

Transcript of the Sheku Bayoh Inquiry

Wednesday, 1 March 2023

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(10.05 am)

LORD BRACADALE: Ms Grahame.

MR GRAEME DURSLEY (continued)

Questions from MS GRAHAME (continued)

MS GRAHAME: Good morning. Can I ask you a couple of things relating to yesterday's evidence.

A. Yes.

Q. And the first is that you had mentioned yesterday you did actually consider that this might go to a public inquiry, because you were aware of a public inquiry previously, so that was in the back of your head, or back of your mind. And I would like to know what previous public inquiry were you aware of at that time, do you remember?

A. Yes, the public inquiry for the death of the male who I had found in the cells, had died, went to a public inquiry. So when this incident happened, this is the second time I have been involved in an incident involving that, so I knew there was a previous public inquiry and I thought it may happen again.

Q. And when you say "public inquiry", do you mean like an FAI, a fatal accident inquiry, or something along those lines, or do you actually mean a public inquiry like ourselves?

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- 1 A. I couldn't actually give you the definition. I did
2 Google it, it was 2007, and it went to an Inquiry.
3 Whether it was an FAI or public inquiry, one of the two,
4 but it certainly was reviewed.
- 5 Q. That's fine. I just wanted to check that. You remember
6 yesterday just shortly prior to lunch and just after
7 lunch, I asked you a number of questions about the
8 reference to the black male having been found dead?
- 9 A. Yes.
- 10 Q. The words "found dead". And I explained to you that
11 Colette Bell had given evidence to the Inquiry that she
12 had been told that a black male had been found dead and
13 you accepted that Sheku Bayoh hadn't been found dead,
14 but you couldn't say for certain what words were used by
15 you when you spoke to DC Parker and DC Mitchell and when
16 you said to DC Parker, you wanted the death message
17 relayed to Colette Bell. Do you remember me asking
18 about that yesterday?
- 19 A. Yes, yes.
- 20 Q. And we went through your daybook.
- 21 A. Yes.
- 22 Q. Which I believe you will still have with you.
- 23 A. Yes.
- 24 Q. And we looked at the words "black male dead" that you
25 had noted down on the daybook and I think I asked you

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1 whether you could think of anything that you had said to
2 DC Parker that might indicate in any way that the black
3 male had been found dead and you didn't think there was
4 anything. You remember that?

5 A. Yes.

6 Q. Can I ask you to look again at your Inquiry statement,
7 please. We looked at this yesterday, it's SBPI 00228
8 and it is paragraph 53. And I did ask you about this
9 yesterday and it was about the CCTV issue, and you had
10 made a call to, I think, Technical Support Unit, or
11 there you have them as TSU.

12 A. That's right, yes.

13 Q. And I asked you about the CCTV in the van and you had
14 indicated there was a problem with it.

15 A. That's correct, I remember that.

16 Q. When you looked at your daybook yesterday, you noted
17 that there was a handwritten note that at 2 minutes past
18 10 in the morning, 10.02, it said, "TSU", and I think
19 you said yesterday in evidence, "That's the time that
20 I have either phoned TSU or got their number"?

21 A. Yes, I believe that to be the case, yes, because it has
22 the time next to it.

23 Q. And that was on 3 May 2015?

24 A. Yes.

25 Q. There's reference in paragraph 53, which is still on the

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1 screen, to the Airwave call, and what I would like to do
2 is play part -- play this tape. You will hear it within
3 the speakers within the room and then what I will do is
4 I will ask you some questions about it afterwards.
5 There's the transcript is actually in paragraph 53 but
6 we will play the audio anyway, if that's okay?

7 (Audio played)

8 A. Yes.

9 Q. Did you recognise your voice?

10 A. Yes.

11 Q. And that was the explanation you were giving to TSU when
12 you called them?

13 A. That was to the control room about getting the number
14 for TSU, but that's -- yes.

15 Q. Sorry, to the control room. And during that
16 conversation -- if you look at paragraph 53, which is
17 the sort of transcript, if you like, of that call, you
18 will see that you have said there in relation to the
19 van, paragraph 53:

20 "... that is attending at the locus where the male
21 has been found dead after altercation with the
22 police officers."

