who was in Charge on 3 May 2015?
  - Background

### ACR

1. Duty Inspector Stewart
  - Absence & Delay in Response
  - Resourcing
  - Firearms Incident
  - Delivery of Stay Safe Messages
2. Sergeant Dalglish
3. Sergeant Bissett
4. PC Scott Masterton

### Division

1. Duty SIO Fife Division, Acting Inspector Colin Robson

2. Police Incident Officer, Acting Inspector Kay

#### Hayfield Road

1. Sergeant Maxwell
2. Attending Officers
3. CID
4. Summary

#### (6) Management of Incident: Tactical Options for Reasonable Officers

1. First Scenario – RVP
2. Second Scenario – Observe Wait Feedback (nearby location)
3. Third Scenario – De-escalation
4. Fourth Scenario – Verbal Dominance; Hard Stop

#### (7) Initial Contact at Hayfield Road

1. Arrival of PC Paton & PC Walker
2. Arrival of PC Tomlinson & PC Short
3. Use of Force
4. Caveat regarding Future Hearings
5. PC Nicole Short
6. The Stamp(s):
  - (1) Version 1: PC Tomlinson; and support for this version
  - (2) Version 2: Kevin Nelson; and support for this version
  - (3) ALI
  - (4) Evidence about Injuries/Pain from Witnesses
  - (5) Subsequent Medical Examinations: PC Short
  - (6) Medical Support – Mr Anderson & Mr Crawford
  - (7) Photographs of Injuries
  - (8) Forensic Evidence
  - (9) Use of Force in response to Stamp(s)

#### (8) Restraint:

- After being brought to the Ground

- Mr Bayoh's Struggle Against Restraint
- When was Mr Bayoh brought to the Ground?
- Mr Bayoh flicks legs and Tomlinson loses balance
- Arrival of PC Paton & Use of Baton on Left Arm of Mr Bayoh
- Press Up
- Arrival of PC Smith & PC Good
- Application of Handcuffs
- Application of Fast Straps
- Use of Force – Restraint
- Comments from Eyewitnesses (police and civilians) on Use of Force used by Officers
- Restraint of Mr Bayoh's legs

(9) Officers turned Mr Bayoh onto his Left-hand Side

- Awareness of Loss of Consciousness
- Communication During Restraint
- Calling for Ambulance/CPR/First Aid
- Rib Fracture

(10) Ambulance and Attendance at Victoria Hospital

- Ambulance
- Arrival at Victoria Hospital

(11) Cause of Death

- But For Test
- Material Contribution
- Factors not Causative of Death
- Factors which may have been Causative to Some Extent
- Sickling
- Petechial Haemorrhages
- Consumption of Illicit Drugs
- Excited Delirium

- Comments

### **The Early Hours of Sunday 3 May 2015**

The events in the early hours of Sunday 3 May 2015 are not contradicted and the evidence paints a consistent story. Post-mortem analysis of Mr Bayoh's blood and urine confirmed the presence of MDMA and Alpha PVP. He began to act out of character at the house of Mr Dick, believing others in the house were being disrespectful to him. He left at 0530 hours and went home.

### **Fight with Zahid Saeed**

Zahid Saeed came to his house and Mr Bayoh was displaying further signs of paranoia, thinking Mr Saeed was in the CID. Zahid Saeed described Mr Bayoh's eyes "switching"; and a change in his personality. Mr Bayoh punched Mr Saeed to the head several times; chased him with a wooden washing line pole; got on top of him and punched him repeatedly to the head, face and body.<sup>1</sup> The fight was witnessed between 0630 hours and 0645 hours by Naomi Rhodes and it lasted approximately 2 minutes.<sup>2</sup> According to Ms Rhodes, Mr Saeed did not punch or fight back.

In Dr Lipsedge's opinion, Mr Bayoh was suffering from psychostimulant intoxication,<sup>3</sup> due to MDMA and Alpha PVP, which was the cause of his paranoia and psychosis, culminating in Mr Bayoh's attack on Mr Saeed. Professor Eddleston agreed. Alpha-PVP is a powerful stimulant that causes rapid heartbeat and raised

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<sup>1</sup> Inquiry statement Zahid Saeed SBPI 00070

<sup>2</sup> Inquiry Statement Naomi Rhodes SBPI 00071; oral evidence 13 May 2022

<sup>3</sup> Listed in both DSM V and ICD 11. Prof Eddleston agreed with this diagnosis, although he preferred the terminology "drug induced psychosis" and explained that diagnosis was ultimately for a psychiatrist.

blood pressure, and has the potential to cause extreme paranoia, agitation, hallucinations, violent behaviour, delirium and psychosis.<sup>4</sup>

## **Journey from Arran Crescent to Hayfield Road**

### **(1) Sheku Bayoh**

It seems likely that Mr Bayoh returned to his house and took a knife from a set in the kitchen.<sup>5</sup> At around 0630,<sup>6</sup> he encountered his neighbour, Neil Morgan, in the street. Mr Morgan said to Mr Bayoh, “What you doing with that? Look, you can’t walk around with that, you’re going to get done. Look, come back to the house, something’s upset you. Come back, have a cup of coffee, a cup of tea, you need to settle down. Just come back.” Mr Bayoh replied, “No, I’m fine, I’m alright, I’m fine.”<sup>7</sup> Mr Bayoh seemed calm, although his eyes were “starey” and he “wasn’t himself”.<sup>8</sup>

It would appear that Sheku Bayoh then walked from Arran Crescent, turned right into Cramond Gardens, left into Templehall Avenue, right into Hendry Road then left into Hayfield Road. This is a journey of under 1 mile. He was in Hayfield Road at 0720 hours. The map<sup>9</sup> and the Evidence Video Timeline<sup>10</sup> collate all the footage available for this journey.

### **(2) Calls from the Public**

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<sup>4</sup> Professor Eddleston

<sup>5</sup> COPFS 00114 SPA Forensic Services Report on Articles

<sup>6</sup> PIRC 00073

<sup>7</sup> 4/43/8

<sup>8</sup> 4/43/9; 4/44/5

<sup>9</sup> SBPI-00104

<sup>10</sup> SBPI-00046

Within a period of around 8 minutes, between **07:09:43 and 07:16:33**, six emergency calls were received in the Police Scotland Area Control Room (ACR) at Bilston Glen (Mr Kolberg called twice).

At **07:10:14** on 3 May 2015, Robson and Harry Kolberg called 999.<sup>11</sup> Harry Kolberg reported that a man of “African origin” had “thumped” and started to chase his car.<sup>12</sup> The man looked to be carrying a knife. He was described by Harry Kolberg as being “quite muscly built” and wearing a white t-shirt and dark coloured jeans.<sup>13</sup>

From the point of the call handler answering the call from the Kolbergs at **07:10:14**, a period of over four minutes elapsed before a STORM log was created at **07:14:16**. It took a further 94 seconds for the STORM log to then be transferred to Bilston ACR, before it was thereafter accepted by PC Masterton, controller, at **07:16:14**; exactly six minutes after the call initially commenced. Four minutes was a long period of time<sup>14</sup> and no explanation has been given for this delay. Joyce Joyce called at **07:11:01**, to describe a black man who had a 9-inch knife in his hand. The corresponding STORM log was not created until **07:15:42**<sup>15</sup>, with the incident then transferred to the Bilston ACR at **07:16:05**. Again, there is no explanation why so much time was required from the point of the call being answered to the point a STORM log was created. This was a Grade 1 call:<sup>16</sup> At **07:15:34** Alan Pearson called about a guy with a “large knife, a 9-inch blade”.<sup>17</sup> At **07:16:36** Linda Limbert called describing the man carrying a “huge big big knife”.

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<sup>11</sup> PS00002; SBPI-00046, 07:10:14. Whilst the call starts at 07:10:12, it finishes around 07:12:18.

<sup>12</sup> SBPI-00082, page 1

<sup>13</sup> SBPI-00082, page 1

<sup>14</sup> 25/27/2

<sup>15</sup> PS00232, page 1

<sup>16</sup> Incident Prioritisation and Response SOP (PS11333), paragraph 2.6.1

<sup>17</sup> SBPI 00082

The eyewitnesses who called the police commented on Mr Bayoh's odd behaviour and the fact he had no jacket on. It was a cold, wet morning.<sup>18</sup> Joyce Joyce noted that "due to his mannerisms and fixed state I assumed he was on something..."<sup>19</sup> Other than Ms Limbert, they were not medically trained, but from their vehicles were able to form the view that Mr Bayoh's behaviour and appearance were out of the ordinary.

### Medical Evidence

Dr Lipsedge viewed the footage of Mr Bayoh on the Evidence Video Timeline and noted that Mr Bayoh appeared disorientated, bewildered and confused, and took no care for his personal safety. He explained that when a person is in a paranoid state, "their thinking is dominated by imaginary enemies, by the idea that other people are out to harm you... you are highly suspicious of other people, including people in authority".<sup>20</sup> This would make it difficult to engage with and reassure such a person. Mr Bayoh's earlier conversation with Mr Neil Morgan, neighbour, may indicate a "variability in his mental state ... and in his paranoia from almost minute to minute";<sup>21</sup> or may have been due to "a difference in approach".<sup>22</sup> Professor Eddleston considered a person suffering from paranoia and psychosis may be confused, and unable to process instructions.<sup>23</sup>

### **(3) Response by Team 4**

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<sup>18</sup> Report by Dr Richard Wild SBPI 00186

<sup>19</sup> Joyce Joyce PIRC statement PIRC 00065, page 3, paragraph 2

<sup>20</sup> 55/80/3

<sup>21</sup> 55/81/19

<sup>22</sup> 55/82/5

<sup>23</sup> 56/93/21

At 07:16:32 PC Masterton diverted PC Tomlinson and PC Short's vehicle<sup>24</sup> to Hendry Road to deal with the incident.<sup>25</sup> Following this transmission, PC Tomlinson responded:<sup>26</sup> *That's received Control is there other units that can assist us?* At 07:17:23, Acting Police Sergeant Maxwell made the following Airwave transmission:<sup>27</sup> *"...I want all units to attend that, bearing in mind officer safety, is there an ARV and a dog as well please"*. At 07:19:12, Sergeant Maxwell requested an update in relation to the deployment of an ARV and dog unit.<sup>28</sup> In response, PC Masterton stated at 07:19:17 that he believed a dog unit was en route<sup>29</sup> and Michelle Hutchison, Force Communications Officer, stated at 07:19:23 that an ARV was also being organised.<sup>30</sup>

PC Paton and PC Walker re-routed to Hayfield Road. At 07:19:54 PC Paton transmitted that they were "approaching locus". At 07:20:06 he indicated "That's us on Hayfield Road heading in that direction".

#### **(4) Factors bearing on State of Mind of Attending Officers**

##### Knife incidents

Inspector Stewart said knife calls were received on a daily basis in 2015<sup>31</sup> and sending unarmed officers to a knife call was a routine deployment response.<sup>32</sup> Attending officers would carry out an ongoing, dynamic risk assessment using the

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<sup>24</sup> PC Masterton recorded the mobilisation of PR41C on STORM log 0745 around three minutes later, at 07:19:36 (PS00049, 07:19:36).

<sup>25</sup> SBPI-00047, page 1. PC Masterton also identifies himself as "Control 1" within his first inquiry statement (SBPI-00067, paragraph 22) and his oral evidence (24/131/14)

<sup>26</sup> SBPI-00046, 07:16:59; SBPI-00047, page 2

<sup>27</sup> SBPI-00047, page 2

<sup>28</sup> SBPI-00046; SBPI-00047, page 2

<sup>29</sup> SBPI-00046, 07:19:17; SBPI-00047, page 2

<sup>30</sup> SBPI-00046, 07:19:23; SBPI-00047, page 2. See also SBPI-00202, paragraph 78, in which Ms Hutchison corrects the wording of the transmission attributed to her, as recorded within SBPI-00047.

<sup>31</sup> 5/159/7; SBPI-00197, paragraph 7

<sup>32</sup> 25/40/19; SBPI-00207, paragraph 39; SBPI-00205, paragraph 33; SBPI-00192, paragraph 29; SBPI-00194, paragraph 14; SBPI-00197, paragraphs 7 and 9



information initially received from the controller and then obtained at the locus when they had sight of the subject in order to determine the correct response.<sup>33</sup> The officers who attended had experience of attending knife incidents.

Grade 1 calls were not particularly common, and it was “very, very rare” to get a grade 1 call at 7am on a Sunday.<sup>34</sup> Grade 1 calls were usually later in the day, often on Friday or Saturday evenings.<sup>35</sup> PC Masterton could not recall receiving a knife call at that time of day on a Sunday morning previously.<sup>36</sup>

### Conversations en route to Hayfield Road

En route to the incident at Hayfield Road, PC Walker “had a brief discussion with PC Paton on tactics and worst case scenario”.<sup>37</sup> 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 Whyteman’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”.<sup>38</sup> PC Walker said to PC Paton that “if the worst case scenario came to be and he came at the vehicle with a knife or a sword I wasn’t getting out and I might hit him with the vehicle.”<sup>39</sup>

### Link between Terrorism & Race

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<sup>33</sup> SBPI-00194, paragraph 14

<sup>34</sup> SBPI-00067, paragraph 16

<sup>35</sup> 24/126/16

<sup>36</sup> 24/126/22

<sup>37</sup> PIRC-00264

<sup>38</sup> PIRC-00264

<sup>39</sup> PIRC 00264

The officers denied at the oral hearings any connection in their minds between Mr Bayoh and a terrorist or the thought having entered their head they dismissed it as unlikely. A comparison can be found with their PIRC statements from 4 June 2015.

PC Paton<sup>40</sup> recalled a rumour going around Kirkcaldy Police Office (KPO) about someone intending to cause harm to a female officer; there being an increased terrorist link and higher threat level; a memo making reference to Lee Rigby; and thinking this male could be part of a terrorist plot; but refuted any suggestion he was prejudiced against non-white people. He later denied the assertions of his sister and brother-in-law.

It crossed PC Walker's mind<sup>41</sup> that the male was doing this to get the police there bearing in mind the Severe Threat Level for an attack on the police,<sup>42</sup> but race had "no influence" on his decisions.<sup>43</sup> He spoke of 'suicide-by-cop' and 'anybody could suffer from a psychiatric episode'.

It entered PC Kayleigh Good's mind<sup>44</sup> momentarily due to the UK terror level suggesting an attack was highly likely and a briefing that year about a female being attacked. There was a big focus on terror level, officers were to arrive at work in their own clothes, not uniform; they weren't to be identified as officers outside work; they were double-crewed at all times. She thought about Lee Rigby mainly due to the fact of the "coloured male" and the potential terrorist connotations.

### State of Knowledge

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<sup>40</sup> PIRC 00262; SBPI 00081

<sup>41</sup> PIRC 00264; SBPI 00039

<sup>42</sup> PIRC 00264

<sup>43</sup> SBPI 00039

<sup>44</sup> PIRC 00274; SBPI 00040; 12/138-143

The Airwaves are listed in chronological order on the Combined Audio & Video Timeline (the spreadsheet) and provide a comprehensive list of the Airwave messages that were available to be heard on the journey via the officers' radios and indicate what information had been shared with officers.<sup>45</sup> There is some evidence that not all officers heard all Airwave messages e.g. PC Paton and PC Walker denied hearing Inspector Stewart's 'stay safe' message from 07:20:13 to 07:20:29 hours on their arrival at Hayfield Road.

#### Personal Details/Experience/Equipment available

PC Paton was 6'4" tall and at the time weighed 17 stones.<sup>46</sup> He had completed 14 years' police service. PC Walker was 6'4" tall and weighed 25 stones.<sup>47</sup> He had completed 10 years' police service. PC Tomlinson was 5'11" tall and weighed 13.5 stones.<sup>48</sup> He had completed 18 months' police service. PC Short was 5'1" tall and weighed 50 kg (around 7.8 stones).<sup>49</sup> She had completed 6 years' police service, but had recently joined the response team. PC Gibson was 5'11" tall and weighed 12 stones.<sup>50</sup> He had completed 3 years' police service. PC McDonough was 5' 6.5" tall and weighed 10 stones 2 lbs.<sup>51</sup> He had completed 6 months' police service. PC Smith was 5'10" tall and weighed 14.5 stones.<sup>52</sup> He had completed 10 years' police service. PC Good was 5'3" tall and weighed 8.5 stones.<sup>53</sup> She was a probationer and had completed 4 months' police service. Acting Sergeant Maxwell was 6'2" tall<sup>54</sup> and had completed 7 years' police service.

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<sup>45</sup> SBPI-00047

<sup>46</sup> PIRC-01305 and 01314 – Forensic Examination Record and Report

<sup>47</sup> PIRC-01302 and 01311 – Forensic Examination Record and Report

<sup>48</sup> PIRC-01306 and 01315 – Forensic Examination Record and Report

<sup>49</sup> PIRC-01301 and 01310 – Forensic Examination Record and Report

<sup>50</sup> PIRC-01307 and 01316 – Forensic Examination Record and Report

<sup>51</sup> PIRC-01308 and 01317 – Forensic Examination Record and Report

<sup>52</sup> PIRC-01304 and 01313 – Forensic Examination Record and Report

<sup>53</sup> PIRC-01303 and 01312 – Forensic Examination Record and Report

<sup>54</sup> PIRC-01309 and 01318 – Forensic Examination Record and Report

Mr Bayoh was 5' 10" (178 cm) tall and weighed 12 stones 10 pounds (81 kg). His BMI was 25.6.<sup>55</sup>

Apart from PC Walker, who left his baton at KPO, all officers were fully equipped and all were up to date with Officer Safety re-certification training. Ms Caffrey said equipment was important when factoring matters into the National Decision-making Model (NDM).<sup>56</sup>

## **(5) Management of Incident - Who was in Charge of the Incident on 3 May 2015?**

### Background

Calls are received from the public by call handlers at Bilston Glen in the Area Control Room. The prioritisation or grading of calls about an incident must be based on an assessment of risk and vulnerability and not on resource availability.<sup>57</sup> Grade 1 calls are "*An ongoing incident where there is an immediate or apparent threat to life or a serious crime in progress*".<sup>58</sup>

The controller, supervisor and ACR inspector (duty officer) should all see a grade 1 call come up immediately.<sup>59</sup> When a new incident came in from a call handler, it flashed on the controller's screen.<sup>60</sup> Grade 1 jobs flashed in red.<sup>61</sup> Grade 1 jobs would be visible to Overview and the relevant supervisor at the same time, so it would not

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<sup>55</sup> PIRC-01445 – Final post-mortem report

<sup>56</sup> 29/105

<sup>57</sup> Incident Prioritisation and Response SOP (PS11333), paragraph 2.4

<sup>58</sup> 5/122/8; Incident Prioritisation and Response SOP (PS11333), paragraph 2.6.1

<sup>59</sup> SBPI-00067, paragraph 21

<sup>60</sup> 24/123/20; SBPI-00194, paragraph 6

<sup>61</sup> SBPI-00194, paragraph 6. Within his oral evidence, Inspector Stewart could not recall a "red marking" appearing on screen for grade 1 calls, but stated "I imagine it would" (25/77/20 – 25/78/10).

be necessary for the controller to bring the incident to their attention.<sup>62</sup> Where there had been a grade 1 call<sup>63</sup> the controller, supervisor and ACR inspector would look at the incident “straight away” to assess what resources were required, including, potentially, firearms officers.<sup>64</sup> When allocating officers to an incident, a controller will call the officers on the radio, tell them the details of the incident, and then allocate those officers to the incident on the relevant STORM log.<sup>65</sup>

If Overview personnel require to leave the room for an extended period, they are able to take their handheld radios with them.<sup>66</sup> If the duty officer is absent from Overview, the sergeant, as the duty officer’s deputy,<sup>67</sup> will continue to review the jobs coming in<sup>68</sup> and pull out the key information from them – description, location, potential risk to the public, whether a weapon is involved, whether sufficient divisional resources are attending, that the call is graded correctly, carrying out background checks on the subject, whether there is any CCTV available and the location of specialist resources etc..<sup>69</sup>

## **I ACR**

### **1. Duty Officer - Inspector Stewart**

#### *Absence & Delay in Response*

The duty officer has oversight, and overall charge,<sup>70</sup> of the service centre and area control room,<sup>71</sup> and has “specific responsibility” for the control, coordination and

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<sup>62</sup> 24/124/7 – 24/124/15; SBPI-00194, paragraphs 6 and 9. Inspector Stewart agreed with PC Masterton’s evidence in this regard (25/88/12).

<sup>63</sup> SBPI-00067, paragraph 16

<sup>64</sup> 24/127/1

<sup>65</sup> 24/127/25

<sup>66</sup> SBPI-00202, paragraph 32

<sup>67</sup> 25/101/14; SBPI-00197, paragraph 15

<sup>68</sup> 25/76/15

<sup>69</sup> 25/5/11; SBPI-00197, paragraph 15

<sup>70</sup> 5/121/23 and 24/123/6; SBPI-00205, paragraph 3

<sup>71</sup> PIRC-00395, page 1, paragraph 1

deployment of specialist resources, including firearms, road policing, public order, negotiators, dog unit, and any specialist resources available to Police Scotland.<sup>72</sup> He is responsible for ensuring that incidents are resourced and attended by local officers and specialist resources, if required.<sup>73</sup>

Sometime after 0700 on 3 May 2015, Inspector Stewart was away from Overview and occupied elsewhere in the building, although he 'could not recall exactly for what purpose<sup>74</sup> or for how long'.<sup>75</sup> He did not know if he had his handheld radio when he left Overview.<sup>76</sup> Inspector Stewart estimates that he returned to Overview around **07:18am**.<sup>77</sup> By this time a number of calls had been received from members of the public. Within his oral evidence he said he "was down in the big communications hall"<sup>78</sup> and "the way I ran up the stairs I must have been in the service centre area".<sup>79</sup>

There was a delay in responding to Mr Kolberg's call from the time the call was received at **07:10:14** to Inspector Stewart's arrival at Overview at around **07:18**. This delay was criticised by Joanne Caffrey. Inspector Stewart feels that Joanne Caffrey's view that he "missed approximately 8 minutes of the incident" is slightly misleading as there would have been a period of time between the call being received and the call then reaching the controller and local officers being dispatched.<sup>80</sup> As noted above, it took 4 minutes for the controller to create the STORM log. There is no explanation why it took so long. It took until 07:14:16 for the STORM log to be created, 07:15:50 for the incident to be transferred to the ACR, and 07:16:14 for the

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<sup>72</sup> SBPI-00084, paragraph 11; PIRC-00395, page 2, paragraph 2

<sup>73</sup> 5/121/8 and 25/76/2; SBPI-00205, paragraph 3

<sup>74</sup> 25/110/7; PIRC-00395, page 2, paragraph 7

<sup>75</sup> 25/134/1

<sup>76</sup> SBPI-00197, paragraph 31. Inspector Stewart refers to this being his "mobile phone".