23 And so it would appear that in that call to the
24 control room, you used the phrase "found dead" and
25 I just wondered, having listened to that call that you

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- 1 made on 3 May, would you maybe accept that there is
2 a possibility that you have used that phrase at some
3 point during the day, "Found dead"?
- 4 A. I definitely have, because I have used it on that call
5 and I have used it in my statement the next day and
6 I have used it in the PIRC statement and I have used it
7 later. It's a term that I have used without
8 understanding the importance of the word "found".
- 9 Q. So it's possible that when you spoke to DC Parker that
10 you maybe did use the words "found dead"?
- 11 A. I would love to be able to tell you definitely what I --
12 but I genuinely can't. I may have used that word. Did
13 I want to use the word? That's not the message that we
14 were looking to put across, but can I say that for
15 certain? I can't.
- 16 Q. Can I ask you about operational statements very briefly.
17 We have heard from officers Mitchell and Parker about
18 their operational statements and we have heard that you
19 asked DC Mitchell to "beef up" his statement. And then
20 in his Inquiry statement, I think you have -- well, you
21 have been asked about asking Mitchell at the very least
22 to ask for a more comprehensive statement. What do you
23 mean by "beefing up" a statement?
- 24 A. I don't know if I was asked to ask him to do that, or if
25 I have done that myself, but if I have looked at their

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1 statements and thought, "You need to give more
2 information", you know, "You need to be clear about what
3 we have done, when we have done it, how we have done
4 it," I would ask someone to -- "beef up" would be a term
5 that I would use, so add more to it, more information to
6 it.

7 Q. So is it simply adding more detail or more information
8 rather than anything else?

9 A. Both. More detail, you know, if I think there wasn't
10 enough information, so that people that are coming in
11 and reviewing that and read it and be clear about what
12 exactly has taken place.

13 Q. So it's with one eye on maybe someone looking at it at
14 a later time?

15 A. It's to make it easier for people that are coming in to
16 look at this afterwards. If I'm getting things handed
17 to me by a shift, I read it and think, "What about X, Y
18 and Z?", you want to make it easier for a person
19 receiving that if you can answer these questions first.

20 Q. To what extent would you be thinking maybe these
21 statements are inadequate or insufficient, or is it more
22 with a view to providing more information to people
23 coming later?

24 A. It's more with a view to helping whoever is picking up
25 this enquiry, so they can actually know what's been

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1 said, or how it has been said, or what they have exactly
2 done.

3 Q. Can I ask you to look at paragraph 166 of your Inquiry
4 statement, please. This relates to the period prior to
5 you becoming aware that Mr Bayoh had died, so prior to
6 09.04 in the morning when he was pronounced life
7 extinct, and you have been asked to refer to part of
8 your own PIRC statement at that time. And it says:

9 "'Prior to life being pronounced extinct and formal
10 identification of the accused I asked for checks to be
11 carried out on Mr Bayoh to establish any criminal
12 history, images, identification marks or police
13 [markers] listed on police systems ... I only became
14 aware of his details following the call to the police by
15 Colette Bell expressing concern for her partner Sheku."

16 And so I just wanted to be clear about the
17 chronology of events again, if I may. Is it the case
18 that you -- obviously you have talked yesterday about
19 identification being important, because at the very
20 early stages, you didn't know who it was in
21 Hayfield Road who had been restrained.

22 A. Yes.

23 Q. And you asked for some checks to be carried out by
24 a member of the police staff. Was that to see if you
25 could get more information about identification?

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- 1 A. Yes.
- 2 Q. And as I understand it, you have indicated -- you will
3 see at the bottom of page -- well, at 169, if we go down
4 further, you will see that you mention that that was by
5 Lorraine Dewar, one of the enquiry office assistants
6 that you spoke to.
- 7 A. Yes.
- 8 Q. And you asked her to do some checks for you and she was
9 looking for maybe images or anything like that, that you
10 would have on a database. Is it called CHS?
- 11 A. That's correct.
- 12 Q. What does that stand for, CHS?
- 13 A. I should know that. Criminal history something, but ...
- 14 Q. All right --
- 15 A. Scotland.
- 16 Q. Scotland?
- 17 A. Possibly. I guess.
- 18 Q. Was -- at the point that you asked for those checks to
19 be done, I think Lorraine Dewar's statement, which you
20 will see at paragraph 168, says that the time that you
21 asked was 0856 hours on 3 May. I think yesterday you
22 said you knew that he had passed away at 0904, so this
23 was just shortly prior to you becoming aware that he had
24 died.
- 25 A. Yes.