<sup>77</sup> 5/151/12 and 25/110/14; SBPI-00197, paragraph 18

<sup>78</sup> 25/131/18

<sup>79</sup> 25/132/7

<sup>80</sup> SBPI-00197, paragraph 28

call to be accepted by PC Masterton. This reduces the period of any “delay” to around 4 minutes (07:14:16 to 07:18).

When asked if being in Overview at 07:14 when the STORM log was created would have made a difference to his risk assessment on 3 May 2015, Inspector Stewart said that he would have instructed the same initial response, with officers attending the locus to provide feedback.<sup>81</sup>

He also suggested that the information from members of the public was “varied and in some cases inconsistent”.<sup>82</sup> Within his oral evidence, he elaborated on these “inconsistencies” by referring to the locations provided by the witnesses; Mr Bayoh’s “actions”,<sup>83</sup> with some witnesses describing Mr Bayoh not behaving in an aggressive manner and others describing him being “in the road, approaching cars and flailing his arms about”;<sup>84</sup> and inconsistency in relation to the reported size of the knife, with one witness describing it as a knife of “four or five inches”.<sup>85</sup> This is not supported by the STORM records and none mentioned a knife of that size.

### *Resourcing*

Inspector Stewart did not consider that there was enough time for the ARV to be deployed as the closest vehicle was in Edinburgh.<sup>86</sup> This was also the case for the dog unit,<sup>87</sup> but it was deployed by Michelle Hutchison and then stood down.

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<sup>81</sup> 25/129/24 – 25/130/20

<sup>82</sup> SBPI-00197, paragraph 11

<sup>83</sup> 25/82/20

<sup>84</sup> 25/82/12

<sup>85</sup> 25/81/24; SBPI-00197, paragraphs 19 and 22

<sup>86</sup> SBPI-00084, paragraphs 37 – 38

<sup>87</sup> 5/190/14

PC Paton said an ARV would have helped. If there had been confirmation<sup>88</sup> that an ARV was on its way from Glenrothes; if he had been told to stand back, to muster somewhere, with body worn cameras, cameras on the van;<sup>89</sup> if he had only had to wait 10 minutes for an ARV from Glenrothes he would have.<sup>90</sup> He could have waited at Gallagher's car park. While waiting they could be closely monitoring the situation; sharing information with the ACR; other officers could hear transmissions.<sup>91</sup>

### *Firearms Incident*

Inspector Stewart did not declare a Firearms Incident. Upon being questioned by the Chair during his initial oral evidence, Inspector Stewart confirmed that he did not take command of the incident as it developed on Hayfield Road on 3 May 2015 and command of the incident rested with the local (divisional<sup>92</sup>) police officers.<sup>93</sup> Specifically, Inspector Stewart identified this as being Acting Inspector Kay the local police inspector (PIO<sup>94</sup>) and Acting Sergeant Maxwell, the local police sergeant.<sup>95</sup> This was the case even though Sergeant Maxwell and Inspector Kay were not initially present at the scene.<sup>96</sup>

Inspector Stewart disagreed with Ms Caffrey's view<sup>97</sup> that the ACR inspector takes charge of every high-risk incident.<sup>98</sup> An incident involving a person in possession of a knife is not – and was not in 2015 – an automatic firearms incident.<sup>99</sup> For knife calls,

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<sup>88</sup> 20/89/23

<sup>89</sup> 20/91/5; 11-19

<sup>90</sup> 20/91/16-19

<sup>91</sup> Up to 20/94/1

<sup>92</sup> 25/103/5

<sup>93</sup> 6/15/25, 25/104/5 and 25/154/10

<sup>94</sup> 25/104/24

<sup>95</sup> 6/16/7

<sup>96</sup> 25/105/5; 25/105/21-25/106/6

<sup>97</sup> Joanne Caffrey – Final Use of Force Report – 31 October 2022, (SBPI-00181), paragraph 23.1.1

<sup>98</sup> SBPI-00197, paragraph 54

<sup>99</sup> SBPI-00197, paragraph 7



the circumstances of an incident and the level of threat and risk to the public, officers and person(s) involved had to be carefully considered on a case-by-case basis to determine if an armed deployment was required.<sup>100</sup> Any deployment of armed officers has to be proportionate to the threat being faced.<sup>101</sup> Inspector Stewart would keep the risk assessment under constant review, adapting his strategy to account for new information received or changes during the course of the incident.<sup>102</sup>

For the incident on 3 May 2015, Inspector Stewart carried out a risk assessment in relation to the deployment of an ARV,<sup>103</sup> which was his responsibility.<sup>104</sup> In making a risk assessment, Inspector Stewart was considering the threat, risk, and what resources were appropriate to deploy in the circumstances of the incident.<sup>105</sup> It was appropriate to dispatch a dog unit to an incident involving a knife, as a possible measure to mitigate risk – dogs are trained to deal with a person in possession of a weapon.<sup>106</sup> There was not time for a negotiator on 3 May 2015.<sup>107</sup>

Martin Graves explained the circumstances in which he felt an armed response was appropriate: where there is a risk to the public, where the information or the intelligence indicates that a subject may be armed with a weapon. That could be anything from a sharp implement, a knife, to an actual firearm, where an actual firearm has been seen or where officers or members of the public may be placed in danger if that type of specialist support was not provided.<sup>108</sup>

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<sup>100</sup> SBPI-00197, paragraph 7

<sup>101</sup> SBPI-00197, paragraph 40

<sup>102</sup> 5/135/19

<sup>103</sup> SBPI-00084, paragraph 32

<sup>104</sup> SBPI-00084, paragraph 50

<sup>105</sup> SBPI-00084, paragraph 51

<sup>106</sup> SBPI-00084, paragraph 41

<sup>107</sup> SBPI-00084, paragraph 43

<sup>108</sup> 26/121/4-14

### *Delivery of Stay Safe Messages*

Having arrived at Overview at around 07:18 hours, Inspector Stewart delivered a stay safe message between 07:20:13 and 07:20:29. This message spanned the period during which PC Paton and PC Walker arrived at Hayfield Road (07:20:23 hours). Both officers said they had not heard this message. Prior to making this transmission, Inspector Stewart asked if a “stay safe” message had been given to the attending officers,<sup>109</sup> but he didn’t receive a definitive response.<sup>110</sup> Inspector Stewart was not aware that no stay safe message had been delivered by the controller.<sup>111</sup>

Inspector Stewart’s expectation was that in a firearms incident or an incident involving a weapon then the controller would deliver a stay safe message to the attending officers;<sup>112</sup> failing which, the sergeant in the ACR, or the divisional sergeant or inspector.<sup>113</sup> All officers received the “stay safe training” and “everyone should be thinking about that”.<sup>114</sup> PC Masterton was only aware of the ACR inspector issuing stay safe messages during grade 1 calls.<sup>115</sup> A stay safe message for PC Masterton was a message that officers should consider their safety, and consider whether they should stand off, observe, report back and use cover if necessary for their protection.<sup>116</sup> This differs to Ms Hutchison’s evidence, in which she stated that controllers are trained that if a firearm or potentially lethal weapon is involved, they tell the officers on the ground to stay safe, stay out of the area, and await guidance from the inspector within Overview.<sup>117</sup>

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<sup>109</sup> SBPI-00084, paragraph 21

<sup>110</sup> 25/137/21; SBPI-00084, paragraph 22

<sup>111</sup> 25/137/18

<sup>112</sup> SBPI-00084, paragraph 21; SBPI-00197, paragraph 33

<sup>113</sup> SBPI-00197, paragraph 33

<sup>114</sup> 25/136/23 and 25/162/4; SBPI-00197, paragraph 33

<sup>115</sup> SBPI-00194, paragraph 12

<sup>116</sup> 25/46/10

<sup>117</sup> SBPI-00202, paragraph 66

It is not clear from the evidence available whether stay safe cards were available to controllers on their desk in 2015.

## **2. Sergeant Dalglish**

Upon Inspector Stewart's return to Overview, he checked with the Overview Sergeant Dalglish that the Divisional inspector and local sergeant were aware of the incident and local officers had been dispatched.<sup>118</sup> Sergeant Dalglish confirmed to Inspector Stewart that the PIO, Inspector Kay, was "aware" and that the PIO and local sergeant had "command of it",<sup>119</sup> meaning, (in Inspector Stewart's interpretation), that they were responding to the incident.<sup>120</sup> At this point Inspector Stewart considered that a "Divisional response" was appropriate,<sup>121</sup> being a local policing response.<sup>122</sup> This response had already been instigated and local officers were en route to the call.<sup>123</sup>

## **3. Sergeant Bissett**

On 3 May 2015, Sergeant Steven Bisset was working as a supervising sergeant.<sup>124</sup> Sergeant Bisset had been in that role for around 12 weeks at that time.<sup>125</sup> He was supervising P Division, which involved covering the radio channels for Fife, including the channel for Kirkcaldy.<sup>126</sup>

During each shift it was commonplace for supervisors to leave their desks – for a break, or a discussion with the duty officer etc. – and for the other supervisors to

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<sup>118</sup> SBPI-00197, paragraph 18

<sup>119</sup> SBPI-00197, paragraph 18

<sup>120</sup> 25/115/9

<sup>121</sup> PIRC-00395, page 3, paragraph 1

<sup>122</sup> SBPI-00084, paragraph 15

<sup>123</sup> SBPI-00084, paragraphs 15, 16 and 17

<sup>124</sup> SBPI-00192, paragraph 2

<sup>125</sup> SBPI-00192, paragraph 18

<sup>126</sup> SBPI-00192, paragraph 4

cover for them in their absence.<sup>127</sup> The supervisors were all “within touching distance” of each other and were easily accessible to the controllers.<sup>128</sup> Controllers could also turn to other controllers within their pod for assistance or support, if required.<sup>129</sup>

Upon commencing duty at 07:00, Sergeant Bisset recalled the duty officer, Inspector Steven Stewart, phoning to say that the night shift had “left a mess in the kitchen” and he wanted this to be cleared up.<sup>130</sup> As there were few, if any, incidents requiring his attention at that time, Sergeant Bisset took it upon himself to clean the kitchen.<sup>131</sup>

Inspector Stewart was unaware that the sergeant for the Fife pod, Sergeant Bisset, was initially absent from his station<sup>132</sup> and would not have imagined the ACR sergeant “going to sort the dishes”.<sup>133</sup> Sergeant Bisset was not at his post when the calls came in regarding the incident.

#### **4. PC Scott Masterton, Controller**

PC Masterton cannot recall the details of any risk assessment he carried out on 3 May 2015.<sup>134</sup> He did not seek any assistance from the supervisors on 3 May 2015.<sup>135</sup> PC Masterton could not see Overview as it was in a separate part of the building.<sup>136</sup> Where PC Masterton was sitting in the control room on 3 May 2015, he was facing

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<sup>127</sup> SBPI-00192, paragraph 42

<sup>128</sup> 25/6/24; SBPI-00192, paragraph 43

<sup>129</sup> SBPI-00192, paragraph 44

<sup>130</sup> SBPI-00192, paragraph 18

<sup>131</sup> SBPI-00192, paragraph 20

<sup>132</sup> 25/132/9

<sup>133</sup> 25/133/19

<sup>134</sup> SBPI-00194, paragraph 17

<sup>135</sup> 25/7/6

<sup>136</sup> 25/5/1

away from the supervisors, including Sergeant Bisset,<sup>137</sup> and could not see them.<sup>138</sup> PC Masterton was not aware when he was dealing with the incident involving Mr Bayoh that Sergeant Bisset had left his desk.<sup>139</sup> PC Masterton was also unaware that Inspector Stewart was away from Overview.<sup>140</sup>

Controllers were able to look at a map to identify the location of resources, but PC Masterton and other controllers never used this system as it was unreliable and inaccurate.<sup>141</sup> Officers' locations on the mapping system "never ever" matched their actual locations.<sup>142</sup>

## **II Division**

### **1. Duty SIO Fife Division, Acting Inspector Colin Robson**

Temporary DI Robson was the SIO for the whole of Fife that day overseeing incidents and providing supervisory oversight from an investigative perspective.<sup>143</sup> He had attended an awareness course but not the full course.<sup>144</sup> He left at 07:20 after hearing an emergency button had been pressed to "assist my colleagues not as supervisory officer".<sup>145</sup> After his arrival at Hayfield Road at 07:23:57,<sup>146</sup> DI Robson was then the most senior officer at Hayfield Road prior to Inspector Kay's arrival.<sup>147</sup> Following Inspector Kay's arrival, he took over responsibility for managing the scene.<sup>148</sup> DI Robson left to take PC Short to the hospital as his role had concluded and

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<sup>137</sup> 24/142/3

<sup>138</sup> SBPI-00194, paragraph 6

<sup>139</sup> 25/4/12

<sup>140</sup> 25/4/18

<sup>141</sup> 25/8/11 and 25/8/21; SBPI-00067, paragraph 13

<sup>142</sup> 25/8/1

<sup>143</sup> Inquiry Statement SBPI 00251 paragraphs [79] and [80]; 42/60/11 -

<sup>144</sup> 42/60/15-16; 61/18-23; 62/1-5; 64/13-15

<sup>145</sup> 42/85/11 – 86/7

<sup>146</sup> 42/88/10 - 25

<sup>147</sup> 24/58/1; 42/114/15-115/18

<sup>148</sup> 24/59/12 – 24/59/23

he would have returned to the police station.<sup>149</sup> DI Robson<sup>150</sup> would have left the sergeant to the enquiries that needed to be made around the initial incident.<sup>151</sup> He returned when he heard over the radio that Mr Bayoh was unconscious.<sup>152</sup>

## **2. Police Incident Officer (PIO), Acting Inspector Kay**

The PIO is a senior officer, reporting to the Chief Inspector, and at the same rank within KPO as the station inspector, community inspector and the divisional inspector within CID.<sup>153</sup> The PIO ran the “daily business” for the division.<sup>154</sup> A “big part” of the role was making sure that there were sufficient resources.<sup>155</sup> If any stations were low on staff, then people could be moved around to assist with tasks like locus protection, securing evidence and other priorities.<sup>156</sup> The PIO had an overview of all the calls within their area, allowing the PIO to ensure that “if anything was flagged up that the sergeants had a grip of it” and the incidents were graded and resourced properly.<sup>157</sup> The PIO took a “helicopter management view of everything that’s coming into the division”<sup>158</sup> and had discretion to take control over a particular incident.<sup>159</sup>

Inspector Kay was the senior officer for Team 4.<sup>160</sup> He did not know many members of Team 4 personally,<sup>161</sup> only professionally to a certain degree,<sup>162</sup> having only been

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<sup>149</sup> 42/115/11-18

<sup>150</sup> PS00280; 42/121/20 – 42/122/22

<sup>151</sup> 42/122/13

<sup>152</sup> 42/120/6-11

<sup>153</sup> 24/9/23; SBPI-00017, paragraph 17. On 3 May 2014, the divisional inspector for CID was DI Colin Robson (24/10/9) and, in a combined role, the community and station inspector was Alan Seath (24/10/19).

<sup>154</sup> 24/7/4; SBPI-00036, paragraphs 11, 17 and 18

<sup>155</sup> 24/7/12 and 24/11/4

<sup>156</sup> 24/7/7 and 24/11/14

<sup>157</sup> 24/7/3, 24/14/14, 15/42/24 and 15/44/5; SBPI-00036, paragraph 11

<sup>158</sup> 15/44/3

<sup>159</sup> 15/44/9

<sup>160</sup> SBPI-00036, paragraph 25

<sup>161</sup> 24/12/14

<sup>162</sup> SBPI-00036, paragraph 26

based in Kirkcaldy since November 2014.<sup>163</sup> Inspector Kay had some familiarity with the team members' levels of experience.<sup>164</sup>

Inspector Kay was on the phone and not listening to the 999 calls as they were coming in, but he was seeing what was on the STORM call cards on his screen<sup>165</sup> and attempting to listen to the transmissions made on Airwave at the same time.<sup>166</sup>

Inspector Kay's initial reaction to the incident was to "get the veracity of it" and to understand what was happening.<sup>167</sup> He needed more information before he got involved and made a risk assessment, if required.<sup>168</sup>

Inspector Kay was aware that a single unit was allocated to the call, and that Sergeant Maxwell then requested that all units attend.<sup>169</sup> Inspector Kay agreed with the "rationale and risk assessment" made by Sergeant Maxwell.<sup>170</sup> In Inspector Kay's view, the risk assessment would have been based on there being reports of a male with a knife, there being multiple calls, which would suggest that the reports were accurate,<sup>171</sup> and, as this was the case, that the attendance of additional units could assist with the response, potentially allow the area to be contained and make the public safer.<sup>172</sup> In Inspector Kay's view this was a serious matter and Maxwell was treating it seriously.<sup>173</sup>

Inspector Kay did not consider, in his oversight role, seeking additional support for PCs Tomlinson and Short as Sergeant Maxwell had already requested the dog unit

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<sup>163</sup> 24/7/16

<sup>164</sup> 24/12/22; SBPI-00036, paragraphs 29 – 38

<sup>165</sup> 24/18/7

<sup>166</sup> 24/19/22 and 24/100/25

<sup>167</sup> 24/17/16

<sup>168</sup> 24/17/24 – 24/18/6 and 24/18/12

<sup>169</sup> PS00345, page 2, paragraph 4

<sup>170</sup> PS00345, page 2, paragraph 4

<sup>171</sup> 24/23/3

<sup>172</sup> SBPI-00036, paragraph 61

<sup>173</sup> 24/23/16

and ARV and he did not have any further information and there was not a “clear picture” at this point in time.<sup>174</sup> For “belt and braces”, considering the level of uncertainty, it was a reasonable strategy for Sergeant Maxwell to request the dog unit and ARV as they were likely to be in Edinburgh or Stirling and if they were required the “wheels would be in motion” or they would be en route,<sup>175</sup> and these resources could “easily be cancelled” if they were not required.<sup>176</sup> Inspector Kay did not consider the deployment of a Police Support Unit (PSU), as an ARV had already been requested and it would “almost certainly” be linked to a PSU.<sup>177</sup>

By 07:20:56, Inspector Kay would have been aware of the activation of an emergency button as his radio would have vibrated, made a noise and a button would have lit up in red.<sup>178</sup> He immediately thought that it was necessary to “keep the Airwaves clear” to allow a “better update” to be received to understand what was happening, including who had pressed their emergency button and why.<sup>179</sup> After hearing PC Paton’s transmission identifying that an officer was injured, Inspector Kay left to attend the locus to be “visible”, gain a clearer understanding of what was happening and provide supervision.<sup>180</sup> En route to Hayfield Road Inspector Kay continued to listen to the Airwave transmissions.<sup>181</sup> At 07:21:55, he sought an update via Airwaves<sup>182</sup> and continued to listen and respond.<sup>183</sup> At 07:23:10, in response to a message to control from Sergeant Maxwell, Inspector Kay identified that the message should be passed to him and he was “listening”.<sup>184</sup> In a separate

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<sup>174</sup> 24/24/18

<sup>175</sup> 24/25/18 and 24/26/2

<sup>176</sup> 24/25/18

<sup>177</sup> 24/33/5 and 24/50/3 – 24/50/25

<sup>178</sup> 24/38/20; 07:20:56 Airwave page 4 of Combined Audio & Video Timeline (SBPI-00047)

<sup>179</sup> 24/39/4 and 24/43/1 – 24/43/25

<sup>180</sup> 24/51/22 – 24/52/8; SBPI-00036, paragraphs 68 and 73; PS00345, page 2, paragraph 10

<sup>181</sup> 24/53/7

<sup>182</sup> Page 5 of Combined Audio and Visual Timeline

<sup>183</sup> Page 6 supra

<sup>184</sup> SBPI-00046, 07:23:10; SBPI-00047, page 6



transmission at 07:23:30, Inspector Kay requested an update on “any injury”,<sup>185</sup> by which he was referring to any injury, not just an injury to an officer.<sup>186</sup> This was an indication by Inspector Kay that an ambulance was required.<sup>187</sup> Inspector Kay was reiterating Sergeant’s Maxwell’s request at 07:23:34 as, at that point, the control room had not acknowledged the request.<sup>188</sup> He was only aware of one injury at this stage, so he did not request an additional ambulance for Mr Bayoh.<sup>189</sup> Inspector Kay would have considered calling for an ambulance for Mr Bayoh if he had known that Mr Bayoh had been struck to the head with a baton, or sprayed with incapacitant spray.<sup>190</sup>

In response to questioning from the Chair to the Inquiry, Inspector Kay stated that in a grade 1 incident with the ACR receiving and grading a call involving a knife, the ACR would be in command of the situation as a “firearms incident”.<sup>191</sup> In Inspector Kay’s view, “as soon as the knife is mentioned then it’s ACR who take control”.<sup>192</sup> In Inspector Kay’s view, it is the sergeant’s job to send a response team out on a call.<sup>193</sup> Sergeant Maxwell was running Team 4.<sup>194</sup> When Inspector Kay arrived at Hayfield Road, he took charge.<sup>195</sup>

DS Davidson thought Inspector Kay was in charge until more senior officers arrived.<sup>196</sup>

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<sup>185</sup> SBPI-00046, 07:23:30; SBPI-00047, page 6

<sup>186</sup> 24/40/20; SBPI-00036, paragraph 124

<sup>187</sup> 24/42/1

<sup>188</sup> 24/41/17

<sup>189</sup> 24/46/19

<sup>190</sup> 24/47/7 – 24/47/22

<sup>191</sup> 24/103/13 – 24/103/22

<sup>192</sup> 24/101/24

<sup>193</sup> 24/13/14

<sup>194</sup> 24/13/25

<sup>195</sup> 15/46/5 – 15/46/15

<sup>196</sup> 17/74/11-15

### III Hayfield Road

#### 1. Sergeant Maxwell

Sergeant Maxwell was in charge of Response Team 4 on 3 May 2015.<sup>197</sup> His supervisor was Inspector Kay.<sup>198</sup> As an acting sergeant, Sergeant Maxwell had oversight of his team, but, in his view, officers are autonomous and when they attend an incident “they are wholly responsible for their actions at that particular time” on the basis of their training and professionalism,<sup>199</sup> unless Sergeant Maxwell considered it necessary to intervene.<sup>200</sup>

At the point that officers were at the scene, Maxwell had not yet arrived, he was not “exactly sure what’s happened, Inspector Kay is not entirely sure what’s happened, so technically the charge is still at the locus with the officers”. In Sergeant Maxwell’s view, until he was at the scene in a “supervisory capacity” he “can’t affect much”.<sup>201</sup>

Once Sergeant Maxwell was at Hayfield Road, he was in charge of the incident in his role as acting sergeant,<sup>202</sup> but he gave evidence that he did not arrive until after the restraint was achieved. The timing of his arrival will have to be carefully considered in light of the CCTV footage which shows his vehicle arriving when the attempts at restraint appear to be ongoing; as well as other evidence including that of DS Davidson.