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1 Q. Was there any -- when you came to ask for those checks
2 to be done by Lorraine Dewar, was there anything
3 influencing you in asking for that that related to his
4 race or the fact that he was a black man?

5 A. No.

6 Q. And what was the predominant reason why you asked for
7 those checks to be done?

8 A. I'm looking for a quick win that may give us something
9 on the police systems that would identify that it was
10 Mr Bayoh. So either a good picture of him, a tattoo on
11 an arm, you know, a missing finger, or something that we
12 would record in police systems that would -- I could
13 then pass that on to the team dealing with the incident
14 to say there's further potential that it could be
15 Mr Bayoh.

16 Q. So these checks, were they done to aid the
17 identification of the male?

18 A. Yes.

19 Q. Rather than anything else?

20 A. Yes.

21 Q. And if Mr Bayoh had been white, would you have been
22 asking Lorraine Dewar to carry out the same types of
23 checks at that time?

24 A. Yes. I will do that for any death that we have where
25 identification is not known. It's one of the first

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1 things you would do.

2 Q. Can I ask you to look back at the investigation and your
3 involvement that day and reflecting on it now, do you
4 think that there were improvements that could have been
5 made by you in the role you were in, or things that
6 could have been done better by you?

7 A. Yes.

8 Q. Can you give the Chair any examples?

9 A. I think the biggest thing is the liaison and updates to
10 the family are the biggest thing for me and being
11 accurate in providing them information I think sooner.
12 Biggest thing.

13 Q. Is there anything you feel -- you have told us that you
14 had a team of officers that you were working with, you
15 maybe didn't know many of them. Is there anything,
16 looking back now, that you think they could have done
17 better?

18 A. To be honest, they were called in from different areas,
19 they have never worked here before and they were given
20 individual actions and ... no, I find it hard to comment
21 on what other officers' actions have been on that day.
22 But certainly, from my point of view, just what I have
23 said, I think, I could have pushed things on quicker.

24 Q. And looking up the chain of command at more senior
25 officers, did you think there was anything they could

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1 have improved on that day?

2 A. It's so hard, you know. I work quite closely through my
3 service with Colin Robson and I think on that day we
4 both did everything we could to try and do as good a job
5 as we can. And when you look back, you know, at the
6 time, you can say to yourself, "Why did we not, why did
7 we not?" But on that day, I felt like we were doing
8 everything we could to try and do everything, to cover
9 every option as to what happened to Mr Bayoh that day.

10 Q. After these events, you have talked about a review maybe
11 being carried out, others coming in, you have talked
12 about PIRC, was there any period after 3 May where you
13 were asked to be part of a lessons learned process, or
14 to discuss with other officers and yourself about how
15 things could have been done better?

16 A. No, I have not been, no.

17 Q. And is there any suggestion that you would wish to make
18 that you would like to draw to the Chair's attention
19 about things that could be done to improve a situation
20 like this generally?

21 A. I'm angry at myself for not checking about the officers
22 in relation to consent. I think that as a line manager,
23 I should have asked on that day, you know, if there was
24 a process there to allow for me making sure that was
25 done, whether it was a separate piece of paper, whether

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1 it's an instruction that a DS must do that on the day,
2 something like that. So that could be an idea.

3 Q. Thank you. Can we move on to 4 May, so this is the next
4 day. Can I ask you to look at a document PS00784. Now,
5 this is headed up, you will see, "Briefing Notes".
6 I don't think you've got a hard copy of this. It's
7 headed up, "Briefing Notes", and it's -- I will just --
8 we will ask if this can just be scrolled through, just
9 to give you -- cast your eye over it. But there is one
10 or two bits I will ask you about.

11 You will see it's single line spacing, seems to be
12 a sort of typed version of something with individuals'
13 names mentioned and references to things they're going
14 to do. Do you see that? It's only about four pages,
15 I think.

16 A. Yes.

17 Q. Have you seen that before?

18 A. Never.

19 Q. Do you know who typed that or who prepared that?

20 A. No, I've never seen that before.

21 Q. Right. Can we go back to the top, please, or sorry,
22 page 2 of it -- well, let's start at the top, page 1.
23 Let's just see where we are. You will see at the top,
24 the first line of the body of the text says:

25 "Briefing: 1000 hrs 04/05/2015 AM briefing Monday --

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1 Hall Kirkcaldy.

2 Chaired by [Detective Superintendent] Campbell."

3 Do you see that?

4 A. Yes.

5 Q. Now, as I understood your evidence yesterday, there was

6 nothing in your daybook for 4 May and you didn't

7 remember really being involved that day, but you will

8 see that this appears to be some sort of typed version

9 of briefing notes, at least there from 10 o'clock on

10 4 May. Do you see that?

11 A. Yes.

12 Q. And then if we go to page 2 and five lines from the top

13 of page 2, we see your name and it says:

14 "DS Dursley: Have viewed the Mobile phone footage

15 which shows Deceased in leg restraints but does not show

16 any confrontation or baton strike."

17 Were you at a briefing that morning?

18 A. I genuinely do not remember being involved at all after

19 the first -- that day, unless that's somebody giving an

20 update in relation to me. However, I'm actually reading

21 "Mobile phone footage", which I think, well, that

22 happens as well.

23 Q. We have not heard from Detective Superintendent Campbell

24 yet, so it may be that he will be in a position to give

25 us more information, but I just wanted to ask you

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1 Q. The Snapchat footage. Have you seen that footage
2 before?

3 A. I think I have only seen that -- well, I think I have
4 seen that on the TV. Has that been on TV?

5 Q. It's been on the television, yes.

6 A. Yes.

7 Q. It was used in the first hearing we had.

8 A. Yes.

9 Q. And I think it was on the television.

10 A. Yes, so I've never watched it during evidence, but I'm
11 sure I have seen that on the telly.

12 Q. Do you remember if you have ever watched that before?

13 A. No, I don't remember watching that before, but
14 Ashley Wyse was someone whose name was in my book.

15 Q. Exactly. So if we could go back to the briefing notes,
16 please, the PS00784, page 2, line 5. So where it
17 appears to say:

18 "DS Dursley: Have viewed the Mobile phone footage
19 which shows Deceased in leg restraints but does not show
20 any confrontation or baton strike."

21 Insofar as that appears to attribute that to you,
22 that's not anything you remember doing?

23 A. I don't remember that.

24 Q. Can I ask you about briefing notes. In May 2015, whose
25 decision was it to take a view on how the officers were

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1 to be briefed, what they were to be briefed about, that
2 sort of thing? Whose decision would that be to have
3 a briefing and what the content of the briefing would
4 be?

5 A. It depends what you mean by "a briefing" because
6 a briefing in general would mean sit down, people round
7 a table, "Right, this is the story", you bring everyone
8 up to speed, which a general briefing for a major
9 incident, you know, like Day 2, Day 3, Day 4, that's
10 what would happen in the morning and potentially at
11 night. Certainly, my involvement on day one, it wasn't
12 a case of a sit-down where everyone would sit and chat.
13 Briefings are faster, they're on the move and they're
14 happening quite quickly. So it's not a briefing as in
15 a traditional sense of everybody sitting and they share
16 information.

17 Q. When you say "they're on the move", describe how they
18 are conducted?

19 A. When I say "on the move", they could be -- they could be
20 done by telephone, they could be done at different
21 locations in a police station, where a briefing for
22 me -- a traditional briefing is in either a muster room
23 or a conference room where you sit down and you actually
24 sit and there is a Chair and someone allocated to take
25 control of that and give the updates in information.

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1 Q. And people can take notes and things?

2 A. Yes.

3 Q. And then the other briefing, which is on the phone
4 maybe, is that a less formal briefing?

5 A. Yes, that's -- yes.

6 Q. Is that what you were talking about yesterday when you
7 said you updated DI Robson? You talked about an update
8 and I said, "Is that the same as a briefing?"