When DS Davidson arrived at Hayfield Road, she took charge of the scene, but Sergeant Maxwell was still in charge of the officers.<sup>203</sup>

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<sup>197</sup> 14/126/21 and 14/168/25

<sup>198</sup> 14/126/24

<sup>199</sup> 14/145/11

<sup>200</sup> 14/128/20 – 14/129/13

<sup>201</sup> 14/168/7

<sup>202</sup> 15/42/16

<sup>203</sup> 15/41/12

## 2. Attending Officers

As noted above, according to the Team 4 Sergeant, Maxwell, officers were autonomous and when they attended any incident “they are wholly responsible for their actions at that particular time”; and “technically the charge is still at the locus with the officers”.<sup>204</sup>

PC Walker thought Sergeant Maxwell was in charge as he travelled to Hayfield Road.<sup>205</sup> Inspector Kay had not been on the radio at that point, so it was in the hands of Sergeant Maxwell.<sup>206</sup>

PC Paton felt the situation needed taken control of.<sup>207</sup> The situation needed to be “firmly taken control of as soon as possible and the fact that he didn’t have a knife in his hands, I could see his hands, I’ve got to grasp this opportunity and confront him and try and engage him in conversation”.<sup>208</sup>

## 3. CID

If an incident becomes more serious, CID officers take charge of the investigation from a “serious crime” perspective.<sup>209</sup> In Inspector Stewart’s view, in the context of the incident involving Mr Bayoh, the point at which CID would have taken over would have been either when Mr Bayoh lost consciousness or stopped breathing.<sup>210</sup>

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<sup>204</sup> 14/167/23 to 168/1-5

<sup>205</sup> 6/40/21 – 41/3

<sup>206</sup> 6/41/9-13

<sup>207</sup> 20/24/7-16

<sup>208</sup> 20/31/14-22

<sup>209</sup> 25/106/12 – 25/107/4

<sup>210</sup> 25/1075 – 25/07/22

From the evidence, it would appear that DS Davidson<sup>211</sup> took charge when she realised it was a more serious incident (Mr Bayoh was unresponsive; in cardiac arrest; CPR was commenced).

### **Summary**

Inspector Stewart was initially absent from post but, on return, thought the Divisional Officers were in charge, namely the PIO, Inspector Kay, and Sergeant Maxwell. Sergeant Dalglish thought Inspector Kay and Sergeant Maxwell had command. Sergeant Bissett the supervisor was away from post. The controller, PC Masterton was doing his job, but was under the mistaken impression Inspector Stewart and Sergeant Dalglish had oversight.

DI Robson, Duty SIO for Fife Police, went to the scene “to assist colleagues, not as a supervisory officer” although he was the most senior officer until Inspector Kay arrived. Inspector Kay did not arrive until after the restraint had concluded. Inspector Kay thought that when a Grade 1 call involving a knife was involved that ACR were in command and took control as soon as the knife was mentioned.

Sergeant Maxwell was in charge of Team 4 until Inspector Kay arrived when he took charge. Maxwell thought the officers were “autonomous” and “wholly responsible” unless he thought it necessary to intervene, so until he arrived the officers were in charge. He didn’t arrive until the restraint had been achieved.

PC Walker thought Maxwell was in charge and PC Paton wanted to take control of the situation on his arrival. DS Davidson took charge when the incident became more serious and Mr Bayoh became unresponsive.

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<sup>211</sup> Inquiry Statement paragraph [21]; 17/160/24 – 165/

## **Management of Incident: Tactical Options for Reasonable Officers**

Throughout the evidence 4 tactical options emerged. Of the four scenarios discussed, the first two of those involve non-engagement by the officers and the second two involve engagement with the subject.

- (1) Rendezvous Point (RVP)
- (2) Observe, Wait, Feedback
- (3) De-escalation
- (4) Verbal Dominance – “A Hard Stop”

Both Martin Graves and Joanne Caffrey agreed that all 4 of these tactical options were available to reasonable officers when responding to a knife incident in 2015.

### **(1) First Scenario - RVP<sup>212</sup>**

This suggestion was raised by PC Paton.<sup>213</sup> The scenario was put to Joanne Caffrey for comment:

“The first would involve non-engagement by the officers ... they would move to a rendezvous point, so a remote area, for example, in this location such as Gallaghers pub car park, and the officers could park in the car park, wait there, same position, same location, keep their eyes on the subject. If he walked off, they could try ... to contain him. They would have to be fluid. There would be a potential risk to members of the public if they appeared. It would have to be closely monitored, but

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<sup>212</sup> 28/114/19 – 28/115/8

<sup>213</sup> 20/90/3-94/8

they could take a point of view from Gallaghers car park and see the roundabout and the streets in that area and while they were there waiting, feedback to ACR.”<sup>214</sup>

Joanne Caffrey considered this tactical option was open to the attending officers. “So the main benefit of the rendezvous point is for additional staff to meet and then to discuss rapidly the tactical options of how they can work the incident with the numbers of staff they’ve got ... it gives them time to come together and hopefully produce a coordinated option ... but it would then be an agreed plan and ideally led by a supervising officer.”<sup>215</sup>

If a firearms incident had been declared a rendezvous point would have been expected, but it was still an option even if no firearms incident was declared. The decision could be made by officers at the scene as well as prior to arrival at the scene. Caffrey stated in her report:<sup>216</sup>

*The first officers attending should have been clearly informed to abort and not to engage with the subject, to pass information, and RV with officers at a nearby nominated location. This would then allow the ACR Inspector to decide their initial tactical plan, gain additional information and establish the ETA of the dog(s).”*

Inspector Stewart disagreed with the view that the control room should have instructed the officers to abort and not engage with Mr Bayoh, as the officers required to locate him as soon as possible to protect the public and feed back in relation to the level of threat posed at the time.<sup>217</sup>

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<sup>214</sup> 28/114/7

<sup>215</sup> 28/116/15

<sup>216</sup> Joanne Caffrey – Final Use of Force Report – 31 October 2022, (SBPI-00181), paragraph 9.11.2;

<sup>217</sup> SBPI-00197, paragraph 47

Inspector Stewart did not consider telling the officers to withdraw to an RVP.<sup>218</sup> The other officers required to continue to the scene to try to provide support to their colleagues.<sup>219</sup>

Inspector Stewart disagreed with the suggestion that officers should have been sent to an RVP.<sup>220</sup> In significant incidents, including firearms incidents, consideration is always given to identifying an RVP for attending officers, specialists and other emergency services and, had the incident involving Mr Bayoh developed further, an RVP may have been established for negotiators and public order officers to attend.<sup>221</sup> In the circumstances, however, the threat was considered to be high for members of the public and officers required to attend directly at the locus.<sup>222</sup> RVPs are always considered for firearms incidents involving persons in possession of a gun as unarmed officers can be targeted from a distance, but this incident involved a knife and Inspector Stewart considered it safe for the officers to attend, considering the “control measures” in place and the officers’ “safety awareness”.<sup>223</sup> Waiting 10 or 15 minutes for a dog unit to attend was not a realistic option, in Inspector Stewart’s opinion, and would not have kept the public safe;<sup>224</sup> a balance needed to be struck between risk to the public and officer safety.<sup>225</sup> Ms Caffrey’s opinion “flies in the face of everything” that Inspector Stewart has been taught in terms of keeping people safe and there being a duty to act.<sup>226</sup>

Inspector Stewart stated that “several” of his views differ from those in Ms Caffrey’s report, noting that she has never been an accredited firearms commander and

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<sup>218</sup> 25/144/19

<sup>219</sup> 25/145/2

<sup>220</sup> SBPI-00197, paragraph 47

<sup>221</sup> SBPI-00197, paragraphs 47 and 48

<sup>222</sup> SBPI-00197, paragraph 47

<sup>223</sup> SBPI-00197, paragraphs 47 and 48

<sup>224</sup> SBPI-00197, paragraph 47

<sup>225</sup> SBPI-00197, paragraph 48

<sup>226</sup> SBPI-00197, paragraph 48

appears not to have worked in a control room environment.<sup>227</sup> Inspector Stewart identifies that, in a fast-moving incident, there is no time to refer to SOPs, so reliance will be placed on training and experience instead.<sup>228</sup>

## **(2) Second Scenario - Observe; Wait; Feedback (nearby location)<sup>229</sup>**

Again, this involves non-engagement by police officers. This scenario was first discussed in the evidence of Inspector Stewart who explained the officers would have pulled their car up a distance away from Mr Bayoh, assessed what he was doing, how he was behaving and whether a weapon was visible, and then maybe approached Mr Bayoh, whilst also relaying information back to control.<sup>230</sup> The period of observation envisaged by Inspector Stewart would have been “quite quick”; 10 seconds, or potentially longer.<sup>231</sup>

Martin Graves<sup>232</sup> described it as a “viable tactical option and quite a sound one really”. Feedback to ACR regarding location; demeanour; what doing; behaviour; whether in possession of weapon; wait for sufficient officers to more safely deal with individual, depending on length of time waiting for armed support, if deployed; thinking time; time to consider options; waiting for other specialist resources - ARV/dog unit; prepare if escalates; other units join; more information to ACR.<sup>233</sup> If it is a mental health crisis or the man is intoxicated and it is a medical emergency, call for medical assistance.<sup>234</sup>

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<sup>227</sup> SBPI-00197, paragraph 50

<sup>228</sup> SBPI-00197, paragraph 50

<sup>229</sup> 28/130/11 – 28/131/7

<sup>230</sup> 5/170/6

<sup>231</sup> 5/170/17; SBPI-00084, paragraph 25 refers to the observation being done “really, really quickly”.

<sup>232</sup> 26/173/12 - 177/2

<sup>233</sup> 26/175/2 – 176/14

<sup>234</sup> 26/178/1 – 179/4



The benefits of this method are that it would have allowed officers time to communicate with ACR and with fellow officers; to react more quickly if things changed (as opposed to being situated at some distance); it would also have allowed officers to observe the subject, including his demeanour; and given time to consider whether it was a medical emergency and call an ambulance; to await specialist resources such as a dog unit or ARV; to allow other units to join; and to plan tactics.

Ms Caffrey discussed non-engagement with the officers on the ground with the subject, but in this case they wouldn't move to a remote rendezvous point, but perhaps park nearby in the street, at the end of the street or in the vicinity, so non-engagement, observe, wait and feedback. So, the officer would have parked, remained within the vehicle, but observing, waiting and feeding back to ACR, so not bringing themselves out of the vehicle, and potentially into harm's way.

### **(3) Third Scenario<sup>235</sup> - De-escalation**

This was first described by Inspector Stewart. In Inspector Stewart's view, the operational objective within a significant incident, such as that involving Mr Bayoh, is to identify, locate, contain and neutralise the threat by the safest means possible, with the minimum level of force necessary.<sup>236</sup> 'Contain and negotiate' is always the safest way to achieve this, for the subject officers and members of the public,<sup>237</sup> and the preferred tactical option to use when possible.<sup>238</sup> This scenario was put to Joanne Caffrey for comment:

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<sup>235</sup> 26/179/5

<sup>236</sup> SBPI-00197, paragraphs 10 and 61

<sup>237</sup> 25/69/11

<sup>238</sup> 25/69/14; SBPI-00197, paragraph 10

[A] tactical option of engage and negotiate and de-escalate. Unarmed officers attend a location, they are trying to understand what is going on, which would then allow them to inform the decision-making about the process, that they would provide additional updates to ACR and other officers. It would provide them with various options such as the opportunity to communicate. It would be key to building rapport. They would attempt to de-escalate, engage and negotiate ...they're not sitting in a vehicle at any position, they're actually approaching the subject."<sup>239</sup>

Joanne Caffrey considered this option was "definitely" open to the attending officers: "you could even commence the communication through the open window ... Hey, are you ok?"

Regarding this third scenario <sup>240</sup> Martin Graves described how 'Engage Negotiate and De-escalate' is another option for officers to consider; still keeping yourself safer, opening window a little bit, talking through the window, keeping doors locked; CUT; observe demeanour and body language and how appeared; whether under influence of drink or drugs; whether suffering a mental health crisis; assess whether verbal or non-verbal communication; NDM ongoing.

The adoption of the CUT principle would allow the officers to retain some distance from the subject but still communicate with the subject and share feedback on the radio to ACR. This permits an officer more time, more opportunity to observe and see what is happening and engagement permits a clearer assessment of whether the person is under the influence of drugs or alcohol or perhaps suffering a mental health crisis. Under the "preclusion principle", different tactical options are tried at

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<sup>239</sup> 28/139/14

<sup>240</sup> 26/179/5 to 183/21

different levels of force, starting at a low level and increasing the level of force thereafter, if required.<sup>241</sup>

Inspector Stewart gave evidence that when approaching a person who is distressed, upset or has “issues”, there is the option of giving that person time and space in order to speak to them, understand what is happening and attempt to “calm things down”.<sup>242</sup> Depending on the “mindset” of the individual involved, this can sometimes be effective in de-escalating a situation,<sup>243</sup> even when someone is in possession of a knife.<sup>244</sup> “Space” in this scenario means physical space between the officer and the subject<sup>245</sup> and time means taking a patient approach as opposed to “rushing in”.<sup>246</sup>

There may, however, be occasions where the tactic is not an option, for example, due to the subject being too aggressive or unwilling to engage, perhaps due to the influence of drink or drugs.<sup>247</sup> It is more challenging to use the contain and negotiate tactic in an open space than in an enclosed space, such as a house.<sup>248</sup> Within an open space, the aim would be to keep members of the public away from the incident, maintaining their safety, whilst also isolating as best as possible the subject to ensure that they cannot get close to anybody and to allow there then to be communication with that person.<sup>249</sup> The number of officers required to contain a subject depends on the extent of the area involved, although “ideally you’re looking for as many officers as possible”, as this allows certain officers to then be closer to the subject to initiate

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<sup>241</sup> 25/70/19

<sup>242</sup> 5/174/24 – 5/176/9 and 5/196/24; SBPI-00084, paragraphs 25 and 33

<sup>243</sup> 5/175/5 and 5/177/5; SBPI-00084, paragraph 33

<sup>244</sup> 5/177/18

<sup>245</sup> 5/176/1

<sup>246</sup> 5/176/24

<sup>247</sup> 25/69/21 – 25/70/9

<sup>248</sup> 25/66/9 and 25/66/23

<sup>249</sup> 25/66/24 – 25/67/13

dialogue.<sup>250</sup> Ideally there would be more than two officers present to contain a subject in a public street,<sup>251</sup> although in general terms there is no minimum number of officers required to contain a subject.<sup>252</sup>

In Inspector Stewart's view, "it was very much" the de-escalation approach that was taught within his officer safety training, using the minimum level of force possible to achieve your objective safely.<sup>253</sup>

There is no guarantee that alternative options would have succeeded in the circumstances, but they were options open to the officers and in considering this, you may wish to consider the situation that arose in relation to Mr Bayoh's neighbour, Neil Morgan and the comments on this evidence from Dr Lipsedge. He emphasised the importance of listening to a person suffering from paranoid psychosis, and offering reassurance: "What I teach medical students is in a situation like that you have to pretend that you've got unlimited time. Of course you haven't got unlimited time but you have to give the patient the impression that you are able to listen to them and that you are not in a hurry."<sup>254</sup> He explained that de-escalation is used by psychiatrists and mental health nurses - an unhurried approach focussing on listening and providing reassurance, that increases the likelihood of establishing rapport, reducing agitation, and a good outcome.<sup>255</sup> Professor Eddleston spoke of the importance of empathy, using a calm voice and familiar language, and warm and empathic body language.

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<sup>250</sup> 25/67/14 – 25/68/4

<sup>251</sup> 25/68/16

<sup>252</sup> 25/68/24

<sup>253</sup> 25/158/9

<sup>254</sup> 23/25

<sup>255</sup> 55/90/4

Ms Caffrey said if the subject was non-verbal then that is an indication that they are suffering from a mental health crisis or under the influence.

#### **(4) Fourth Scenario - Verbal Dominance – the “Hard Stop”**

This was the second of the 4 scenarios where there is actual engagement with the subject by the officers. This was described in Martin Graves’ Inquiry Statement dated 12 and 13 October 2022<sup>256</sup>

It is an authoritarian approach; wanting to try and control the individual; a verbal dominance approach to communication. A methodology of trying to dominate the individual by getting them to comply with your instructions to minimise the risk or minimise the requirement to possibly use other force. This was also described as a “hard stop” by Martin Graves in evidence and, previously, during a consultation with the Crown.<sup>257</sup>

Martin Graves explained this in evidence<sup>258</sup> as an authoritarian approach; officers wanting to try and control an individual by verbal dominance – to bring about compliance with instructions. They locate the individual and feedback immediately; it is a lot faster; strong verbal commands are given; it is difficult to come back down from that until they’ve complied; their adrenaline and heart rate is starting to raise because of the situation and the individual they believe they are dealing with. Heightening threat level and their perception of risk. They still have observational skills, but they are starting to reduce because of increased stress levels. The main focus is non-compliance. If this verbal dominance is not working, then they have

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<sup>256</sup> SBPI-00190, paragraph 73

<sup>257</sup> COPFS 02332 Consultation Martin Graves with Alex Prentice, COPFS page 3 paragraph 1

<sup>258</sup> 27/1/25 to 6/26

very little option other than to escalate from that to make the individual comply with directions.<sup>259</sup>

Asked whether there were circumstances in which a reasonable officer would not adopt this scenario,<sup>260</sup> Martin Graves replied, "If the decision had been made to engage ... in a more communicative way ... trying to talk through window, asking how he was, what's going on, what's he doing out on a Sunday morning, they might have gleaned more information in relation to demeanour ... If you think of it as a ladder, once you have decided to climb the ladder, it's quite difficult to then try and climb back down the ladder .... Although not impossible but it is difficult."<sup>261</sup>

PC Paton did not agree that de-escalation was an option; he took the view that this 'Verbal Dominance' option was necessary due to the risk to the public. He took the view that Mr Bayoh was under the influence of drugs; he may have had a knife; he was a danger to the public and he had an opportunity to control him when he was walking in Hayfield Road and he took that opportunity.

Dr Lipsedge gave evidence that an attempt to dominate by using commands and orders would be likely to "alienate and antagonise"<sup>262</sup> a person suffering from psychosis: "if ... you appear threatening, domineering, dismissive ... then you are going to make the situation worse and the person will become more agitated and regard you as ... a threat rather than a source of help and reassurance."<sup>263</sup> Professor Eddleston explained that "being aggressive, making the patient frightened, doing

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<sup>259</sup> 27/6/25

<sup>260</sup> 27/6/22 to 27/7/1-15

<sup>261</sup> 27/7/1

<sup>262</sup> 55/88/17

<sup>263</sup> 55/90/12

anything to stimulate their fight or flight response, is not going to help”<sup>264</sup> and would inflame the situation.

### **Initial contact at Hayfield Road**

#### **Arrival of PC Paton and PC Walker**

PC Craig Walker and PC Alan Paton were the first officers to arrive and stopped their vehicle in Hayfield Road at around 07:20:23 hours.<sup>265</sup> Mr Bayoh was walking along Hayfield Road near the bus stop. He didn't appear to be angry at that point.<sup>266</sup> PC Walker could see his hands and there was no knife.<sup>267</sup> He was 8 feet from the van.<sup>268</sup> They arrived at a 45-degree angle with the transit van.<sup>269</sup> Their lights were flashing. Both got out of the van. PC Paton opened the passenger door of the vehicle first with his CS spray in his hand. It was his 'go to' piece of equipment, like Walker.<sup>270</sup> Both shouted commands at Mr Bayoh to which he did not respond and both used their sprays.

There are differences between the evidence of PC Paton and PC Walker about what they did and where they stood. In considering their evidence, you have the footage and you will hear submissions from the Core Participants in relation to the individual actions of each officer. The second report by ALI shows their positions, as described in evidence.<sup>271</sup> PC Paton described how Mr Bayoh appeared when they arrived and he “first saw him”: “a one-track mind, just staring through people,

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<sup>264</sup> 56/100/11

<sup>265</sup> SBPI-00047; Mark De Giovanni gave evidence about how this spreadsheet was prepared by ALI and how it was to within 1 second accuracy.

<sup>266</sup> 6/118/14

<sup>267</sup> 6/113/17-18

<sup>268</sup> 6/113/7

<sup>269</sup> 6/110/22-24

<sup>270</sup> 20/86/2-6

<sup>271</sup> 33/4/4; SBPI-00175 (Second Report)

goggle-eyed, oblivious to everything else that's going on about him, consistent with being on Flakka."<sup>272</sup> His eyes were bulging out of his head.<sup>273</sup>

You have heard from Inspector Stewart what difference it would have made if he had known what PC Paton saw,<sup>274</sup> namely "...medical help or medical assistance would be a consideration of mine at that time, getting an ambulance."

### **Arrival of PC Tomlinson and PC Short**

Reinforcements arrived in the form of PC Tomlinson and PC Short at **07:20:39 hours**, approximately 16 seconds behind PC Walker and PC Paton.

They gave evidence about what they saw when they arrived, which again will have to be considered in light of the evidence from PC Walker and PC Paton. There are differences in what was a very fast-moving scene. The Second Report<sup>275</sup> by ALI will assist with this comparison.