9 A. It's not -- that's just sharing information, but it's --
10 and that's what you do at a briefing, ey, but it's just
11 a slightly --

12 Q. Just slightly different?

13 A. Yes, slightly different for me.

14 Q. When you have the more formal briefing and people are in
15 a muster room, say, are notes prepared that allows
16 someone to deliver the briefing to officers?

17 A. It depends what type of case it is, because certainly
18 for major investigations, I'm not part of the major
19 investigation team and I never have been. However, I do
20 know that the process for them is formal briefings and
21 that, and I'm pretty sure that they are recorded and
22 recorded on a HOLMES computer system.

23 Now, in terms of briefings where I work, I would
24 order a briefing and I will just do that myself from --
25 not necessarily notes, I will just prepare that from

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- 1 memory or what I know that I need to get done.
- 2 Q. So could it be from notes from your daybook or --
- 3 A. Could be, or could be statements I've got or emails
- 4 I have and then I will go in and deliver the briefing at
- 5 that point.
- 6 Q. But not necessarily sort of prepared notes that --
- 7 like -- not a lecture, but presentation, nothing like
- 8 that?
- 9 A. No, not to that -- no, not to that extent.
- 10 Q. How do you ensure in the sort of work that you do that
- 11 there is consistency amongst briefings that are given
- 12 between different officers?
- 13 A. Could you say that again for me?
- 14 Q. If you, say, deliver a briefing to a certain group of
- 15 officers --
- 16 A. Yes.
- 17 Q. -- but then you realise that not everyone was present
- 18 and you need to deliver another briefing to a different
- 19 set of officers, how do you ensure that there's
- 20 consistency?
- 21 A. You would just try to cover the same information. Now,
- 22 what you don't want to do is be briefing all day and see
- 23 then ten different people, so you would try and capture
- 24 everyone at the same time. But if you've got someone
- 25 who's going to be coming onto that enquiry, you would be

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1 looking to bring them up to speed and brief them when
2 they arrive.

3 Q. So you're the point of contact for people and the point
4 of knowledge for -- that delivers the briefing and it
5 all comes from you?

6 A. Not for this investigation, but --

7 Q. No, not for this, but just generally?

8 A. In general, yes, it would be.

9 Q. Would it be difficult to incorporate some sort of
10 written record of briefings in an investigation of this
11 sort that could be delivered to officers for
12 consistency, that type of thing?

13 A. I think that would be -- sounds great, but I think that
14 would be very hard to do, because when these things are
15 happening, it's so fast-paced and to be able to keep on
16 top of that and then record -- recordings, it's -- well,
17 crucial, look at my notes, you know, if you're getting
18 the better quality notes, it makes it so much easier
19 further down the line, you know. You want to get that
20 done, but at the same time, you also can't spend your
21 time constantly writing in your book because you've got
22 to get stuff done.

23 Q. You talked yesterday about things moving at a quick
24 pace, fast moving?

25 A. Yes.

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1 Q. Does that inhibit the ability of you to write good
2 notes?

3 A. Yes, it did.

4 Q. If we look at these briefing notes again, towards the
5 bottom of that page -- we can maybe move up -- we then
6 see briefing 9.51 -- sorry, come back. Briefing 9.15,
7 5 May 2015, so this appears to be a document where again
8 another briefing note appears, chaired this time by DCI
9 Hardie. And it says:

10 "PIRC are the primary investigators and we work
11 under their instruction, as decided by Dave Green the
12 senior Procurator."

13 There's no reference to you having been involved at
14 that briefing that day.

15 Can we move further up, please, because there's
16 another reference at the bottom, which is from 6 May.
17 Keep going, sorry. It's towards the end. You see at
18 the end "Briefing", 8 o'clock in the morning, 6 May, and
19 then it says, "No briefing".

20 In what circumstances would you be expecting to see
21 a reference that says, "No briefing"?

22 A. It depends if they -- maybe the day before -- because
23 normally in your briefing, you're setting out your
24 actions or what the priorities are for that next day.
25 It may have been that the day previous they set out

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1 actions that will cover for two days and the agreement
2 is we will regroup again on the morning of, say, the
3 7th.

4 Q. Thank you. Could we go back to paragraph 42 of your
5 Inquiry statement, please. I'm finished with the
6 briefing note.

7 So paragraph 42, this refers back to the note in
8 your daybook that we touched on yesterday. This is the
9 66-page and it says:

10 "'Zahid - (Spoke to him - racist)'."

11 And you say:

12 "I'm looking at that note and that's the officers
13 who were speaking to Colette Bell, that's information
14 that Zahid Saeed has been speaking to him. It's an
15 assumption maybe that Zahid Saeed has been racist."

16 And I just wanted to -- I said yesterday we would
17 come back to this paragraph and I just want to ask you
18 about this. What was it that gave you a basis for
19 assuming that Mr Saeed had been racist, which is what
20 you seem to be suggesting here in paragraph 42?

21 A. Purely because it's next to his name.

22 Q. Just the little dash "racist"?

23 A. Yes, "Zahid Saeed" and then there's an arrow, dash,
24 "'(Spoke to him - racist)'".

25 Q. Let's just look at that on the screen so everyone can

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1 follow what you're referring to. I think this is on the
2 right-hand side towards the top of this page and it
3 says, "Zahid" and the arrow and then the brackets next
4 to it, does it say, "Spoke to him"?

5 A. "'(Spoke to him - racist)'".

6 Q. Dash "racist". And there's no other explanation or
7 detail there about what that meant?

8 A. No.

9 Q. And in paragraph 42, you seem to be suggesting or
10 assuming that Mr Saeed had been racist. When you --
11 that's an assumption on your part. Do you remember
12 anything about this?

13 A. No.

14 Q. Why you wrote that?

15 A. No, because when I looked at that note, I thought, "What
16 is that?" And then, of course, it's next to
17 "Zahid Saeed" and then I actually thought I could do
18 with looking at the statement noted from Colette Bell,
19 because that should cover that information if that's
20 correct. But obviously, I have not got access to any of
21 these statements, I've never seen these statements, so
22 I didn't do that, but ...

23 Q. So you think this might be something from Colette Bell?

24 A. Yes, that's the officers that have been speaking to
25 Colette Bell giving me an update at that time.

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1 Q. Is it possible that Mr Saeed was suggesting that
2 somebody had been racist towards him?

3 A. Somebody had been racist towards Mr ...?

4 Q. Saeed?

5 A. That's totally possible. It's totally possible, because
6 I don't know what the content of that is.

7 Q. Can I ask you to look at paragraph -- in your Inquiry
8 statement -- 197 now, please. You say here:

9 "Effectively hate crimes may have slipped through
10 the net in the past, like other things, not because of
11 colour or anything that like, it's because mistakes
12 happen. Now with hate crime there's a focus so these
13 crimes don't slip through the net. It's focused,
14 effectively, is how I would describe it. I think it's
15 given special attention because of a change in the times
16 and we have to make sure we fully support minority
17 groups and not let people feel they are not trusted or
18 believed and in these crimes we can't make mistakes.
19 It's been a long time since we started doing that.
20 I don't remember anything happening or why this
21 changed."

22 I would just like to ask you some more questions
23 about that paragraph. When you mention the words
24 "special attention", I wondered what you meant by that?
25 That's roughly halfway down the paragraph, you say,

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- 1 "I think it's given special attention ..."
- 2 A. There is a -- what I mean by that is on the inspectors'
3 logs that are run in our division, there is a section
4 purely for hate related crime, so if there's a hate
5 related incident reported, that would be included on the
6 log and it remains in it until it is resolved and
7 reviewed by an officer. That's to ensure that it has
8 been fully investigated.
- 9 Q. And for people listening, can you explain to them what
10 you mean by "a hate crime"?
- 11 A. A crime which someone reports where they, or someone
12 else perceives that they have been the victim of an
13 offence and it relates to either race, religion, gender,
14 whatever the circumstances are. So, you know, shouting
15 and swearing at someone because of their ethnicity or
16 anything like that would be classified as a hate crime.
- 17 Q. One of their particular characteristics?
- 18 A. That's right, yes.
- 19 Q. And you also talk about "a change in the times". Can
20 you just explain what you mean by that?
- 21 A. I will just read that sentence again.
- 22 Q. You see at the end you say, "I" -- sorry. I have lost
23 it. It's the same -- just after "special attention",
24 "... because of a change in the times ..." so it's in
25 the middle.