PC Tomlinson described Sheku Bayoh walking up the path and PC Tomlinson "mirroring" him, walking parallel with him. He was shouting commands to Mr Bayoh telling him to get on the floor and "stop what you're doing". He was shouting at him at the top of his voice. There was no reaction from Sheku Bayoh. As Sheku Bayoh was walking off, PC Tomlinson took out his spray and took up a stance, which he described as a "defensive" stance. He sprayed and the first spray was affected by the wind. Then he guided the sprays so that the wind bent the spray

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<sup>272</sup> 20/87/1-3

<sup>273</sup> 20/30/25 to 31/16

<sup>274</sup> 25/146/3-17

<sup>275</sup> SBPI-00175



around towards Mr Bayoh. The spray had no effect on Mr Bayoh. Neither the continued shouting, nor the spray, had any effect.<sup>276</sup>

Within 3 seconds of the arrival of PC Tomlinson and PC Short, at 07:20:42 hours, PC Paton hit the 'emergency button' on his personal Airwave radio whilst shouting "*Get down on the fucking ground*".

PC Paton crouched down at the rear of the transit van, as he had been incapacitated by the spray.

You have heard evidence about the state of mind of the officers. PC Tomlinson thought PC Walker had been slashed to the face.<sup>277</sup> You heard comment from Ms Caffrey about the impact of the belief that a colleague has been slashed and what a reasonable officer would be thinking at that moment and what steps they would take as a priority.<sup>278</sup> You also have her evidence that if the officer believed that the offender had adopted Level 6 behaviour then subject to preclusion<sup>279</sup> and depending on orders from ACR<sup>280</sup> and their own experience and circumstances<sup>281</sup> they would respond but they could pull back.<sup>282</sup> Martin Graves gave evidence that they could consider any option open to them including possibly causing serious or fatal injury and Joanne Caffrey agreed.<sup>283</sup>

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<sup>276</sup> 9/73/1

<sup>277</sup> 9/52/18-21

<sup>278</sup> 29/18/4-10

<sup>279</sup> 29/20/22-25 to 21/1

<sup>280</sup> 29/22/11-14

<sup>281</sup> 29/23/20-22

<sup>282</sup> 29/24/1-22

<sup>283</sup> 29/26/1-12

## Use of Force

In 2015 police officers had the right to use “reasonable force” to ensure that detainees under section 14(1) of the Criminal Procedure (Scotland) Act 1995 remained with them.<sup>284</sup>

The Police Service of Scotland (Conduct) Regulations 2014 govern the conduct of police officers up to and including the rank of Chief Superintendent. The 2014 Regulations came into force on 1 April 2014 and were in place at the time of the incident involving Sheku Bayoh in May 2015. The Regulations outline various “Standards of Professional Behaviour”, including around the use of force:<sup>285</sup> A breach of the Standards of Professional Behaviour will amount to misconduct or, in serious cases, gross misconduct.<sup>286</sup>

The guidance acknowledges that “there will be occasions when police officers may need to use force in carrying out their duties, for example to effect an arrest or prevent harm to others”<sup>287</sup> and goes on to state that:<sup>288</sup>

- *It is for the police officer to justify his or her use of force but when assessing whether this was necessary, proportionate and reasonable all of the circumstances should be taken into account and especially the situation which the police officer faced at the time. Police officers use force only if other means are or may be ineffective in achieving the intended result.*

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<sup>284</sup> Criminal Procedure (Scotland) Act 1995, s. 14(8)

<sup>285</sup> Schedule 1

<sup>286</sup> The Police Service of Scotland (Conduct) Regulations 2014, regulation 2

<sup>287</sup> Police Service of Scotland (Conduct) Regulations 2014 Guidance, Paragraph 3.5.2

<sup>288</sup> Police Service of Scotland (Conduct) Regulations 2014 Guidance, Paragraph 3.5.3 (emphasis added)

Ms Caffrey gave evidence that constables may use force only to the extent that it is necessary, proportionate and reasonable in all the circumstances.<sup>289</sup> There is agreement between Ms Caffrey, Mr Graves and the individual officers that they need to justify each and every use of force by them whilst on duty.<sup>290</sup>

In the same circumstances, two police officers may react differently and select different options; but it is for each officer to justify their individual course of action.

The Use of Force Standard Operating Procedure (Version 1.03) identifies that:<sup>291</sup>

*Any force used by a Police Officer or member of Police Staff must be **legal, proportionate, and reasonable in the circumstances and the minimum amount necessary** to accomplish the lawful objective concerned.*

The Standard Operating Procedure goes on to state that:<sup>292</sup> *An arrest should be made as unobtrusively as possible. In no circumstances must a prisoner be harshly treated or have greater force used towards that person than is **absolutely necessary** to restrain them.*

### **The Framework Against which the Events Can be Considered**

This was set out in Use of Force Standard Operating Procedure (Version 1.03); the 2013 OST Manual which mirrored the wording of the SOP; and there was also a PowerPoint presentation that was used for training at the time. All of these documents mirrored each other, so even if an individual officer had not read the

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<sup>289</sup> 28/74-75

<sup>290</sup> Evidence of Joanne Caffrey 28/74; re: Power Point COPFS 05973; slides 7 and 8;

<sup>291</sup> Police Scotland Use of Force Standard Operating Procedure (Version 1.03) (PS10933), paragraph 22 (emphasis added)

<sup>292</sup> *Ibid*, paragraph 2.4 (emphasis added)

entire Manual or seen the PowerPoint, the SOP applied to them in relation to any Use of Force.<sup>293</sup> Use of Force was an important part of their training.

You heard from both PC Walker<sup>294</sup> and PC Tomlinson<sup>295</sup> who were familiar with the SOP and gave evidence about the Profiled Offender Behaviour and the Reasonable Officer Response in the Use of Force SOP. This should assist you in interpreting paragraphs 4.5 and 4.7 of the SOP.

Martin Graves also referred to the SOP (v1.03) section 2.2: and agreed any force used by a police officer must be legal, proportionate and reasonable in the circumstances and the minimum amount necessary.<sup>296</sup> Individual officers must be prepared to account for decisions and show their actions were justified.<sup>297</sup>

Joanne Caffrey also gave evidence about the framework that existed at the time that would allow you to compare the actions of PC Paton and PC Walker (and the officers who arrived after them) against that framework.

You may wish to consider the Offender Profile Behaviour category and compare an appropriate level of force that a reasonable officer would adopt, facing that situation; using this SOP in light of the evidence you have heard from Joanne Caffrey alongside the officers' evidence e.g., PC Walker. There is not a clear direct line between each, as there are 6 categories of offender behaviour and 5 police responses, but you have heard about the Profiled Offender Behaviour paragraphs 4.6 and 4.7 and the Reasonable Response. Reasonable officers could use different responses based on the circumstances they are aware of and their own personal capabilities.

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<sup>293</sup> PS10933

<sup>294</sup> From 7/70/11

<sup>295</sup> From 10/133/8

<sup>296</sup> 27/11/17-22

<sup>297</sup> 27/1321-15/14

For example, when considering a subject walking along the street, with purpose, on a mission, not shouting, not brandishing of a knife, no aggression displayed, Joanne Caffrey assessed that sort of behaviour as Level 1 and a Reasonable response of up to Level 2.<sup>298</sup> When the subject fails to comply, his offender profile behaviour goes up to Level 2.<sup>299</sup> Joanne Caffrey was of the view that a reasonable officer, if faced with Level 2 behaviour would not respond with a Level 4 response.<sup>300</sup>

Having carried out that comparison, then you should consider the officer's explanation for adopting the level of force they adopted and whether that was reasonable, bearing in mind that officers can choose different options and still be adopting reasonable force.

Joanne Caffrey explained that where there are signs of bulging eyes; inappropriate clothing for the weather; a lack of communication or response to the police; CS or PAVA are not working then this should be an indication that medical treatment is required.<sup>301</sup> Ms Caffrey explained that the number of calls being received by the police was also a factor and officers should readily identify that the subject is under the influence or suffering from a mental health crisis.<sup>302</sup> If an officer identifies Acute Behavioural Disturbance (ABD) then the aim should be 'contain not restrain' because restraint increases the risk of death.<sup>303</sup> Martin Graves explained that the officer should be thinking, is the person suffering from some disorder, thinking everything's not well,<sup>304</sup> and summoning medical assistance. Joanne Caffrey agreed with his evidence.<sup>305</sup>

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<sup>298</sup> 28/160; 166-168

<sup>299</sup> 29/3/25 – 29/4/11

<sup>300</sup> 29/4/18-22

<sup>301</sup> 29/11/12-18

<sup>302</sup> 29/12/10-17

<sup>303</sup> 29/12/25 to 13/1-3

<sup>304</sup> 29/17/19-24 to 18/1

<sup>305</sup> 29/18/2-3

This ties in with the evidence of Inspector Kay who states that it was going through his mind, from the information on the STORM cards,<sup>306</sup> that if someone is trying to “slash vehicles on the way past or he’s trying to stab them or whatever” it is not rational behaviour, so there would be consideration of what the reason would be behind that behaviour and whether the person is having a mental health episode, under the influence of drink or drugs, has fallen out with their partner, or suffered a bereavement.<sup>307</sup>

Joanne Caffrey explained the reasonable officer should consider the actual risk and it would be difficult to contain a subject in the area of Hayfield Road<sup>308</sup> but emphasised the importance of recognising actual risk and not hypothetical risk. If the subject could not be contained then a reasonable officer would approach the subject and that was one of the tactical options,<sup>309</sup> as was deploying CS spray.<sup>310</sup>

### **Caveat regarding Future Hearings**

I invite you to not form any concluded views about the state of mind of the officers, pending further evidence.

Firstly, we will hear further evidence about training at our hearing later this year. This may impact on how you view their actions at Hayfield Road. PC Paton felt he did not have adequate training for this situation, or resources.

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<sup>306</sup> 24/34/5

<sup>307</sup> 24/33/15 – 24/34/12; SBPI-00036, paragraph 71

<sup>308</sup> 30/10/9-13

<sup>309</sup> 30/10/15; 30/10/16-17

<sup>310</sup> 30/10/24

Secondly, I hope to lead evidence about the potential impact of Racial Threat Theory in the final Race hearing next year. This may assist you in gaining a full understanding of the events that occurred at Hayfield Road.

### **PC Nicole Short**

Ms Short described the demeanour of Sheku Bayoh as he walked along the footpath: “he walked as if he was on a mission, as if nothing else that was happening around him mattered, or was “sinking in” .<sup>311</sup> Ms Short described “mirroring” Sheku Bayoh, walking alongside him. She was trying to engage with him, but he did not react.<sup>312</sup>

At some point she stopped mirroring him. She took her own baton out.<sup>313</sup> She described him as being very confrontational and aggressive.<sup>314</sup> He started walking towards her with a kind of “boxer skip”, like the footwork of a boxer in the ring and she swiped her baton at him but missed; then instinct kicked in and she turned and ran away from him.<sup>315</sup> She was completely overcome with fear. Her whole body was shaking. He also had his hands up like a boxer. As she was running across Hayfield Road she was screaming. She felt him behind her and then she was hit with “an almighty blow” to the back of her head just at her ear. She was unable to stay on her feet and fell forward, putting her hands out to save herself.<sup>316</sup>

She curled up into a ball and grabbed the bun at the back of her head trying to protect her head. She was on her right-hand side on the ground. He was at her back. She was bracing herself for further blows. She attempted to stand up, but her legs

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<sup>311</sup> 8/55/18

<sup>312</sup> 8/58/24

<sup>313</sup> 8/60/20

<sup>314</sup> 8/63/19

<sup>315</sup> 8/68/14

<sup>316</sup> 8/71/3

weren't working; she tried to get up again. She saw PC Paton who was trying to keep his eyes open; his eyes were bulging out of his head. He came over and helped her up. He told her to run to the van. She staggered back to the fish van.<sup>317</sup>

There is support for PC Short's evidence about a strike to the head and a fall to the ground from PC Tomlinson<sup>318</sup> and PC Walker<sup>319</sup> and to a lesser extent from PC Paton and Kevin Nelson<sup>320</sup>. There is medical evidence supportive of her having been struck to the rear of her head, and to sustaining injuries consistent with her falling to the ground.

The CCTV demonstrates someone running onto Hayfield Road from the direction of the footpath, followed by another person. The first person falls to the ground and the second person is also seen moving. This CCTV footage will assist you in considering the evidence given by PC Short. There is an Airwaves entry on the Combined Audio and Video Timeline at 07:21:02 hours where PC Paton says, "Officer's injured...PC Short...male".

You also have the evidence from PC Tomlinson as an aid to interpret what is seen on the footage. He spoke about the footage starting at 07:21:03 and who could be seen falling on the video; as well as his own position.

Thereafter, the versions given by the witnesses diverge.

### **The Stamp(s):**

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<sup>317</sup> 8/63/7-8/75/25

<sup>318</sup> 9/76/1 and 9/77/15

<sup>319</sup> 6/192/6

<sup>320</sup> SBPI-00014



## Version 1: PC Tomlinson

Having seen the man punch PC Short, she fell to the ground face down and tried to protect her head and pushed herself up with her hands at the same time. As PC Tomlinson ran over to assist her the man “**stomped on her back**” with his foot with a great deal of force. **He put his full body weight into the stomp and used his arms to gain leverage.** After he did this, she went back to the floor and never moved. PC Tomlinson thought that the man had killed PC Short. The man **stomped on her back again with the same force** and she was not moving. PC Tomlinson stated: “**I struck him with my baton once to his head. It was to the left-hand side of his head, diagonally from the back of the head to his jaw.** He stopped stomping on Nicole at this point. **I think I hit him again which was about 2 or 3 times in total to the head area.**” He also **struck the man 2 or 3 times with his baton to his arms.**<sup>321</sup>

PC Tomlinson thought that Sheku Bayoh had killed Ms Short. The stamp was on her vest below the word “police”; on the large flat section of her back. He did not remember seeing PC Short curled up in the foetal position. PC Tomlinson demonstrated Sheku Bayoh making two hard stamps with full force, with his **right leg lifted, thigh horizontal, knees at right angles and arms raised.**<sup>322</sup>

### Support for Tomlinson’s Version:

PC Short: There is no support from PC Nicole Short in her oral evidence for Tomlinson’s version of stamps. She does not recall being stamped on twice (or even once).

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<sup>321</sup> PIRC 263; SBPI 00043; 9/8/17-94/4

<sup>322</sup> 9/80/3ff

PC Short gave a statement on 9 June 2015.<sup>323</sup> In this she stated that: “I went back to the canteen I sat down with my team, they asked me how I was. I explained I was “sore”. I said **“What happened to me after he punched me?** PC Tomlinson said **“He was stamping and kicking at you every time you tried to get up”**. I knew he meant Sheku Bayoh when he spoke of this. PC Kayleigh Good also asked if I was alright, everybody else was just “flat”. I thanked all of them for “saving my life”.” It appears that her knowledge of the stamp(s) only comes from this conversation with PC Tomlinson.

PC Walker: PC Walker says that he looked up and saw the man chasing PC Nicole Short. She was running away from him and he was chasing after her. He was very close to her. PC Walker said to PC Paton “give me your baton”. He looked back to PC Nicole Short again and she was falling to the ground with the man right behind her. Both her feet were off the ground and the man’s hands were raised. PC Paton gave him the baton. He turned back towards PC Nicole Short and started running towards the man and PC Short. PC Short was lying face down in the prone position on the road. Sheku Bayoh had his right leg in a high raised position with his arms raised up at right angles to his body and brought his right foot down in a full force stamp on the lower back, kidney area, of PC Short.<sup>324</sup> PC Walker demonstrated the full force stamp.<sup>325</sup> He did not recall Tomlinson’s use of his baton.

Acting Police Sergeant Maxwell:

The audio of the Airwave broadcast appears to record Sergeant Maxwell broadcasting the following message: “Although there’s no visible injuries to PC

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<sup>323</sup> PIRC-00255

<sup>324</sup> 7/13/4

<sup>325</sup> 7/11/20

Short she's eh... been **stomped** to the body a few times etcetera...ehm...and struck to the head..."<sup>326</sup> Sergeant Maxwell did not see this, but it was information shared by PC Tomlinson that Acting Sergeant Maxwell relayed on airwaves within a short time, at 07:24:28.

### **Version 2 – Kevin Nelson**

In his oral evidence: Mr Nelson said that he did not see Mr Bayoh stamping on Ms Short. He did not see his arms up in the air in the manner described by PC Tomlinson.<sup>327</sup> He said that he did not see Sheku Bayoh move towards the policewoman to strike her again.<sup>328</sup> He appeared to be trying to get away as she was going down, he was moving away from her. He was going diagonally towards Hendry Road. He demonstrated the striking of Ms Short and Sheku Bayoh then moving away.<sup>329</sup>

Kevin Nelson,<sup>330</sup> in a statement given to PIRC on 5 May 2015, stated that he saw the black man "**acting as if the police were not talking to him**. He **ignored** everything that was being said ... he **did not appear to be carrying anything** in either of his hands." He stepped towards the female officer and "appeared to **lunge at her with his left fist** towards her face, head area." Mr Nelson stated: "I believe he **struck at her with his closed fists at least 3 times**. I heard her scream out." At this point Mr Nelson decided to go into the front garden to have a closer look. He went on to say: "**I believe it may have taken me between 10-20 seconds to do this**. I exited my house via the front door and stood looking over my gate. In this time the black male **now appeared to be face down** on the pavement to the left of my house on my side of the street. I could no longer get a clear view of this male, there appeared to be **five**

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<sup>326</sup> PIRC-00266; PIRC-00267

<sup>327</sup> 12/45/1-3

<sup>328</sup> 12/48/5

<sup>329</sup> 12/61/5

<sup>330</sup> PIRC-00017; PIRC-00018; PIRC-00020; COPFS-00055

**or six male police officers attempting to restrain him.**” “I observed one officer appeared to be **kneeling on the ground with the weight of his upper body by use of his arms to the black male’s shoulder/back of neck area.**” “The other police officers appeared to be **laying across the black male’s body.**”

He gave evidence about a precognition given to Crown Office on 6 October 2016 where he described having noticed a female officer.<sup>331</sup> He stated: “At that point it was like something triggered a switch in the guy. **He ran into the middle of the road and lunged and swung a punch at the female officer’s head. He caught her with the punch** and tried again but missed as she had stumbled to the side.” Mr Nelson then left his living room to go outside. This “took about **10 seconds**”. “Once outside I saw two officers on the ground struggling to restrain him. They were on my side of the road. Everyone was shouting and swearing. **It was ‘get the fuck off me’ and ‘calm the fuck down’.** “He was kicking and punching without direction. I could only describe it like a toddler having a tantrum on the ground. They had got him to the ground, but he was having none of it. The two officers were trying to stop him from lashing out. He was **swinging his arms and legs and trying to lift his head up.** At this point he was **face down** with his legs turned up at the knees.”

In his oral evidence to this Inquiry and inquiry statement, he described seeing Sheku Bayoh swinging to hit the policewoman who was the officer he was closest to. She was backing away from Sheku Bayoh.<sup>332</sup> When the blow struck, she was perhaps side on to Mr Nelson but not facing the witness. He described officers walking backwards away from the man: taking small steps backwards. He described Sheku Bayoh swinging his arms and making a punching motion towards the female officer’s head. Both hands went up. The first blow landed and he saw the policewoman stumbling back and to the side from the force of the blow. He could

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<sup>331</sup> COPFS-00055

<sup>332</sup> 12/29/5; SBPI-00014, paragraph 6

not say whether the second blow had struck the woman. Mr Nelson could not see how she fell because his view was obstructed by the hedge and the cars. He did see her starting to go down.

During a subsequent interview with Mark Daly of the BBC, Mr Nelson was asked about further physical contact between Sheku Bayoh and PC Nicole Short. He replied: “No. He was **running off ... after the punch, that was it, there was no more attack** on her at all.”

In particular, Mr Nelson was asked whether Sheku Bayoh stamped on PC Short and replied, “**That never happened. I didn’t see him stamping at all.**”

He explained why he gave the Panorama interview. He did not think it was possible that Sheku Bayoh could have stamped on the female officer in the 15 seconds that he was walking from the window to the gate. This was because they were moving the way they were moving and the police officer grabbing him. He could not see Mr Bayoh having time to go back, stamp on the officer and then get back to where he was on the ground with the police officers on top of him within 15 seconds.<sup>333</sup> He first became aware that people were suggesting that Mr Bayoh stamped on Nicole Short sometime after the event.

In considering these differences and which evidence you prefer – Version 1 or 2, there is further evidence that may assist you in your task: images from ALI; medical and forensic evidence; and photographic evidence.

### Advanced Laser Imaging (ALI)

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<sup>333</sup> 12/88ff

Mr DeGiovanni from ALI created images depicting the view from Mr Nelson's living room window<sup>334</sup> which Mr Nelson agreed was a reasonable indication of the view he had that day. As well as comparing the timings from the CCTV footage and how long Mr Nelson was away from his window and the events he did not see, including the baton use by PC Tomlinson and the bear hug bringing Mr Bayoh to the ground. In addition, Mr Nelson's PIRC statement makes no mention of an officer taking Mr Bayoh to the ground but he did mention this in evidence, describing a 'bear hug type tackle'.<sup>335</sup> You raised with him his failure to mention that when he gave the statement, two days after the event. He agreed that you had reason to be puzzled about that.<sup>336</sup>

#### Evidence about Injuries/Pain from Witnesses

You have heard evidence which should allow you to consider whether there is evidence of injury and medical evidence consistent with Mr Bayoh having stamped on PC Short as she lay on the ground.

In her statement dated **9 June 2015**<sup>337</sup> PC Short states she was curled up in a ball with her hands gripping her head. She was in the foetal position. She "**was waiting for more blows**".

PC Short stated: "I tried to get on my feet. I could not get my legs to work. I went down on my knees. Then I got to my feet ... **"I felt my right side was painful. I don't know what caused this"**. I staggered towards the van holding my side..." In her statement dated 9 June 2015<sup>338</sup> PC Short stated: "**I do not recall "strikes to my**

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<sup>334</sup> 12/68/23

<sup>335</sup> 12/39/23

<sup>336</sup> 12/84/3

<sup>337</sup> PIRC-00254

<sup>338</sup> PIRC-00255

**body” whilst I was lying on the ground”**. In her PIRC statement dated 16 June 2015<sup>339</sup> PC Short confirmed she was **not aware of bruising on her chest or torso, but did have pain, front and back from her collar bone to her hip** and she had told her GP and Dr Anderson, the Consultant.

These descriptions do not mention passing out or being passed out for any length of time. Nicole Short described that when she was on the ground, she had a sore body. Her side and her hips were sore. She had had the wind knocked out of her. Her utility belt had dug into her hips making them sore.<sup>340</sup>

PC Smith saw PC Short after his arrival between 07.21.28- 07.21.31 PCs Smith and Good arrived in their police vehicle which stopped near the transit van. PC Short communicated to PC Smith that she had been hit on the back of the head.<sup>341</sup> PC Good did not recall her complaining of any pain.<sup>342</sup>

At one point there was evidence given by Sergeant Maxwell, that on arrival PC Short told him that she had been attacked by the male and “kicked and punched”. He could not recall this in evidence and that information did not appear in any airwaves. He subsequently said that he did not dispute her evidence that she did not say that.<sup>343</sup>

Chief Inspector Robson drove Nicole Short the short distance to the hospital. In his operational statement he said PC Short recalled “*seeing the male’s foot coming towards her head.*”<sup>344</sup> In his PIRC statement he suggested that PC Short told him that she

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<sup>339</sup> PIRC-00256

<sup>340</sup> 8/116/16

<sup>341</sup> 11/71/10; 11/73/3; 11/74/19

<sup>342</sup> 12/146/13; 12/149/11-150/11

<sup>343</sup> 15/12/12

<sup>344</sup> SBPI-00133

recalled Mr Bayoh's "foot coming towards her head" but in his inquiry statement he said he made an assumption because she was complaining of a sore head and he may have been "tainted" by the media.

### Subsequent Medical Examinations – PC Nicole Short

Dr Mitchell saw Nicole Short in accident and emergency at the Victoria hospital at 08.10 on 3 May 2015. She conducted a full body "top-to-toe" examination of PC Short. Nicole Short had abrasions over her elbows and knees. There were no breaks in the history given by Nicole Short: she was able to describe what had happened prior to the event, namely, that she had been chased; she could remember the fall itself and putting her arms out to save herself; curling up into a ball; and being lifted by one of her colleagues.<sup>345</sup> Dr Mitchell confirmed that in her notes there was no reference to a complaint of back pain or pain on the right hand side of the body of PC Short. She would have expected to make a note if she had been told about such pain.<sup>346</sup> She squeezed the kidney area to elicit tenderness. She would have noted what she was told.<sup>347</sup>

Dr Norrie was a forensic medical examiner who examined Nicole Short on 3 May 2015 at Kirkcaldy Police Office. She conducted a top-to-toe examination. There were injuries to her right knee<sup>348</sup>, left knee and left hand. She was tender in the right occipital area and right mastoid: no injuries were noted but she was tender on palpitation. She was tender in the right cervical spine, but no injuries were seen. There was no mention of any back injuries in the notes which meant that she did not see any injuries to the back of Nicole Short. Her GCS score was 15 which was normal

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<sup>345</sup> 16/29/18

<sup>346</sup> 16/13/14

<sup>347</sup> 16/38/4

<sup>348</sup> 16/62/6



and there was no cause for concern.<sup>349</sup> Dr Norrie examined Nicole Short and noted any complaints of pain or tenderness that Nicole Short gave. She noted no injuries in relation to the back or the abdomen.<sup>350</sup>

On and after 4 May 2015 there are references were made to a stamp/jump/kick on her back/head. At around 1540 hours, on 4 May, PC Short attended Accident & Emergency and was seen by Dr Zoe Smeed.<sup>351</sup> On 5 May 2015 PC Short attended her GP, Dr Erica Ellison.<sup>352</sup> On the evening of 10 May 2015 PC Short phoned NHS 24. She was seen at Victoria Hospital by a junior doctor, Dr Christopher Speakman.<sup>353</sup> She was admitted to Kirkcaldy hospital, kept in overnight and given a CT scan.<sup>354</sup> On 11 May 2015, at around 0850 hours, she was examined by Consultant Physician, Ali Siddiqui.<sup>355</sup>

#### Medical Support: Mr Anderson & Mr Crawford

On 21 May 2015, she was sent by the Scottish Police Federation to a **Consultant, Mr Ian Anderson**.<sup>356</sup> This was 18 days following the incident. He noted that she had suffered contusions to the right side of her torso, particularly over her lower right rib cage, consistent with having been caused by blunt injury. In his Inquiry statement, para 39, Mr Anderson said the following about the development of visible injuries to the torso:<sup>357</sup>

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<sup>349</sup> 16/64/10

<sup>350</sup> 16/71/5

<sup>351</sup> PIRC-00259; 8/152/13ff

<sup>352</sup> PIRC-00320

<sup>353</sup> PIRC-00319

<sup>354</sup> 8/155/6

<sup>355</sup> PIRC-00288

<sup>356</sup> PIRC-01405

<sup>357</sup> SBPI-00077, paragraph 39

“That would happen pretty soon. Certainly in the hours and by the day following an injury you would expect to see something. If she had bruising at the site of blunt force trauma, it would be visible, certainly by the next day, certainly by the time she had been seen several times in the hospital, if anybody had looked at them. If she’d had blunt force injury at that site, they would have seen bruising.”

He appeared to support the view that the contusions and an injury to her back were consistent with being stamped on, on 3 May 2015.

In evidence he was asked whether if the evidence of those officers about the stamping on the lower back of Nicole Short with that level of force, as demonstrated, was accepted, whether he would have expected there to be some visible signs of that on her body. His answer was “Yes”, there would be. He would have expected the person receiving these blows to complain about exquisite pain at the impact site such that they would have real difficulty even standing straight up. He would have expected external evidence of bruising or scuff marks, although that would have been mitigated by the fact that she had been wearing a protective vest. So, he would have expected to see quite marked localised tenderness and developing bruising. The doctors who examined Nicole Short at the hospital would have seen that if it had been there. In his oral evidence he did not consider that the demonstrations by Tomlinson and Walker which we showed him were consistent with the injuries he saw on Nicole Short during his examination.

On 16 August 2019, Dr Crawford prepared a desk top report<sup>358</sup> for the Crown on “Whether the injuries are consistent with her being stamped on in the manner described”. “In my opinion, the injuries were consistent with her being stamped on

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<sup>358</sup> COPFS 00085

in the manner described.... the complaint of all over body pain the following day would also be consistent with this account, as well as the effects of extreme physical exertion in a “fight or flight” situation.”

In his Inquiry statement<sup>359</sup> he said the following: “[24] There certainly wasn’t any evidence of serious injuries caused by stamping. From my point of view, stamping is a very dangerous and potentially lethal injury mechanism, it can cause very serious life changing injuries. I’ve seen people with this. Stamping to the head or body, people have died as a result of that. It’s potentially life-threatening. It’s fair to say, in my opinion, there is no evidence of serious injuries or gross injuries consistent with a serious or life-threatening stamping injury. [25] Given the description of the stamping, I would have thought there would have been evidence of it, such as fractured ribs or significant blunt force injury or pattern bruising. [26] However, the caveat is that she was wearing a protective vest and clothing that could have afforded protection in terms of some of the severity of the injury. In other words, it may have explained why there was no visible evidence of injury to her body.”

He accepted as a possibility that the pain in the right-hand side could have been caused by falling onto the ground and lying on her utility belt and CS spray can.<sup>360</sup>

### Photographs of Injuries

PC Short explained that when she had the photographs taken it was of areas where she felt pain. The photographer was trying to take photographs of any injuries that she had and where she had been struck and where she felt pain.<sup>361</sup>

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<sup>359</sup> SBPI-00117

<sup>360</sup> 16/171/18

<sup>361</sup> 8/150/15

Judith Harley, Scene examiner & Photographer, took photographs of Nicole Short's injuries on 3 May 2015. On 8 May 2015 she took further photographs of Ms Short. She explained, when taking photographs of this kind the photographer is guided by the person who was injured. She would say to the person, "What injuries do you want to disclose to us?" And ask whether the person was happy for these to be photographed. If the injured person disclosed an area of the body which they believed was injured, then the photographer would photograph that area. There were no photographs of her lower back.

### Forensic Evidence

You will also wish to consider whether the forensic evidence is supportive of or inconsistent with stamp(s) on PC Short.

#### *The mark on PC Short's vest*

There is conflicting evidence between PC Short; PC Tomlinson; Jane Combe; Amanda Givan; and DC Bruce. Regardless of the conflicts, there is a mark visible on the vest and this was subject to forensic examination<sup>362</sup>.

You also heard evidence about the testing and comparison work done for the first time, by experts instructed by the Inquiry: Professor Lorna Dawson<sup>363</sup> and Paul Ryder.<sup>364</sup> Professor Dawson was of the view that the soil on Mr Bayoh's boots was consistent with contact having been made between his footwear and the vest of PC Short.

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<sup>362</sup> MacPhie, Day 19; Marven; Day 19

<sup>363</sup> Day 31;

<sup>364</sup> Day 32

You will have to consider the CCTV footage both in terms of what can be seen or not seen as it is, as our attempts made to explore possible enhancement of the footage, were not successful.

It appears that there are three possible conclusions open to you based on the evidence available:

1. there were two full force stamps as described and demonstrated by PC Tomlinson, or, at least, one full force stamp as described and demonstrated by PC Walker;
2. there was no stamping;
3. there was some contact between the footwear of Sheku Bayoh and the vest worn by Nicole Short, but not in the manner described by the officers.

### **Use of Force in response to the Stamp(s)**

Depending on your decision on whether or not Mr Bayoh stamped on PC Short, you will then have to determine whether the response by PC Tomlinson and the response by PC Walker was a reasonable use of force.

The Profiled Offender Behaviour and Reasonable Officer response categories are available in the SOP as before. Ms Caffrey gave evidence about the framework and the actions of a reasonable officer, against which you can consider the actions of PC Tomlinson and then PC Walker. She categorised a subject chasing an officer, particularly a smaller female officer, as Level 6 behaviour. Striking an officer to the head area, the red area, is a serious risk.<sup>365</sup> The demographics of the officer are to be

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<sup>365</sup> 29/27/11-23

considered: if smaller. A reasonable officer would consider “up to” a Level 5 response, deadly or lethal force,<sup>366</sup> bearing in mind preclusion and minimum force.<sup>367</sup> Ms Caffrey was of the view that a reasonable officer, responding with Level 5, bearing in mind the principles of minimum force and preclusion could take action that included multiple strikes with a baton and a shoulder charge to the ground.<sup>368</sup> Each strike would need to be justified whether to the head or other area.<sup>369</sup>

Ms Caffrey made one caveat to that statement namely that if the strikes are to the head, the reasonable officer must make instant disclosure to the ACR – an ambulance is now required for the person as well.<sup>370</sup> Further, any officer can contact ACR with that information.<sup>371</sup>

Ms Caffrey saw no difference between Martin Graves and her evidence on this matter.<sup>372</sup> A strike to the head that took a person off their feet constituted additional aggravation and risk and was equal to a stamp on the back.<sup>373</sup> Martin Graves viewed stamping on an officer on the ground as a level of ongoing serious assaultive behaviour.<sup>374</sup>

Each strike must be justified bearing in mind the circumstances which exist at the time. You will have to compare PC Tomlinson’s PIRC statement (Mr Bayoh stopped after the first strike) and his oral evidence (Mr Bayoh continued to stamp on PC Short after the first strike).

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<sup>366</sup> 29/28/25

<sup>367</sup> 29/29/1-5

<sup>368</sup> 29/35

<sup>369</sup> 29/32/19-25; 29/34/8; 29/34/16-19

<sup>370</sup> 29/33/13-23; 29/33/23; 29/34/8

<sup>371</sup> 29/30/19

<sup>372</sup> 29/36/25 to 37/1

<sup>373</sup> 29/37/20

<sup>374</sup> 29/38/7 to 14

Dr Shearer confirmed that the abrasion to Mr Bayoh's forehead, and underlying haemorrhage, were consistent with blunt force and could have been caused by a baton strike. As there was no underlying fracture, the force would have been less than moderate.

### **Restraint**

Mr Bayoh was then brought to the ground by PC Walker<sup>375</sup> who shouldered him to the ground.<sup>376</sup> There are differences between PC Walker's self-penned operational statement; his PIRC statement; and his evidence about the nature of this manoeuvre, but there is no disagreement that PC Walker brought him to the ground in a forceful move. In this regard he is supported by PC Tomlinson<sup>377</sup> who described a bear hug. Whether or not it was a 'shoulder charge' or a 'bear hug' or a 'wrestle like manoeuvre' (Nelson) may make little difference. The CCTV footage is available for whatever assistance that may provide.

### **After being brought to Ground**

The level of force and pressure used and the weight applied to the body of Mr Bayoh and where, will have to be carefully considered by you, when you determine whether the force used was reasonable. The corresponding actions of Mr Bayoh cannot be ignored.

PC Walker described being "on his knees while Mr Bayoh was on his back"<sup>378</sup> and "making an attempt to get over the top of his shoulders and hands to get Mr Bayoh

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<sup>375</sup> 7/17/8

<sup>376</sup> 7/15/3

<sup>377</sup> 9/101/21

<sup>378</sup> 7/20/22 to 7/21/8

under control". He "reached across to get a hold of his hands and just pin them down". He was asked if that was pinning him down to his chest and he said: "just any way possible".<sup>379</sup> He was struggling with Mr Bayoh who was punching him.<sup>380</sup> He raised his shoulders and tried to punch me with his right-hand. "As I lent over I then struck him a couple of times with a clenched fist somewhere around his left cheek bone area on his face and he continued to struggle".<sup>381</sup>

Mr Bayoh was "actively resisting with extreme force" and was himself throwing punches at this point.<sup>382</sup> I asked if at any stage did you lie on Sheku Bayoh? He answered: "I think as part of having to reach across him ... the upper part of my body was on his shoulder."<sup>383</sup> He also described being on his knees and reaching across Mr Bayoh. His shoulder and hands were reaching across.<sup>384</sup> He said "I put pressure from my chest area onto his right shoulder, pushing him onto his left side. My body was in a crouched position over him with my knees on the pavement against his back so he couldn't turn back towards me to lash out."<sup>385</sup>

PC Tomlinson arrived a "second or two" after PC Walker took Mr Bayoh to the ground.<sup>386</sup> His recollection was that Mr Bayoh was in the prone position during the initial part of the restraint.<sup>387</sup> PC Tomlinson delivered 2 or 3 baton blows to Mr Bayoh's Achilles area and then straddled his legs.<sup>388</sup>

### Mr Bayoh's Struggle against Restraint

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<sup>379</sup> 7/21 and 22/10

<sup>380</sup> 7/22:15

<sup>381</sup> To 7/23/19

<sup>382</sup> 7/25/3

<sup>383</sup> 7/29/20

<sup>384</sup> 7/30/1-12

<sup>385</sup> 7/30/16

<sup>386</sup> 9/116/16

<sup>387</sup> 10/22/17; SBPI-00043, paragraph 31

<sup>388</sup> 116/20 to 117/13; and 119/10-22



Ms Colette Bell gave evidence that Mr Bayoh had said to her, “Do you know as a black man when you’re up against the police it doesn’t matter if you have done right or if you’ve done wrong, the only way you’re getting out from a confrontation with the police is if you run. There is no way out as a black man when you are coming up against the police.”<sup>389</sup>

Dr Lipsedge gave evidence that if a person has been sensitised by a previous negative experience of the police, they may resist arrest even if not intoxicated or mentally unwell “because they are truly in fear of their lives”.<sup>390</sup> When mental illness or intoxication and paranoia are present, “the suspicion and fear are compounded, multiplied enormously”. So, the reaction will be even more intense.”<sup>391</sup> When a paranoid person is being restrained, “they will struggle against the restraint because they believe that they are going to be harmed ... there is a vicious circle of struggle and fear on the part of the restrained person, and the struggle provokes the restraining officers to exert even more pressure. So, from the patient’s point of view, it is a life and death struggle. From the restraining officers’ point of view, it’s a sign of lack of cooperation.”<sup>392</sup>

Dr Shearer explained that stimulant drugs, such as Alpha-PVP and MDMA, can increase both heart rate and blood pressure, and cause arrhythmias and cardiac arrest. However, both Dr Shearer and Dr Cary emphasised that it is important not to look at any aspect of the evidence in isolation, but to take account of the full circumstances. Dr Cary opined that what was happening at the time of cardiac arrest was of particular importance. Dr Cary explained that struggling against restraint is “very, very energetic”.<sup>393</sup> The restrained person’s muscles “are doing a huge amount of work, they

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<sup>389</sup> 40/95/25 – 40/96/5

<sup>390</sup> 55/85/10

<sup>391</sup> 55/85/15

<sup>392</sup> 55/14/18

<sup>393</sup> 59/41/20

are consuming oxygen, putting your blood pressure up, putting your pulse rate up.”<sup>394</sup> Dr Cary defined hypoxia as a lack of oxygen delivery to the tissues. He explained that a lack of oxygen in the blood may cause the heart to become vulnerable to rhythm disturbances, which can culminate in cardiac arrest. If not corrected, hypoxia can lead to unconsciousness.

Dr Cary explained that when a person is hypoxic, anaerobic respiration occurs, producing lactic acid, leading to acidosis. “In this case the struggling is a very important component ... because you may well have evidence of lactic acidosis from extreme muscle exertion.”<sup>395</sup> He explained that heart function is less effective when the blood is acidic. Mr Bayoh’s struggle against restraint may have been due to panic: a desperate attempt to take in oxygen.

#### When was Mr Bayoh brought to the Ground?

PC Tomlinson pushed the emergency button for assistance at 07:21:19 hours. By the time he did so, Mr Bayoh was on the ground for “maybe seconds”.<sup>396</sup> He was in a position of straddling, lying across Mr Bayoh and using his free hand to push and then brace himself and using his radio to press his emergency button.<sup>397</sup> He then “moved to a lying position across diagonally”<sup>398</sup> which he demonstrated. He put his weight on his knees.<sup>399</sup>

In summary, the first officers arrived at 07:20:23 hours and by the time PC Tomlinson pressed his emergency button it was 07:21:19 hours. On my calculation

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<sup>394</sup> 59/41/17

<sup>395</sup> 59/81/24

<sup>396</sup> 42/9-17

<sup>397</sup> 41/19 – 42/7

<sup>398</sup> 120/17-21

<sup>399</sup> 121/11-13

this is a period of 56 seconds and by this time Mr Bayoh was on the ground with PC Tomlinson straddling his legs; CS and PAVA sprays had been discharged in his direction by 3 officers; he had been struck with a baton multiple times to the head and arms and he had been shoulder charged to the ground.

Ms Caffrey gave evidence about a reasonable officer using minimum force and bearing in mind the principle of preclusion, she commented on this period of time and described this as 'a lot in a small period'. She compared this with Tactical Communications which is a lengthy process. She gave a real-life personal example of a situation she found herself in.<sup>400</sup> Her incident lasted 10 to 20 seconds but where she had still observed the principle of preclusion and had used her radio to contact control.<sup>401</sup>

During a phone call, Inspector Kay spoke to Inspector Stewart and stated that officers were on the scene "so quickly ... too quick actually",<sup>402</sup> meaning that there was no time for specialist resources to assist with the incident or to provide any guidance other than the reminder to make an initial assessment and feedback.<sup>403</sup> Within that call, Inspector Stewart stated that the incident was "an ARV job ... and a dog job" but that "it's obviously the time",<sup>404</sup> meaning that the attending officers acted before any specialist resources could be there to provide support.<sup>405</sup> Similarly, within a subsequent call to Sergeant Bisset, Inspector Stewart stated that the incident "was over before it started".<sup>406</sup>

### Bayoh flicks legs and Tomlinson loses balance

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<sup>400</sup> 29/97

<sup>401</sup> 29/100/20-22

<sup>402</sup> PS02107 (audio), SBPI-00113, transcript of call

<sup>403</sup> 5/194/1 – 5/194/18

<sup>404</sup> PS02107, transcript SBPI-00113, page 2

<sup>405</sup> 5/195/17

<sup>406</sup> PS02134 (audio), SBPI-00114, transcript of call

Mr Bayoh flicked his legs and caused PC Tomlinson to lose his balance and his grip on his handcuffs.<sup>407</sup> He said, “I’ve basically used my hand to basically support myself on the roadway and then I’ve basically flicked what would effectively be my right leg from under me and across and then taken a position.”

PC Tomlinson changed his position in response to this action, to lie across Mr Bayoh’s legs diagonally to stop this movement.<sup>408</sup> PC Tomlinson demonstrated his move from a position straddling Mr Bayoh’s legs to lying across them, during his oral evidence.<sup>409</sup>

#### Arrival of PC Paton & Use of Baton on Left Arm of Mr Bayoh

PC Paton was the third officer to arrive at the restraint.<sup>410</sup> PC Paton had a baton and passed it through Mr Bayoh’s left arm to try to pull Mr Bayoh’s left hand out from under him in order to get both hands behind Mr Bayoh’s back for him to be handcuffed to the rear.<sup>411</sup>

PC Paton’s eyes were still bothering him following exposure to CS/PAVA; he lent across Mr Bayoh<sup>412</sup> and wiped his eyes with the back of the left sleeve of PC Walker’s t-shirt.<sup>413</sup> PC Paton tried to get hold of Mr Bayoh’s left arm in order to exert some control over Mr Bayoh and allow someone to apply handcuffs to Mr Bayoh.<sup>414</sup> In

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<sup>407</sup> 9/122/2 to 125/1

<sup>408</sup> 9/120/19; SBPI-00043, paragraph 32

<sup>409</sup> 9/123/2 and 9/126/19; hearing footage PC Tomlinson (pm) – 25/05/2022, from 03:57:50, showing PC Tomlinson straddling Mr Bayoh’s legs, and from 04:02:50, showing the move from the straddle to a lying position.