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1 A. Things are getting better, you know. The world for me
2 is getting a better place than what it was when,
3 you know, I was born in the late 70s and into the early
4 80s and into the 90s, when people did have different
5 views. But my perception is that things are getting
6 better nowadays.

7 Q. When you comment on making sure that you support
8 minority groups "and not let people feel they are not
9 trusted or believed", was that something that was an
10 issue that minority groups felt they couldn't trust or
11 believe in the police? Was that something you were
12 conscious of?

13 A. I think it's just important to make sure that minority
14 groups are happy to come forward and speak to
15 the police, you know, and they trust that we're going to
16 take action on what they're reporting.

17 Q. And when you said at the top:

18 "Effectively hate crimes may have slipped through
19 the net in the past, like other things, not because of
20 colour or anything that like, it's because mistakes
21 happen."

22 What did you mean by that?

23 A. What I'm saying is in the past -- well, sometimes in
24 the police, you know, things are missed, you know, don't
25 get done effectively. What I have said is that that may

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1 have happened in the past in relation to hate crimes,
2 but now there's the audit check in place that that
3 shouldn't be happening. We shouldn't be making mistakes
4 and there shouldn't be things missed.

5 Q. So sometimes mistakes happen.

6 A. Yes.

7 Q. But other times it may be that things happen because
8 they are hate crimes?

9 A. Yes.

10 Q. Can I ask you about paragraph 11 now, please, of your
11 Inquiry statement. Here you were talking about training
12 and you were asked about equality and diversity
13 training. And at paragraph 11, you say:

14 "You can go on the intranet ..."

15 We have heard that there's a Police Scotland
16 intranet:

17 "... and identify what training is available and
18 take on extra work. The keen officers do this. You
19 don't have to do it outside police hours. There might
20 be some officers who do it while they're on duty."

21 I'm interested in finding out what you mean about
22 extra work.

23 A. I have described them as "keen officers", that's
24 probably not the best description, but you get some
25 officers who are really enthusiastic, want to develop,

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1 want to learn other skills, want to go into different
2 areas and, you know, they will do that extra work, which
3 might not be required for everyone, it's not
4 a requirement, it's not a must do, but they want to do
5 it because they want to develop, which is brilliant, but
6 you don't always have to do that.

7 Q. Right. What -- you have mentioned "the keen officers",
8 is that because they want to advance themselves in some
9 way?

10 A. That's how I would describe somebody who has got a drive
11 and wants to do things.

12 Q. Is "keen officers" a bit of a derogatory term, is it, or
13 is it not with that connotation attached?

14 A. It's just not very professional when I read it back.

15 Q. We have heard that sometimes officers find it difficult
16 to read guidance and information and SOPs, for example,
17 on the intranet and through their emails when they're so
18 busy during the day and is that an ongoing problem for
19 officers?

20 A. Yes.

21 Q. And you said they don't have to do it outside of police
22 hours. If they did do it outside police hours are they
23 paid for that?

24 A. I don't think they will be. Some of them sometimes do
25 extra Moodle. You know, sometimes I have sat and you

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1 work on it maybe an hour or two, just to get it done, to
2 make sure you're doing that. You won't necessarily do
3 that. However, at the same time, we are trying to give
4 officers time to do these Moodle courses. But again,
5 it's not easy to fit it in. You have to be honest and
6 say it's not.

7 Q. We heard some evidence and we may hear more evidence
8 about training, but that Police Scotland have rolled out
9 a Moodle course which can be done online on the
10 computer?

11 A. Yes.

12 Q. And apparently it is now compulsory. Is that what
13 you're referring to when you're referring to --

14 A. Is that in relation to the diversity Moodle course?

15 Q. Equality and diversity.

16 A. Yes, that's right, yes.

17 Q. And as well as maybe not having enough hours in the day
18 at work, what about things like shifts? Do shift
19 patterns impact on the ability of officers to engage
20 with training that might be available?