<sup>410</sup> 7/26/10

<sup>411</sup> 7/35/2 and 7/38/16; SBPI-00039, paragraph 55

<sup>412</sup> 20/60/16

<sup>413</sup> 20/56/16 and 20/60/12; PIRC-00262, page 6, paragraphs 1 and 4

<sup>414</sup> 20/45/19; PIRC-00262, page 6, paragraph 6

doing so, PC Paton picked up<sup>415</sup> a baton that was lying nearby and, in its extended form,<sup>416</sup> put it across Mr Bayoh's left bicep.<sup>417</sup> PC Paton held both ends of the baton<sup>418</sup> in a "push up" position and, using his whole body weight,<sup>419</sup> applied pressure on the baton over Mr Bayoh's bicep.<sup>420</sup>

### Press Up by Mr Bayoh

PC Tomlinson attempted to apply a handcuff to Mr Bayoh's right wrist<sup>421</sup> but, when PC Tomlinson grabbed Mr Bayoh's wrist with his left hand,<sup>422</sup> Mr Bayoh pulled his hand forward, dragging PC Tomlinson closer to him.<sup>423</sup> At this point, PC Tomlinson describes Mr Bayoh being able to take a "bench press type position and lift himself from the ground" whilst PC Tomlinson attempted to restrain him along with PC Walker.<sup>424</sup> During the course of his oral evidence, PC Tomlinson clarified that in referring to a bench press type position<sup>425</sup> he was, in fact, referring to a 'press-up' type position.<sup>426</sup> PC Tomlinson demonstrated this press-up position during his oral evidence.<sup>427</sup>

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<sup>415</sup> 20/111/1

<sup>416</sup> 20/50/3; PIRC-00262, page 6, paragraph 7

<sup>417</sup> 20/46/20; SBPI-00081; PIRC-00262, page 6, paragraph 7

<sup>418</sup> PC Paton demonstrated how he was holding the baton within hearing footage Alan Paton (am) – 21/06/2022, from 01:54:50.

<sup>419</sup> 20/59/5 refers to "pretty much" his full weight.

<sup>420</sup> PIRC-00262, page 6, paragraph 7; PC Paton demonstrated how he held the baton to Mr Bayoh's bicep within hearing footage Alan Paton (am) – 21/06/2022, from 01:55:32

<sup>421</sup> 9/119/21; SBPI-00043, paragraph 42

<sup>422</sup> 9/123/17; hearing footage PC Tomlinson (pm) – 25/05/2022, from 03:58:10

<sup>423</sup> 9/120/6; SBPI-00043, paragraph 32; PIRC-00263, page 4, paragraph 3

<sup>424</sup> 10/27/2, 10/27/23 and 10/33/16; SBPI-00043, paragraphs 31 and 35; PIRC-00263, page 4, paragraph 3

<sup>425</sup> 10/22/8 to 26/8

<sup>426</sup> 10/26/2

<sup>427</sup> 10/25/14. PC Tomlinson (am) – 26/05/2022, from 00:52:45

PC Good recalled seeing PC Walker lying across the top of Mr Bayoh's back towards the upper half of his body to prevent Mr Bayoh from pushing up from the ground. Mr Bayoh was face down with his chest on the ground. His arms and legs were flying, kicking out and arms flailing, and he was trying to force himself up using his arms like a press up movement. Several officers were trying to restrain him by pushing him to the ground. PC Walker was lying across the top of the man's back towards the upper half in an effort to stop him from forcing himself to his feet.

From her position at the fish van, PC Short recalled seeing PCs Walker, Paton and Tomlinson struggling to control Mr Bayoh on the ground,<sup>428</sup> but viewing the struggle for a "few seconds only".<sup>429</sup> PC Short describes Mr Bayoh, in the course of this struggle, pushing himself up from the ground in a press-up position and managing to lift the weight of the three police officers in doing so.<sup>430</sup> Mr Bayoh was "incredibly strong" in resisting the officers' attempts to put him fully on the ground.<sup>431</sup>

Mr Nelson saw two of the officers: "They were lying across his body like crossing over it."

Dr Cary considered that it would have taken Mr Bayoh an enormous amount of effort to lift both his own body weight and that of others. This would have led to a risk of hypoxia and sickling. It may have caused a degree of mechanical asphyxiation/restriction of breathing. It is likely that the push up increased the build-up of lactic acid. So long as Mr Bayoh was not in cardiac arrest at this point, so Dr

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<sup>428</sup> 8/97/5; SBPI-00041, paragraph 17

<sup>429</sup> SBPI-00041, paragraph 18. This accords with PC Short describing that she "only had one glance at the officers and Sheku" within her PIRC statement (PIRC-00254, page 7, paragraph 4).

<sup>430</sup> 8/76/14, 8/95/18 and 8/96/12; SBPI-00041, paragraphs 17 and 19. Within her oral evidence, PC Short demonstrated Mr Bayoh's position when doing a press-up (8/96/21; hearing footage Nicole Short (am) – 24/05/2022, from 3:18:28)

<sup>431</sup> SBPI-00041, paragraphs 19. Within her oral evidence, PC Short describes it as being "like nothing that I had ever seen before in my life, that level of strength" (8/96/16)

Cary considered the effects were reversible and “tipping point” had not been reached.

In Dr Cary’s opinion, the weight of PC Walker across Mr Bayoh’s back was significant, in terms of the risk of asphyxia: it would have caused truncal compression, restricting both intercostal and diaphragmatic breathing. This would have reduced the capacity of his lungs to take in oxygen and reduced the store of oxygen in his lungs.

#### Arrival of PC Smith and PC Good

At 07:21:28 – 31 PC Smith and PC Good are seen on CCTV arriving at Hayfield Road. On approaching the restraint, PC Smith could see PCs Paton, Tomlinson and Walker restraining Mr Bayoh on the ground.<sup>432</sup> Whilst PC Smith’s Airwave transmission identified that Mr Bayoh was “secure on the ground”, it became apparent that this was “not entirely accurate” as Mr Bayoh was still struggling with the officers.<sup>433</sup>

Mr Bayoh was moving, trying to free himself by getting himself into the prone position, maybe pushing, or pulling<sup>434</sup> himself up.<sup>435</sup> PC Smith was unsure how much pressure or weight, if any,<sup>436</sup> PC Paton was applying to Mr Bayoh, but the point of contact was at the top of Mr Bayoh’s torso, his right shoulder.<sup>437</sup> PC Smith was unsure how much pressure PC Walker was applying to Mr Bayoh.<sup>438</sup> PC Walker was “going from a kneeling position to lying flat”.<sup>439</sup> Within his oral evidence, PC

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<sup>432</sup> 11/78/2 and 11/78/14

<sup>433</sup> 11/78/21; PIRC-00278, page 6, paragraph 3

<sup>434</sup> PIRC-00278, page 6, paragraph 3

<sup>435</sup> 11/82/7; SBPI-00042, paragraph 28

<sup>436</sup> 11/88/25

<sup>437</sup> PIRC-00278, page 6, paragraph 5

<sup>438</sup> 11/83/23; PIRC-00278, page 6, paragraph 6

<sup>439</sup> PIRC-00278, page 6, paragraph 6

Smith clarified that in saying PC Walker was “lying flat” within his PIRC statement, he meant PC Walker was lying flat over Mr Bayoh.<sup>440</sup>

PC Smith moved to the front of Mr Bayoh’s upper body;<sup>441</sup> the opposite side to the other three officers.<sup>442</sup> PC Smith knelt down on the ground next to Mr Bayoh.<sup>443</sup> As the officers were having difficulty restraining Mr Bayoh, PC Smith thought that Mr Bayoh might break free from the officers’ control.<sup>444</sup> PC Smith considered that one tactical option would be to disengage from Mr Bayoh and use incapacitant spray, ideally PAVA,<sup>445</sup> on him,<sup>446</sup> however, PC Walker informed PC Smith that CS and PAVA had already been ineffective.<sup>447</sup> PC Walker pushed PC Smith’s CS canister away,<sup>448</sup> knocking the top off the canister.<sup>449</sup>

As incapacitant spray was not an option, PC Smith considered the “only other realistic option” was to assist the other officers to gain control of Mr Bayoh’s hands to allow handcuffs to be applied.<sup>450</sup> Within his oral evidence, PC Smith identified that there was a “very, very pressing need to control Mr Bayoh’s hands” as the knife remained unaccounted for.<sup>451</sup> From his kneeling position, PC Smith could clearly see Mr Bayoh’s hands.<sup>452</sup> There was no knife in Mr Bayoh’s hands, or lying on the ground near him.<sup>453</sup> Officers later found a knife in a grassy area along Hayfield Road.

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<sup>440</sup> 11/112/2

<sup>441</sup> SBPI-00042, paragraph 29; PIRC-00278, page 6, paragraph 7

<sup>442</sup> 11/85/8

<sup>443</sup> SBPI-00042, paragraph 27; PIRC-00278, page 7, paragraph 8. Within his oral evidence, PC Smith could not recall if he was kneeling or crouching down (11/91/7)

<sup>444</sup> 11/85/19; SBPI-00042, paragraph 28; PIRC-00278, page 6, paragraph 10

<sup>445</sup> 11/86/13 and 11/90/10; PIRC-00278, page 7, paragraph 2

<sup>446</sup> 11/86/8; SBPI-00042, paragraph 28; PIRC-00278, page 7, paragraph 2

<sup>447</sup> 11/86/17; SBPI-00042, paragraph 28; PIRC-00278, page 7, paragraphs 2 – 3

<sup>448</sup> 11/86/21

<sup>449</sup> PIRC-00278, page 7, paragraph 3

<sup>450</sup> 11/87/2; PIRC-00278, page 7, paragraph 7

<sup>451</sup> 11/94/17

<sup>452</sup> PIRC-00278, page 7, paragraph 8

<sup>453</sup> PIRC-00278, page 7, paragraph 8



## Application of Handcuffs

There are differences in the evidence about who applied the handcuffs.

PC Walker managed to get a handcuff onto Mr Bayoh's right wrist but, when trying to apply the second handcuff onto Mr Bayoh's left wrist, Mr Bayoh managed to break free from PC Walker.<sup>454</sup> Mr Bayoh swung his right arm into the air, but PC Walker managed to get hold of the handcuff and pull Mr Bayoh's right arm towards his left arm which was still pinned to the ground.<sup>455</sup> PC Walker managed to apply the second handcuff to Mr Bayoh's left wrist, meaning that Mr Bayoh was now handcuffed to the front.<sup>456</sup> PC Walker considered that Mr Bayoh was now under control.<sup>457</sup>

PC Smith described being with PCs Walker and Paton, and despite resistance from Mr Bayoh,<sup>458</sup> PC Smith managed to apply handcuffs to Mr Bayoh.<sup>459</sup> The handcuffs were applied palm-to-palm to the front of Mr Bayoh.<sup>460</sup> There was "no particular technique" involved in applying the handcuffs to Mr Bayoh, with control gained through strength.<sup>461</sup> Within his oral evidence, PC Smith could not recall double-locking the handcuffs at this time, but he believed they were double-locked from a check he completed later.<sup>462</sup> It "wouldn't be impossible" to double-lock handcuffs

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<sup>454</sup> 7/33/22; SBPI-00039, paragraph 57; PIRC-00264, page 8, paragraph 1

<sup>455</sup> SBPI-00039, paragraph 57; PIRC-00264, page 8, paragraph 1

<sup>456</sup> 7/41/21; SBPI-00039, paragraph 57; PIRC-00264, page 8, paragraph 1

<sup>457</sup> 7/41/22 and 7/42/6; PIRC-00274, page 8, paragraph 1

<sup>458</sup> 11/89/22 and 11/96/19; SBPI-00042, paragraph 28

<sup>459</sup> 11/89/10; SBPI-00042, paragraph 28; PIRC-00278, page 7, paragraph 9

<sup>460</sup> PIRC-00278, page 7, paragraph 10

<sup>461</sup> 11/95/23

<sup>462</sup> 11/96/22. PC Smith provided an explanation of how handcuffs are double-locked at 11/97/5 and within the hearing footage PC Smith (am) – 27/05/2022, from 2:40:54

when someone is struggling.<sup>463</sup> Mr Bayoh continued to struggle after the handcuffs were applied.<sup>464</sup>

### Application of Fast Straps

Once the handcuffs were applied, PC Paton said there was a need to apply leg restraints.<sup>465</sup> PC Smith moved down to Mr Bayoh's legs.<sup>466</sup> PC Smith became aware that PC McDonough was at the scene, with his fast straps in his hands.<sup>467</sup> PC Tomlinson was attempting to control Mr Bayoh's legs<sup>468</sup> by lying across them.<sup>469</sup> PC Paton and PC Walker were still restraining the top half of Mr Bayoh's body.<sup>470</sup>

Mr Bayoh's legs were lying in a prone position flat to the ground, with his knees to the ground.<sup>471</sup> The officers tried to straighten Mr Bayoh's legs,<sup>472</sup> this being a good position, in accordance with training, to allow fast straps to be applied.<sup>473</sup> PC Smith, "in the confusion", took hold of PC Tomlinson's boot and started to straighten his leg, but immediately realised his error and let his boot go.<sup>474</sup> Mr Bayoh was either on his side or prone,<sup>475</sup> and was resisting the attempts to straighten his legs, bending them at the knee.<sup>476</sup>

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<sup>463</sup> 11/98/12

<sup>464</sup> 11/98/23; PIRC-00278, page 7, paragraph 11

<sup>465</sup> 11/99/2; PIRC-00278, page 7, paragraph 11

<sup>466</sup> 11/99/4; SBPI-00042, paragraph 29; PIRC-00278, page 8, paragraph 1

<sup>467</sup> 11/99/9; PIRC-00278, page 8, paragraph 1

<sup>468</sup> 11/100/2; SBPI-00042, paragraph 28

<sup>469</sup> PIRC-00278, page 8, paragraph 1

<sup>470</sup> 11/100/21

<sup>471</sup> PIRC-00278, page 8, paragraph 1

<sup>472</sup> PIRC-00278, page 8, paragraph 2

<sup>473</sup> 11/100/7

<sup>474</sup> 11/131/18; PIRC-00278, page 8, paragraph 2

<sup>475</sup> 11/101/11

<sup>476</sup> 11/101/15; SBPI-00042, paragraph 33; PIRC-00278, page 8, paragraph 2

PC Smith describes applying weight to Mr Bayoh's lower legs, ankles and feet,<sup>477</sup> using his arms.<sup>478</sup> This was not constant as it was necessary to move Mr Bayoh's legs to some extent to apply the fast straps.<sup>479</sup> PC Smith describes tipping Mr Bayoh's feet to the side, at right angles to Mr Bayoh and keeping both ankles together,<sup>480</sup> before pinning them to the ground to prevent Mr Bayoh moving his legs.<sup>481</sup> PC Smith used his left<sup>482</sup> hand to apply downward pressure onto Mr Bayoh's right<sup>483</sup> foot, using some, but not all, of his body weight.<sup>484</sup> This was not for a "prolonged period".<sup>485</sup>

With the assistance of PC McDonough, PC Smith was able to apply the fast straps to Mr Bayoh.<sup>486</sup> The fast straps were applied first to Mr Bayoh's ankles and then just above his knees.<sup>487</sup> When applying the fast straps to Mr Bayoh's ankles, PC Smith's hands were trapped underneath Mr Bayoh's feet, causing cuts to PC Smith's fingers on his right hand.<sup>488</sup> PC Smith was kneeling on the ground when the second set of fast straps were applied.<sup>489</sup>

PC Gibson assisted (because PC Walker was having difficulty controlling Mr Bayoh)<sup>490</sup> by dropping down to the ground and lying across Mr Bayoh's legs.<sup>491</sup> PC Gibson lay across Mr Bayoh's thighs<sup>492</sup> using the right-hand side of his upper

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<sup>477</sup> SBPI-00042, paragraph 30

<sup>478</sup> 11/101/22

<sup>479</sup> SBPI-00042, paragraph 30

<sup>480</sup> PIRC-00278, page 8, paragraph 2

<sup>481</sup> 11/101/24; PIRC-00278, page 8, paragraph 2

<sup>482</sup> 11/103/2

<sup>483</sup> 11/103/11

<sup>484</sup> 11/102/9

<sup>485</sup> 11/109/2

<sup>486</sup> 11/105/23; SBPI-00042, paragraph 36; PIRC-00278, page 8, paragraph 3

<sup>487</sup> 11/108/1 and 11/109/16; SBPI-00042, paragraph 32; PIRC-00278, page 8, paragraphs 3 and 4

<sup>488</sup> PIRC-00278, page 8, paragraph 4

<sup>489</sup> 11/110/9

<sup>490</sup> PIRC-00258, page 4, paragraph 10

<sup>491</sup> 13/137/23; PIRC-00258, page 4, paragraph 10 – page 5, paragraph 1

<sup>492</sup> 13/139/6; SBPI-00045, answer 16, paragraph 1

body.<sup>493</sup> PC Gibson was facing Mr Bayoh's feet when he was lying on his legs,<sup>494</sup> so he could not see what was happening at Mr Bayoh's upper body / head area,<sup>495</sup> or what weight, if any, was being applied Mr Bayoh<sup>496</sup> at this time. PC McDonough was near PC Gibson at Mr Bayoh's feet,<sup>497</sup> but PC Gibson was not sure what PC McDonough was doing as he was trying to concentrate on controlling Mr Bayoh's legs to prevent Mr Bayoh kicking out.<sup>498</sup> Within his oral evidence, PC Gibson stated that Mr Bayoh "might have been on his front" and that he was lying on the back of Mr Bayoh's legs with Mr Bayoh's legs facing the ground.<sup>499</sup> As the restraint progressed, PC Gibson moved down Mr Bayoh's legs towards his feet, using a "roll" or a "shuffle" movement.<sup>500</sup>

PCs Smith and McDonough applied fast straps to Mr Bayoh's legs.<sup>501</sup> PC Good assisted with the application of leg restraints and assisted "to pull the straps through".<sup>502</sup> By this time Mr Bayoh was on his front.<sup>503</sup> When the straps were through, PC Smith crossed the straps over and tightened them.<sup>504</sup> PC Gibson remained on Mr Bayoh's legs as Mr Bayoh was still moving, although he was not able to kick out as much due to the fast straps.<sup>505</sup>

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<sup>493</sup> 13/137/23 and 13/139/1; SBPI-00045, answer 16, paragraph 1; PIRC-00258, page 5, paragraph 1. PC Gibson demonstrated the position he used to lie on Mr Bayoh's legs during his oral evidence (13/140/8, hearing footage PC Daniel Gibson (pm) – 01/06/2022, from 00:24:00)

<sup>494</sup> SBPI-00045, answer 16, paragraph 1 and answer 23

<sup>495</sup> PIRC-00258, page 5, paragraph 1

<sup>496</sup> SBPI-00045, answer 23

<sup>497</sup> 13/149/24

<sup>498</sup> SBPI-00045, answer 16, paragraph 1; PIRC-00258, page 5, paragraph 1

<sup>499</sup> 13/150/15 – 13/150/21. Within his inquiry statement, PC Gibson states that he can't clearly recollect how Mr Bayoh was positioned when he was restraining Mr Bayoh's legs (SBPI-00045, answer 17)

<sup>500</sup> 13/139/7 – 13/139/15; SBPI-00045, answer 16, paragraph 2. PC Gibson demonstrated the "roll" or "shuffle" that he used to move down Mr Bayoh's legs during his oral evidence (13/141/13, hearing footage PC Daniel Gibson (pm) – 01/06/2022, from 00:24:54)

<sup>501</sup> 13/149/16; SBPI-00045, answer 16, paragraph 3 and answer 29, paragraph 2; PIRC-00258, page 5, paragraphs 2 – 3

<sup>502</sup> 13/215/5; SBPI-00045, answer 29, paragraph 2; PIRC-00258, page 5, paragraph 3

<sup>503</sup> PIRC-00258, page 5, paragraph 3

<sup>504</sup> PIRC-00258, page 5, paragraph 3

<sup>505</sup> SBPI-00045, answer 26, paragraph 2; PIRC-00258, page 5, paragraph 3

The slow-motion version of the Snapchat footage filmed by Ashley Wyse provides visual evidence of the position of Mr Bayoh's feet during the restraint by the officers.<sup>506</sup>

PC Walker thought Mr Bayoh was on his back throughout the restraint. PC Paton appeared to agree, but in evidence said he thought he must be wrong. The other witnesses speak to Mr Bayoh being on his front during the restraint.

### **Use of Force – Restraint**

In considering the individual actions of the attending officers and the use of force, it may assist to rely on the evidence of Martin Graves who distinguished a 'control' phase of the restraint, where officers were attempting to control the subject, and a 'restraint' phase where the person was restrained. Ms Caffrey recognised and agreed with this distinction.<sup>507</sup>

Joanne Caffrey gave evidence about the actions of a reasonable officer during restraint and how a restraint should be performed if 3 officers are available;<sup>508</sup> considering a possible medical emergency;<sup>509</sup> and she also described where 4 officers were available.<sup>510</sup> She explained the risks of leaning on the subject; placing pressure on the subject; putting weight on the subject; applying force to the whole or part of the back,<sup>511</sup> or any part from the belly-button up. A reasonable officer would not put

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<sup>506</sup> SBPI-00110

<sup>507</sup> 29/60/1 to 15

<sup>508</sup> 29/42

<sup>509</sup> 29/58/14 to 16

<sup>510</sup> 29/51/25

<sup>511</sup> 29/48/25; 29/50/15-17; 29/50/18 – 19; 29/50/21; 29/50/24-25

pressure to the subject's back or apply weight.<sup>512</sup> It made no difference if they were on their front or back.<sup>513</sup>

With regard to a subject exhibiting extreme strength, such as a bench press, the option to withdraw existed.<sup>514</sup> She explained the option to 'disengage'.<sup>515</sup> Where officers took the view it was impossible to restrain the subject.<sup>516</sup> Any of the officers could take over control.<sup>517</sup> A reasonable officer nearby could pass that information back to ACR.<sup>518</sup> A demonstration of such strength was a risk and the officers could report back; they needed specialist resources.<sup>519</sup>

If a person was non-verbal that would be an additional risk.<sup>520</sup> For techniques used with a baton that were not trained, Ms Caffrey commented that the benefit of approved techniques is they have been medically assessed.<sup>521</sup>

Examples of Use of Force by the individual officers in the circumstances here include:

- (1) PC Paton use of CS spray
- (2) PC Walker use of PAVA spray
- (3) PC Tomlinson use of CS spray
- (4) PC Tomlinson use of baton
- (5) PC Walker use of shoulder charge/bear hug to bring SB to the ground

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<sup>512</sup> 29/67/22

<sup>513</sup> 29/68/20

<sup>514</sup> 29/69/25 to 70/1

<sup>515</sup> 29/62/13-20

<sup>516</sup> 29/64/25 to 65/9

<sup>517</sup> 29/71/9

<sup>518</sup> 29/72/22

<sup>519</sup> 29/71/25 to 72/12

<sup>520</sup> 29/73/9-16

<sup>521</sup> 29/74/21 to 75/8

(6) Restraint –

- i. PC Walker’s actions in restraint (as determined by you);
- ii. PC Walker punching Mr Bayoh’s face three times;
- iii. PC Tomlinson (striking Achilles area with baton; straddling legs);
- iv. PC Paton’s use of baton;
- v. PC Paton slapping/patting Mr Bayoh’s face;
- vi. PC Gibson assisting with leg restraints;
- vii. PC McDonough as above;
- viii. PC Smith assisting with application of handcuffs and leg restraints;  
and
- ix. PC Good assisting with leg restraints.

The Use of Force Standard Operating Procedure (Version 1.03), paragraph 2.2 was applicable at the time. Any force used had to be reasonable based on the individual police officer’s perception of the threat that they were facing. In order to be lawful, use of force (including the use of incapacitant spray) had to be reasonable and based on the honestly held belief that it was necessary at the time.

There were two criteria for use of physical force:

1. Justification – where the force used was reasonable and proportionate to the perceived threat and resistance exhibited by the subject; and
2. Preclusion<sup>522</sup> – where other reasonable options had either been attempted and failed, or were considered to be inappropriate.

Both use of a baton and use of CS/PAVA spray fell into the category of defensive tactics within the Use of Force options open to police officers. The primary reasons

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<sup>522</sup> 28/164/18

for either use of a baton, or use of CS spray were (1) safety to the public (2) safety to the police officer or colleagues and (3) safety of the subject.

When considering the circumstances that existed at the time, including their state of mind and honestly held belief, you will hear submissions from Core Participants, but the relevant circumstances may include, for example:

- It was 0720 hours on a Sunday morning
- Location – residential area; Churches nearby; nearby hospitals including a psychiatric hospital
- No members of the public were in the vicinity, other than passing in cars; but it was a residential area and there was a risk of members of the public appearing without warning
- The actions of the subject as described by eyewitnesses and the officers; and as shown on CCTV footage
- The behaviour of the subject seen by eyewitnesses and officers
- Physical appearance; his build and his face/eyes
- The impressions of witnesses e.g., PC Paton whether he appeared to be intoxicated/on drugs/high on Flakka
- The awareness of recent actions in particular, the allegations he had a knife transmitted over the Airwaves
- The possibility of prank calls
- The possibility that the calls were genuine
- Risk to the public
- Risk to Mr Bayoh
- Risk to police
- The knife not being visible, but may have been secreted about his person
- Threat level
- The number of police officers attending



- The experience of officers attending
- The equipment available to officers
- The availability or absence of specialist resources, including an ARV and dog unit
- Tactical Options open to officers

At the stage the officers were at Hayfield Road, you will have to review all those circumstances, including their state of mind based on the knowledge they held on arrival; their own capabilities; and their honestly held beliefs e.g., PC Tomlinson considered that Mr Bayoh had killed PC Short. In summary the officers considered their use of force was “reasonable”<sup>523</sup> and “justifiable and proportionate”<sup>524</sup> in the circumstances.

### **Comments from Eyewitnesses (police and civilians) on Force used by Officers**

PC Short thought the level of force used by PCs Walker, Tomlinson and Paton in restraining Mr Bayoh “was completely in line with the level of violence and resistance shown by Mr Bayoh”.<sup>525</sup>

Within his inquiry statement, PC Smith describes the other officers at times having to exert some direct downward force onto Mr Bayoh’s body as he was in danger of managing to free himself.<sup>526</sup> PC Smith confirmed that this was direct downward force with the officers’ bodies, not just their hands.<sup>527</sup> PC Smith described the level of force used by the officers as being sufficient to stop Mr Bayoh pushing himself up

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<sup>523</sup> SBPI-00039, paragraph 53

<sup>524</sup> 7/25/8; 7/25/11; 7/80/5

<sup>525</sup> 8/104/16

<sup>526</sup> SBPI-00042, paragraph 28

<sup>527</sup> 11/118/18

and free himself, to match the level of force with which he was pushing back.<sup>528</sup> PC Smith stated that it was “not like a prolonged level of downward force with some...as far as I could tell all of somebody’s body weight”.<sup>529</sup> At the point all restraints had been applied to Mr Bayoh, PC Smith was satisfied that all the actions of the officers involved in the restraint were “necessary and appropriate and carried out in line with training”.<sup>530</sup> He had no concerns.<sup>531</sup>

PC Good did not recall observing anything “which was disproportionate to the circumstances”.<sup>532</sup>

### Restraint of Mr Bayoh’s legs

PC Gibson considers the technique that he used in lying across Mr Bayoh’s legs to be in line with his officer safety training.<sup>533</sup> The more resistance there was from Mr Bayoh, the greater the weight or force that was required to restrain him.<sup>534</sup>

From his arrival at the scene, Sergeant Maxwell only saw “professionalism at work”.<sup>535</sup>

Within her PIRC statement Miss Wyse describes the officers being “really rough” with Mr Bayoh, the way they were “pouncing” on him.<sup>536</sup>

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<sup>528</sup> 11/118/25

<sup>529</sup> 11/119/1

<sup>530</sup> PIRC-00278, page 8, paragraph 7

<sup>531</sup> SBPI-00042, paragraph 42

<sup>532</sup> SBPI-00040, paragraph 32

<sup>533</sup> 14/137/13; SBPI-00045, answer 16, paragraph 1 and answer 33; PIRC-00258, page 5, paragraph 1

<sup>534</sup> 13/152/7

<sup>535</sup> PIRC-00267, page 4, paragraph 3

<sup>536</sup> PIRC-00043, page 4, paragraph 12. During her oral evidence, Miss Wyse could not recall saying this (15/178/11) and was unable to provide much clarification as to what she meant in saying these things (15/178/18 – 15/179/20)

DS Davidson states within her inquiry statement and her oral evidence that, from what she observed at Hayfield Road, she had no concerns about the manner of the restraint.<sup>537</sup>

Christopher Fenton regularly restrained patients at work.<sup>538</sup> Against this background, Mr Fenton did not see anything that was “overly excessive”, or which caused him concern,<sup>539</sup> “other than the amount of people that were on top of [Mr Bayoh]”.<sup>540</sup> It appeared to Mr Fenton that the officers were lying on Mr Bayoh using their body weight.<sup>541</sup>

### **Officers turned Mr Bayoh onto his Left-hand Side**

This was a significant moment in the course of events. To use the description used by Martin Graves, at this point the control phase was complete and the subject was restrained.

PC Tomlinson remained over Mr Bayoh’s legs until fast straps had been applied.<sup>542</sup> Once the fast straps had been applied, PC Smith stood up, moving away slightly.<sup>543</sup> When he stood up, PC Smith checked the injuries to his hand<sup>544</sup> and he was able to “re-assess the situation”.<sup>545</sup> To a “small degree” PC Smith turned his attention

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<sup>537</sup> 17/132/8; SBPI-00038, paragraph 12

<sup>538</sup> PIRC-00251, page 3, paragraph 1

<sup>539</sup> SBPI-00011, paragraph 7; COPFS-00048, page 3, paragraph 2; PIRC-00251, page 3, paragraph 1

<sup>540</sup> 21/63/23; SBPI-00011, paragraph 7

<sup>541</sup> 21/21/9 – 21/21/18

<sup>542</sup> 10/42/21. PC Tomlinson demonstrated the application of fast straps during his oral evidence (10/39/1; hearing footage PC Tomlinson (am) – 26/05/2022, from 01:11:00).

<sup>543</sup> 11/119/10; SBPI-00042, paragraph 29; PIRC-00278, page 8, paragraph 8

<sup>544</sup> PIRC-00278, page 8, paragraph 8

<sup>545</sup> SBPI-00042, paragraph 42 (bottom of page 12)

elsewhere, for around 30 seconds to a minute,<sup>546</sup> but he remained in the vicinity of Mr Bayoh and the other officers.<sup>547</sup>

PC Smith identified that when a person is going to be in a prone position for a prolonged period it would be beneficial to monitor the breathing of that person.<sup>548</sup>

PC Smith did not know whether anyone was monitoring Mr Bayoh's breathing prior to realising that he was unconscious.<sup>549</sup>

PC McDonough could not remember if anyone was monitoring Mr Bayoh's breathing.<sup>550</sup> DS Davidson was not aware of anyone monitoring Mr Bayoh's breathing.<sup>551</sup> DS Davidson was also unaware of Mr Bayoh's breathing being monitored after he had lost consciousness.<sup>552</sup>

PC Paton said to roll Mr Bayoh onto his side.<sup>553</sup> At this point, PC Tomlinson got off Mr Bayoh's legs and moved to the side to allow Mr Bayoh to be **rolled onto his left side**.<sup>554</sup> The officers rolled Mr Bayoh onto his left-hand side.<sup>555</sup> Mr Bayoh was handcuffed to the front, palm-to-palm, with leg restraints applied.<sup>556</sup> At this point PC Tomlinson considered that the officers had control of Mr Bayoh.<sup>557</sup>

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<sup>546</sup> 11/136/12

<sup>547</sup> 11/139/16

<sup>548</sup> 11/190/16

<sup>549</sup> 11/190/9

<sup>550</sup> 14/71/8

<sup>551</sup> 17/146/19

<sup>552</sup> 17/151/4

<sup>553</sup> SBPI-00040, paragraph 20; PIRC-00274, page 9, paragraph 5

<sup>554</sup> 10/42/24

<sup>555</sup> 12//161/23; SBPI-00040, paragraph 28; PIRC-00274, page 9, paragraph 5

<sup>556</sup> SBPI-00043, paragraph 44; PIRC-00263, page 4, paragraph 6.

<sup>557</sup> 10/41/15

DS Samantha Davidson,<sup>558</sup> asked if the knife had been located.<sup>559</sup> PC Walker asked PC Tomlinson to check Mr Bayoh's pockets.<sup>560</sup> PC Tomlinson then searched Mr Bayoh's pocket on his right side, looking for a knife.<sup>561</sup> After failing to find a knife, PC Tomlinson took hold of the leg restraints to control Mr Bayoh's legs.<sup>562</sup> At this point PC Walker was controlling Mr Bayoh's upper body and PCs Smith and Paton were at Mr Bayoh's head area.<sup>563</sup>

Ms Joanne Caffrey gave evidence about a reasonable officer checking superficial injuries on his hands at this time. She was of the view that a reasonable officer would not.<sup>564</sup> She referred to the Care & Welfare of Persons in Police Custody SOP<sup>565</sup> and the critical point of apprehension at para 5.3.2.<sup>566</sup>

### **Awareness of Loss of Consciousness**

Whilst PC Paton was holding Mr Bayoh's bicep with the baton, he noticed there was no longer any resistance from Mr Bayoh and he wasn't trying to lift up his arm.<sup>567</sup> Within his oral evidence, PC Paton described Mr Bayoh as breathing but not conscious at this point in time.<sup>568</sup> Within his oral evidence, PC Paton did not recall when he first noticed that Mr Bayoh had stopped moving,<sup>569</sup> nor what he or the other officers were doing at that time.<sup>570</sup> PC Paton didn't recall Mr Bayoh being on his left-

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<sup>558</sup> 7/42/13

<sup>559</sup> SBPI-00039, paragraph 60; PIRC-00264, page 8, paragraph 3

<sup>560</sup> PIRC-00264, page 8, paragraph 3

<sup>561</sup> 10/43/10; PIRC-00263, page 4, paragraph 6

<sup>562</sup> 10/58/10; PIRC-00263, page 4, paragraph 7

<sup>563</sup> 10/59/1; PIRC-00263, page 4, paragraph 8

<sup>564</sup> 29/83/23 to 84/1

<sup>565</sup> PS11014

<sup>566</sup> 29/86/22

<sup>567</sup> PIRC-00262, page 7, paragraph 3

<sup>568</sup> 20/115/11

<sup>569</sup> 20/66/15

<sup>570</sup> 20/66/18 and 20/113/24

hand side at the point Mr Bayoh stopped moving, as other officers had.<sup>571</sup> PC Paton couldn't remember when he stopped moving.<sup>572</sup>

PC Walker said that the officers would have to get Mr Bayoh onto his side, so PCs Walker, Tomlinson and Paton moved Mr Bayoh onto his side.<sup>573</sup> PC Smith did not notice any "obvious resistance" at the point, or very shortly after, Mr Bayoh was turned on his side.<sup>574</sup> PC Walker first became aware that Mr Bayoh was unresponsive when he was rolled onto his back to allow his pockets to be checked for the knife.<sup>575</sup> Around this time PC Walker noticed that Mr Bayoh appeared to be "unwell"<sup>576</sup> and "unresponsive".<sup>577</sup> PC Walker said Mr Bayoh was on his back when he became unresponsive.<sup>578</sup>

PC Tomlinson describes Mr Bayoh stopping moving after he had been moved onto his side.<sup>579</sup> As PC Tomlinson was at Mr Bayoh's legs, he couldn't identify the exact point at which Mr Bayoh lost consciousness;<sup>580</sup> Mr Bayoh's legs had already stopped "thrashing about" to some extent as the leg restraints had been applied.<sup>581</sup> PC Smith checked and confirmed that Mr Bayoh was not responding.<sup>582</sup>

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<sup>571</sup> 20/67/4

<sup>572</sup> 20/67/10

<sup>573</sup> 11/135/3; PIRC-00278, page 8, paragraph 8. PC Smith's inquiry statement refers to Mr Bayoh being restrained on his side at this point, but does not refer to the process of moving him onto his side (SBPI-00042, paragraph 42, top of page 13)

<sup>574</sup> 11/136/2

<sup>575</sup> PIRC-00264, page 8, paragraph 3

<sup>576</sup> SBPI-00039, paragraph 60

<sup>577</sup> SBPI-00039, paragraph 68; PIRC-00264, page 8, paragraph 5

<sup>578</sup> 7/70/10

<sup>579</sup> 10/45/15 and 10/46/7

<sup>580</sup> 10/45/24; SBPI-00043, paragraph 44

<sup>581</sup> 10/45/19

<sup>582</sup> PIRC-00263, page 5, paragraph 1

Within his oral evidence, PC Paton recalled PC Smith making his Airwave transmission about Mr Bayoh being unconscious but breathing.<sup>583</sup> The Airwave transmission by PC Smith was at 07:25:17 hours. PC Smith went to check on Mr Bayoh, he and PC Paton tried to get a response from Mr Bayoh by speaking to him.<sup>584</sup> This produced no response, so PC Smith tried “physical stimulus”; putting his knuckles on the bone on the top of Mr Bayoh’s chest.<sup>585</sup> Again, this produced no response. Mr Bayoh appeared to be unconscious.<sup>586</sup>

PC Smith checked Mr Bayoh’s breathing. PC Smith identified that Mr Bayoh was breathing, and PC Paton concurred.<sup>587</sup> PC Smith immediately passed a radio message stating that Mr Bayoh appeared to be unconscious but breathing and an ambulance was requested.<sup>588</sup> This transmission was made at 07:25:17.<sup>589</sup>

After Mr Bayoh was rolled onto his side, PC Good noticed that Mr Bayoh had stopped struggling and his eyes were closed.<sup>590</sup> PC Paton patted Mr Bayoh on the cheek and stated that Mr Bayoh was breathing.<sup>591</sup> Within her oral evidence, PC Good described PC Paton trying to get a “pain response” from Mr Bayoh by tapping his cheek.<sup>592</sup> PC Good describes thinking that Mr Bayoh was faking that he was unconscious, as it is “not unusual” for people to do this when they are arrested<sup>593</sup> and “he’d been so animated before and then all of a sudden he just ... he

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<sup>583</sup> 20/68/19

<sup>584</sup> PIRC-00278, page 9, paragraph 7

<sup>585</sup> 11/146/25; PIRC-00278, page 9, paragraph 7.)

<sup>586</sup> 11/138/10 and 11/146/10; PIRC-00278, page 9, paragraph 7

<sup>587</sup> PIRC-00278, page 9, paragraphs 7 and 8

<sup>588</sup> SBPI-00042, paragraph 42, page 13; PIRC-00278, page 9, paragraph 9

<sup>589</sup> SBPI-00047, page 7 (“Roger this male now certainly appears to be unconscious, breathing, not responsive get an ambulance for him.”)

<sup>590</sup> SBPI-00040, paragraph 33; PIRC-00274, page 9, paragraph 6

<sup>591</sup> 12/162/7; PIRC-00274, page 10, paragraph 2

<sup>592</sup> 12/189/2. PC Good stated within her oral evidence that she had not been taught to pat, tap or slap someone’s face to check for a pain response. She has been taught to rub a person’s collar bone (12/190/13)

<sup>593</sup> PIRC-00274, page 10, paragraph 2

stopped”.<sup>594</sup> After Mr Bayoh stopped struggling, PC Good was instructed by DS Davidson to take up a “traffic point” at the junction of Hayfield Road and Hendry Road.<sup>595</sup> When PC Good left the area of the restraint, Mr Bayoh was still on his side and still breathing.<sup>596</sup>

After leg restraints had been applied to Mr Bayoh, and when PC McDonough was monitoring or holding Mr Bayoh’s legs, PC McDonough states that Mr Bayoh’s legs “suddenly” stopped moving.<sup>597</sup> PC McDonough recalls someone saying: “he’s motionless”.<sup>598</sup> PC McDonough stood back.<sup>599</sup> PCs Smith and Paton went to Mr Bayoh’s head area and found he was still breathing, before the ambulance was called.<sup>600</sup>

After the fast straps had been applied to Mr Bayoh,<sup>601</sup> PC Gibson heard PC Smith say: “**get off him**”.<sup>602</sup> PC Gibson got off Mr Bayoh’s legs and got to his feet.<sup>603</sup> Mr Bayoh was on his front, with the left-hand side of his face on the pavement facing Hendry Road, and he was no longer struggling.<sup>604</sup>

Between 07:25:38 and 43, whilst driving the Transit van closer to the restraint, DS Davidson heard an Airwave transmission identifying that Mr Bayoh was

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<sup>594</sup> 12/191/4

<sup>595</sup> SBPI-00034, paragraph 34; PIRC-00274, page 10, paragraph 7

<sup>596</sup> 12/164/23; PIRC-00274, page 11, paragraph 1

<sup>597</sup> SBPI-00063, answer 26, paragraph 2; PIRC-00273, page 5, paragraph 6. Within his oral evidence, PC McDonough estimated that Mr Bayoh stopped moving “a minute or two” after the leg restraints were applied, although it might have been shorter (14/59/2)

<sup>598</sup> SBPI-00063, answer 26, paragraph 2; PIRC-00273, page 5, paragraph 6. Within his oral evidence PC McDonough states that this may have been PC Paton or PC Smith, but he can’t say for certain (14/59/12)

<sup>599</sup> SBPI-00063, answer 26, paragraph 3; PIRC-00273, page 5, paragraph 6. Within his PIRC statement PC McDonough also identifies that the rest of the officers stood back as well.

<sup>600</sup> 14/119/22; SBPI-00063, answer 26, paragraph 3; PIRC-00273, page 5, paragraphs 7 – 8

<sup>601</sup> 13/163/18

<sup>602</sup> 13/165/5; SBPI-00045, answer 22, paragraph 3; PIRC-00258, page 6, paragraph 3

<sup>603</sup> PIRC-00258, page 6, paragraph 3

<sup>604</sup> 13/163/24 – 13/164/8; PIRC-00258, page 6, paragraph 3



unresponsive.<sup>605</sup> On getting out of the van, she observed that officers had placed Mr Bayoh in the recovery position on his left side.<sup>606</sup> Mr Bayoh appeared unresponsive.<sup>607</sup>

Acting Sergeant Maxwell arrived in the fifth police vehicle to arrive at the scene which is seen on the CCTV at 07:22:25 to 07:22:29 hours. He is seen exiting the vehicle at 07:22:32 to 07:22:33 hours. DS Davidson and DC Connell do not arrive until 07:23:10 hours and DS Davidson transmitted on the airwaves that the restraint was ongoing and described Mr Bayoh still moving at that time as noted above.

Acting Sergeant Maxwell stated that Mr Bayoh lost consciousness after he had attended to PC Short and returned to the area of the restraint.<sup>608</sup>

DI Robson arrived at Hayfield Road at around 07:24:07.<sup>609</sup> Within his PIRC statement, DI Robson describes Mr Bayoh as being in the “recovery position”.<sup>610</sup> DI Robson did not see Mr Bayoh move at any time.<sup>611</sup>

Dr Cary considered that the cause of Mr Bayoh’s loss of consciousness was hypoxia, as a result of the restraint and struggle. He explained that loss of consciousness

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<sup>605</sup> 17/147/7 – 17/147/15 and 17/150/1; SBPI-00038, paragraph 18; PIRC-00185, page 6, paragraph 9; PS00379, page 3, paragraph 8

<sup>606</sup> 17/156/14; SBPI-00038, paragraph 18; PIRC-00185, page 7, paragraph 5; PS00379, page 3, paragraph 9

<sup>607</sup> SBPI-00038, paragraph 18; PIRC-00185, page 7, paragraph 5

<sup>608</sup> Sergeant Maxwell confirmed that he was “very close” to the restraint when he made an Airwave transmission at 07:25:06 (15/16/18). PC Smith made the Airwave transmission confirming that Mr Bayoh appeared to be unconscious 11 seconds later, at 07:25:17.

<sup>609</sup> SBPI-00046, 07:24:07. DI Robson identified this vehicle as the car in which he arrived during his oral evidence (42/88/25)

<sup>610</sup> PIRC-00223, page 4, paragraph 8

<sup>611</sup> 42/98/25; PIRC-00223, page 6, paragraph 1

represents a “perilous”<sup>612</sup> situation, particularly when a person is hypoxic: unless corrected (for example by rescue breaths), it will lead to cardiac arrest.

### **Communication During Restraint**

PC Smith didn’t hear Mr Bayoh say anything during the restraint, but he was moaning.<sup>613</sup>

From his standing position, PC Smith went down to check Mr Bayoh,<sup>614</sup> whose eyes were closed.<sup>615</sup> Mr Bayoh had been sprayed with incapacitant spray and was now in leg restraints, so PC Smith considered it normal to carry out close observations.<sup>616</sup> The lack of effectiveness of the incapacitant sprays, Mr Bayoh’s “very a ggressive behaviour” and “considerable strength”<sup>617</sup> were ‘indicators of possible excited delirium’, which can lead to deterioration in medical condition and sudden death.<sup>618</sup> PC Smith did not, however, have any “immediate concerns” about Mr Bayoh’s condition.<sup>619</sup>

PC Paton states that Mr Bayoh did not “speak or scream” throughout the restraint.<sup>620</sup> During the restraint PC McDonough did not recall Mr Bayoh saying or shouting anything,<sup>621</sup> although in his inquiry statement he “vaguely remember[s] [Mr Bayoh] aggressively groaning whilst kicking out and lifting his body”.<sup>622</sup> When asked to describe Mr Bayoh’s “groaning”, PC McDonough likened this to the noise someone

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<sup>612</sup> 59/131/25

<sup>613</sup> 11/135/7 – 11/135/17; PIRC-00278, page 8, paragraph 8

<sup>614</sup> 11/139/6; PIRC-00278, page 9, paragraph 4

<sup>615</sup> PIRC-00278, page 9, paragraph 7

<sup>616</sup> PIRC-00278, page 9, paragraph 4

<sup>617</sup> SBPI-00042, paragraph 42, page 13

<sup>618</sup> PIRC-00278, page 9, paragraph 4

<sup>619</sup> PIRC-00278, page 9, paragraph 5

<sup>620</sup> 20/113/13; PIRC-00262, page 7, paragraph 3

<sup>621</sup> PIRC-00273, page 4, paragraph 10

<sup>622</sup> SBPI-00063, answer 26, paragraph 1

would make if they were to lift something heavy or when working out.<sup>623</sup> The “loudness, the tone” was what made the groaning “aggressive”.<sup>624</sup>

PC Gibson does not recall anything being shouted or said by Mr Bayoh during the restraint.<sup>625</sup> During the restraint, PC Good does not recall Mr Bayoh communicating with anyone.<sup>626</sup>

Evidence from other eyewitnesses is available. Some gave oral evidence, for others you have inquiry statements or PIRC statements: Akhtar Ali; Hazel Sinclair; Sean Mullen; Daniel Robinson; Abdelouhab Guessoum; and Christopher Fenton.

Joanne Caffrey, who is a first aid trainer, spoke about a subject breathing ‘normally’ and ‘not normally’.<sup>627</sup> She explained the 2010 version of the first aid manual had drawn this distinction.<sup>628</sup> She emphasised that during this phase, a reasonable officer was still seeking to use minimum force and have regard to preclusion;<sup>629</sup> and a reasonable officer would consider DR ABC<sup>630</sup> (Danger; Response; Airway; Breathing; CPR) and an unresponsive casualty required an ambulance. She commented on the rousability of the subject and the slap to the face.<sup>631</sup> She described the need for constant supervision<sup>632</sup>. She noted the requirement for constant monitoring and reasonable officers being down by the head, listening and an ambulance being

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<sup>623</sup> 14/69/17

<sup>624</sup> 14/70/9

<sup>625</sup> SBPI-00045, answer 26, paragraph 3; PIRC-00258, page 5, paragraph 10

<sup>626</sup> SBPI-00040, paragraph 24; PIRC-00274, page 10, paragraph 5

<sup>627</sup> 29/75/9 to 76/14

<sup>628</sup> 29/77/18

<sup>629</sup> 29/78/7 -13

<sup>630</sup> 29/78/23; 29/80/9

<sup>631</sup> 29/82/21-24

<sup>632</sup> 29/83/8-22

called.<sup>633</sup> And the need to remove handcuffs and leg restraints when the subject was in the restraint phase.<sup>634</sup>

### Calling for an Ambulance/CPR/First Aid

At 07:25:17, PC Smith transmitted, “this male now certainly appears to be unconscious, breathing, not responsive get an ambulance for him”.<sup>635</sup> This was the first call for an ambulance for Mr Bayoh and this was at the point he had been noted to be ‘unconscious and unresponsive but breathing’. No additional information was given from Hayfield Road over the Airwaves indicating he had been sprayed with CS or PAVA or batoned to the head at that time.

At 07:26:52 hours information was transmitted over airwaves by Sergeant Maxwell that Mr Bayoh was sprayed with CS and PAVA and may have been batoned to the head. The information may not have been shared with the ambulance service.

As noted above, at 07:25:17, PC Smith transmitted a call for an ambulance for Mr Bayoh and this was at the point he had been noted to be unconscious and unresponsive but breathing. At 07:29:30, Sergeant Maxwell transmits, “this accused is now not breathing, CPR is **commencing**”.<sup>636</sup>

CPR appears to have commenced more than 4 minutes after Mr Bayoh was noted to be unconscious. Dr Cary gave evidence about a ‘window of opportunity’ to reverse the effects of lack of oxygen and “if you don’t commence adequate resuscitation with

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<sup>633</sup> 29/90/16;

<sup>634</sup> 29/91/4-15

<sup>635</sup> SBPI-00047, page 7

<sup>636</sup> SBPI-00047, page 11

oxygenation, within a minute or two, you are running the grave risk of brain damage".<sup>637</sup>

PC Walker was performing chest compressions. PC Walker was applying the compressions to the sternum area of the chest, "in line with the nipples".<sup>638</sup> At 07:32:11, Sergeant Maxwell transmits, "*chest compressions commenced, however breaths have eh stopped due to cross contamination blood etcetera*".<sup>639</sup> PCs Paton and Smith attempted to fit a one-way valve shield into Mr Bayoh's mouth. They were unable to fit the shield correctly since Mr Bayoh's teeth were clenched shut. They attempted to open Mr Bayoh's mouth with their fingers but were unsuccessful<sup>640</sup>. Dr Shearer described finding injuries to this area at the subsequent post-mortem, which were consistent with those attempts.

PC Smith attempted to provide rescue breaths on three occasions with the face shield, but was aware that the breaths were escaping out of the side of Mr Bayoh's mouth. The face shield appeared to be getting contaminated with saliva and mucus, and mucus was escaping from Mr Bayoh's nose. PC Smith also felt a 'burning sensation' in his mouth, which he "assumed may be from CS spray".<sup>641</sup>

In the event of CPR commencing, Martin Graves and Ms Caffrey would have expected handcuffs to be taken off<sup>642</sup> and leg restraints as well<sup>643</sup>

### Rib fracture

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<sup>637</sup> 59/58/10-21

<sup>638</sup> Inquiry Transcript dated 20 May 2022, page 97 lines 1-2

<sup>639</sup> SBPI-00047, page 12

<sup>640</sup> PIRC-00278, page 10

<sup>641</sup> PIRC-00278, page 10

<sup>642</sup> 27/97/14 to 19

<sup>643</sup> 98/1-7

After 2-3 chest compressions, PC Walker heard the sound of a rib breaking.<sup>644</sup>

All the medical evidence was consistent in that the rib fracture was not a cause of death and was not caused by CPR.

Professor Freemont's opinion was that the fracture happened in life. Decomposition of the tissue made this harder to determine; however, with the use of special histological stains, he was able to demonstrate that osteocyte apoptosis could be seen in the bone tissue. His evidence was that this is something that happens in response to fracture and only takes place in life. Professor Freemont also advised that he detected haemorrhage in the bone tissue that was of a quantity and distribution that it must have happened during life. He carried out testing for fibrin (a protein involved in the clotting of blood) and this testing was negative. As there is normally some fibrin visible from about 6 hours post fracture, he concluded that the injury took place less than 6 hours from Mr Bayoh's death.

He explained that in his experience osteocyte apoptosis is visible in adults from 2 hours from the point of fracture. He advised that in infants osteocyte necrosis happens more quickly, from one hour from the point of fracture. He explained that there is recent research into the effect of androgens (anabolic steroids such as nandrolone) on bones, which suggests that use causes osteocyte apoptosis to manifest more quickly. He opined that could have taken place earlier than two hours from the point of Mr Bayoh's death and somewhere within 1 to 2 hours from death.

Dr Shearer was clear in her evidence that there were no external injuries associated with the first left rib fracture, and that the fracture was an isolated one. Professor

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<sup>644</sup> SBPI-00039, page 11, paragraph 70

Freemont explained that the rib is in a protected position and is difficult to injure without also damaging the surrounding ribs and other bones.

Various scenarios of how the injury may have occurred were put to Professor Freemont and his comment sought. Professor Freemont favoured the injury being caused by a fall onto an outstretched arm or equivalent. He was aware that there was no eyewitness testimony that a fall of this kind had in fact occurred; however, he suggested that it was possible that it happened either during the altercation with Zahid Saeed or with the police. I note that whilst there is no evidence at all that Mr Bayoh fell during the incident involving Mr Saeed (onto an outstretched arm or otherwise), there is evidence that he was brought to the ground by PC Walker.

### **Ambulance and Attendance at Victoria Hospital**

#### **Ambulance**

At 07:33:35, the ambulance arrived at the locus to attend to Mr Bayoh. Ambulance staff Alan Finlayson and David Taylor, attended to Mr Bayoh. Finlayson and Taylor were unable to find a pulse, and decided to transport Mr Bayoh to Victoria Hospital, Kirkcaldy.<sup>645</sup> They requested that a police officer drive the ambulance to the hospital so that both could continue working on Mr Bayoh. Finlayson and Taylor applied a defibrillator in the ambulance and obtained a trace of a pulse. They therefore did not apply a shock to Mr Bayoh.<sup>646</sup>

#### **Arrival at Victoria Hospital**

At 07:45, the ambulance arrived at Victoria Hospital, where he was brought into a resuscitation cubicle. From Mr Bayoh's initial attendance, medical intervention was

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<sup>645</sup> PIRC-00220

<sup>646</sup> PIRC-00220; COPFS-00051; PIRC-00179

undertaken by 7 doctors (headed by Dr Gillian Pickering), assisted by nursing staff.<sup>647</sup> On arrival, Dr Pickering checked Mr Bayoh's carotid artery and found a pulse.<sup>648</sup> She deduced that when the Scottish Ambulance Service had called the hospital, Mr Bayoh was actually in respiratory arrest.

When Mr Bayoh arrived at the hospital, his wrists were handcuffed to the front with leg restraints still applied.<sup>649</sup> The handcuffs and leg restraints were removed at Dr Pickering's request.<sup>650</sup>

Dr Pickering lost Mr Bayoh's pulse and concluded that he had gone into cardiac arrest. CPR commenced.<sup>651</sup> Dr Clark intubated Mr Bayoh.<sup>652</sup> Manual CPR continued and was producing a good pulse in the groin.<sup>653</sup> An arterial line was inserted into the femoral artery by Dr Anderson to deliver a blood pressure reading.<sup>654</sup> His blood pressure was anything from 140 systolic to about 70 systolic with chest compressions.<sup>655</sup>

An ultrasound of the heart and lungs was performed by Dr Clark.<sup>656</sup> The scan of the heart showed minimal cardiac contractility.<sup>657</sup> A THUMPER pneumatic machine was applied to Mr Bayoh. When initially applied, this was positioned a little low and was readjusted to the correct position, higher up the chest.<sup>658</sup> CPR (both manual and the use of the THUMPER machine) last for 1 hour and 14 minutes.<sup>659</sup>

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<sup>647</sup> Dr Gillian Pickering, Dr Surinder Panpher, Dr Martin Clark, Dr David Hall, Dr Susan Downie, Dr Sophie Rollings; Dr Rachel Anderson and Dr Fiona Gillies

<sup>648</sup> PIRC-00118

<sup>649</sup> PIRC-00118

<sup>650</sup> PIRC-00118

<sup>651</sup> PIRC-00118

<sup>652</sup> PIRC-00103, page 2

<sup>653</sup> PIRC-00103

<sup>654</sup> PIRC-00103; PIRC-00118

<sup>655</sup> PIRC-00103

<sup>656</sup> PIRC-00103

<sup>657</sup> PIRC-00103; PIRC-00257

<sup>658</sup> PIRC-00103

<sup>659</sup> PIRC-00103



Life was pronounced extinct at 0904 hours on 3 May 2015

### **Cause of Death**

The Inquiry's terms of reference require you "to establish the circumstances of the death of Sheku Bayoh, including the cause or causes of the death ...". The Inquiry will require to determine whether, on balance of probabilities, any fact or circumstance (whether individually, or in combination) was causative of Mr Bayoh's death.

The Law & Practice Note prepared for the cause of death hearing sets out the Legal Tests on Causation.<sup>660</sup> You will also wish to hear submissions from the Core Participants on what is the appropriate test to be applied.

#### **The 'but for' test**

It is well established that the first method of determining causation is the 'but for' or *sine qua non* test.<sup>661</sup> This test, asks the court to consider whether *but for* the unlawful act or omission, the injury would still have occurred.

You may wish to consider but for the consumption of illicit drugs, whether Mr Bayoh would have died. If you consider that the police used excessive and therefore unlawful force in these circumstances, you may wish to consider whether 'but for' the use of excessive force by the police during the restraint, Mr Bayoh would have died.

It may be submitted to you that the 'but for' test does not apply to these facts. The 'but for' rule poses difficulty in situations where an injury is caused by two or more

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<sup>660</sup> SBPI-00301

<sup>661</sup> SBPI-00301

distinct harms, each of which would have been sufficient in themselves to result in the injury.

To tackle the issues of justice and fairness arising in cases where application of the “but for” test does not assist in determining causation, the courts have developed the concept of material contribution.

### **Material Contribution**

The first departure from the ‘but for’ test in the context of negligence is generally accepted to be *Bonnington Castings Ltd. V Wardlaw*.<sup>662</sup> This case involved a claim by an employee who had sustained an injury – pneumoconiosis – from exposure to silica dust in the course of his employment. Some of the exposure to the dust was due to negligence on the part of the employer, however, other aspects of exposure were understood to be non-negligent. It was not possible, scientifically, to prove which exposure had led to the injury. In his judgement, Lord Reid stated:

*“It would seem obvious in principle that a pursuer or plaintiff must prove not only negligence or breach of duty but also that such fault caused or materially contributed to his injury, and there is ample authority for that proposition both in Scotland and in England.”*<sup>663</sup>

It was held that any contribution to a harm which is more than *de minimis* will be material.<sup>664</sup>

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<sup>662</sup> [1956] A.C. 613

<sup>663</sup> Ibid at paragraph 620

<sup>664</sup> Ibid at paragraph 621

In *McGhee v National Coal Board*,<sup>665</sup> Lord Simon of Glaisdale held that *Bonnington* and, another Scottish Court of Session case, *Nicholson v. Atlas Steel Foundry and Engineering Co. Ltd* established that:

*“where an injury is caused by two (or more) factors operating cumulatively, one (or more) of which factors is a breach of duty and one (or more) is not so, in such a way that it is impossible to ascertain the proportion in which the factors were effective in producing the injury or which factor was decisive, the law does not require a pursuer or plaintiff to prove the impossible, but holds that he is entitled to damages for the injury if he proves on a balance of probabilities that the breach or breaches of duty contributed substantially to causing the injury. If such factors so operate cumulatively, it is, in my judgment, immaterial whether they do so concurrently or successively.”*<sup>666</sup>

#### Factors Not Causative of death

There appears to be a consensus amongst the experts that the discharge of CS and PAVA spray were not causative of death; that nandrolone, the steroid, can be excluded as having played a part in death; and that Mr Bayoh’s hay fever and possible sleep apnoea were not relevant.

Dr Shearer confirmed in her evidence that the injuries documented at post-mortem were all of a minor nature, consistent with the events at Hayfield Road, and did not account for death.

There was no evidence of disease that would explain Mr Bayoh’s death. In particular, there was no evidence of heart disease. The histology slides were subsequently reviewed a number of Dr Shearer’s colleagues as well as Dr Cary, Dr Soilleux and

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<sup>665</sup> [1973] 1 W.L.R. 1

<sup>666</sup> *Ibid*, at paragraph 8

Professor Crane; all of whom reported that the heart was normal. Dr Karch also reviewed the heart histology and came to the conclusion that there was heart disease. In his statement to the Inquiry, he adhered to the view that he saw interstitial fibrosis and myocardial remodelling of the left ventricle. The Chair may wish to consider Dr Karch's qualifications and experience, relative to that of the other pathologists named above, in considering which evidence to prefer.

Over the years since Mr Bayoh's death, mention has been made publicly of excited delirium and Acute Behavioural Disturbance (ABD) but neither were named in the post-mortem report as causative of death, by Dr Shearer or Dr BouHaidar.

Dr Lipsedge explained that excited delirium was adopted as a term to cover severely agitated and disturbed behaviour in crack cocaine users. Over time it gradually lost its status as a drug induced state and became a term that was used for individuals in a state of agitation, especially young black people, and as an explanation for their death following restraint by the police. ABD, he explained, was an umbrella term to describe distressed and agitated behaviours including behaviour caused by psychosis, whether drug induced or otherwise. He expressed concern that the term ABD was being used as a substitute for excited delirium, with implication that the person displaying the condition would have likely died as a consequence.

Dr Lipsedge explained that neither excited delirium nor ABD are listed in DSM-5 or the ICD-11. He also explained that in the UK excited delirium is not a cause of death and use of the term has been 'banned' by the Royal College of Pathologists. Dr Shearer gave evidence that no pathologist in the UK would use the term as a cause of death.

Dr Cary gave evidence that ED “describes a mode of behaviour”<sup>667</sup> but cannot account for death.

Factors which may have been causative to some extent:

Sickling

Professor Lucas gave evidence that the majority of people with sickle cell trait are not aware that they have the condition, but that there are rare circumstances in which it has the potential to cause death. The medical literature on this generally relates to sudden death in athletes or sudden death during training of military recruits.

Professor Lucas explained that a sickle cell crisis can be caused in individuals with sickle cell trait by hypoxia, temperature (high or low), dehydration/increase in the concentration of the sickle haemoglobin, and acidosis. He explained that one of the ways in which a sickle cell crisis may present is as acute chest syndrome, in which the red blood cells sickle resulting in the lungs being unable to adequately supply the heart and consequently the blood with sufficient oxygen, resulting in death if not managed and reversed.

Sickling was found in many of Mr Bayoh’s organs and in 3 out of 6 samples of lung tissue taken at post-mortem; he had “some aspects of the acute chest syndrome”.<sup>668</sup> The quantity and distribution of sickling was, in Professor Lucas’s opinion, consistent with ante-mortem sickling. The likely cause of the sickling in Mr Bayoh’s case was the restraint and struggle, which would have caused hypoxia and acidosis. The effect of the sickling in the lungs was respiratory arrest, leading to cardiac arrest.<sup>669</sup>

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<sup>667</sup> 59/32/24

<sup>668</sup> 58/81/14

<sup>669</sup> 58/105/20

Dr Cary explained that the presence of sickling in someone with sickle cell trait (SCT) means they have been pushed to the limit physiologically and become hypoxic, which has precipitated sickling. He considers that the presence of sickling provides evidence of hypoxia and lactic acidosis due to restraint, and that sickling is an “independent marker” for hypoxia.<sup>670</sup> Dr Cary agreed with Professor Lucas, that sickling developed during the restraint and struggle.

Although there appears to be a consensus amongst the experts that SCT contributed to Mr Bayoh’s death, Dr Shearer noted that if Mr Bayoh hadn’t taken drugs or been restrained, SCT “wouldn’t have mattered at all. It has only come into play because of everything else that is happening. So, it’s certainly not as important as the other factors because if you take the other factors out of the equation this man has not died because he has sickle cell trait.”<sup>671</sup> The consensus appears to be that SCT should be recorded under part II of the death certificate.

Professor Lucas’s opinion as set out in his report was that sickle cell trait should be included in the cause of death at part 1b along with the drugs and the restraint. In his Inquiry statement and oral evidence, he explained that now he would include sickle cell trait in part 2 of the death certificate: “the sickle cell problem in his lungs accelerated the moment when he died but it would have happened anyway” .<sup>672</sup> Dr Shearer agreed.

### Petechial haemorrhages

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<sup>670</sup> 59/88/22

<sup>671</sup> 54/68/14

<sup>672</sup> 58/105/11

Dr Shearer's evidence was while petechial haemorrhages are not specific and can be seen in individuals who have been resuscitated, they could indicate a degree of asphyxia, either positional (chest down) or mechanical (caused by the application of pressure to the back, which could impede breathing)".<sup>673</sup>

Dr Cary agreed that petechial haemorrhages could be indicative of a degree of asphyxia, specifically mechanical asphyxia, due to the application of pressure, weight or force to the front or the back of the trunk. He opined that substantial force was required to cause petechial haemorrhages; he confirmed that the application of the weight of a 25 stone individual would be sufficient. He considered the presence of the petechial haemorrhages provided support for 'mechanical asphyxia'.

### Consumption of Illicit Drugs

Dr Shearer gave evidence that both Alpha-PVP and MDMA are stimulant drugs that can have an effect on the cardiovascular system, causing an increase in both heart rate and blood pressure. They can cause arrhythmias and can result in sudden cardiac arrest.<sup>674</sup>

Professor Eddleston gave evidence that the concentration of Alpha-PVP found in Mr Bayoh's blood and urine was not inconsistent with a fatal dose, but surrounding circumstances should not be ignored: Mr Bayoh was restrained and agitated. In Professor Eddleston's opinion, "but for Mr Bayoh's encounter with the police that morning, and the subsequent restraint, he would not have died".<sup>675</sup>

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<sup>673</sup> 53/61/25

<sup>674</sup> 54/37/12

<sup>675</sup> SBPI 00317 paragraph 141

Dr Cary considered that the timing of Mr Bayoh's cardiac arrest was important – the drugs had been taken some time before, and so likely had a “background effect” rather than a “primary effect”, and “you can't ignore the fact he has been restrained and was struggling”.<sup>676</sup>

### Restraint & Struggle Against Restraint

Both Dr Shearer and Dr Cary stressed the importance of looking at all the circumstances, and urged against looking at any one aspect of the evidence in isolation. In Dr Cary's opinion, what was happening at the time of cardiac arrest is fundamental. There appears to be consensus amongst the experts that the cause of death was multifactorial; that both the drugs consumed by Mr Bayoh, and the restraint and struggle, played a part. Dr Cary considered that although the death was multifactorial, the most significant factor was the restraint and struggle.

### Comment on Cause of Death

Dr Cary considered that the death was multifactorial and he proposed an adjustment to the wording of the cause of death certified by Drs Shearer and BouHaidar, such that it would read, “**1a Sudden death in a man intoxicated by MDMA (ecstasy) and Alpha-PVP, in association with struggling and restraint**”. Dr Shearer and Dr Crane agreed with this proposed form of words.

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<sup>676</sup> 59/98/13