21 A. I'm actually the opposite to that. If you're on a shift
22 and you have a potential -- it doesn't happen a lot on
23 say a night shift, on a particular night, you could get
24 the chance to do your Moodle training when you're on the
25 shifts and that's what's actually good about Moodle

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1 training in that you can do it -- there's flexibility,
2 you can start it, you can stop it, you can come back to
3 it.

4 Q. I mean in an ordinary working day, if there is such
5 a thing in the Police Service, how much time and energy
6 do officers have to fit in additional reading or
7 exploring the intranet?

8 A. It's really hard because response officers at the moment
9 are going from job to job to job, they're very busy, and
10 getting that time is not easy. Sometimes there are
11 crossover in shift patterns, so you've got extra
12 officers on. Now, that is an opportunity, but a lot of
13 times they will be doing custody reports, dealing with
14 people in custody, but that is a time when there is
15 slightly more staff and it gives them a chance during
16 that time.

17 Q. Can I ask you to look at paragraph 9, please, of your
18 Inquiry statement. You say here:

19 "It's the line manager who is in charge of my
20 training. It's the inspector above me. Over a long
21 period of time you've got your line manager who's
22 responsible. Some people change roles and do additional
23 training. I've had various managers over the years,
24 because it changes as a new person comes they'll confirm
25 what training I've had, they'll suggest things and I'll

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1 volunteer to go and do it."

2 And then at paragraph 10, if we just move down
3 a little:

4 "I was the line manager for Calum Clayton and Wayne
5 Parker. I was looking to make sure that they were
6 getting the training when they could."

7 Does that mean that you are in charge of training of
8 officers that you're the line manager for?

9 A. So if I'm the line manager and I would go to a new
10 department, what I would do is I would look at that
11 staff to see what training they have had to make sure
12 they are trained for the roles that they're in. So,
13 like I'm in charge of sexual offences just now, so
14 I will make sure that all the officers are trained
15 appropriately, sexual offences officers, to go and do
16 that job.

17 Q. And as part of that, do you also have to make sure that
18 they have done training in diversity?

19 A. Not until lately.

20 Q. Not until the recent Moodle --

21 A. Yes, the recent one, because that's been shared and
22 there's an instruction that for completion rate, it has
23 to be 100% completion rate for that.

24 Q. And that's a new thing, is it?

25 A. Last year, late last year that that come out.

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- 1 Q. So that's been absorbed by you into your role now --
- 2 A. Yes.
- 3 Q. -- in relation to the officers working beneath you?
- 4 A. Yes.
- 5 Q. In 2015, what was the position?
- 6 A. Well, in preparation for being interviewed, I went and
7 checked my records, and effectively, I hadn't had formal
8 training that I could remember since the date of this
9 witness statement. So I don't remember regular training
10 in relation to diversity issues.
- 11 Q. Can we look at paragraph 12, please. I think you say
12 there that you have not proactively read anything
13 additional in relation to equality and diversity and was
14 that -- apart from the recent Moodle changes, was that
15 the position really throughout your service?
- 16 A. Yes.
- 17 Q. And was that the same for officers who were -- you were
18 the line manager in relation to those officers?
- 19 A. I can't remember asking officers to go and proactively
20 look at training in relation to diversity. No, I can't.
- 21 Q. And so if, as a line manager, you weren't looking up
22 diversity and you weren't asking them to look it up,
23 were you aware of any of the officers that you had under
24 your management going away and researching diversity
25 themselves?

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1 A. I don't remember that. They may have done, but I don't
2 remember them doing.

3 Q. And you have talked today about, you know, different
4 views and how society has changed and it's getting
5 better now. When you talked about different views
6 before in the 70s and things like that, what were you
7 referring to?

8 A. Just in general, you know, society in general, where,
9 you know, you look at things like football matches,
10 chants, things that were said, you know, football
11 players coming to Scotland and being racially abused.
12 It's terrible, you know. But things are getting better.
13 It still happens, but, for me, it has moved on, it is
14 moving on, things are getting better and people are
15 challenging it.

16 Q. I'm not sure football is the best example of change
17 but -- after the recent publicity.

18 A. No, no.

19 Q. But, you know, in other areas, maybe there has been
20 bigger levels of change.

21 A. Yes.

22 Q. Can I ask you to look at paragraph 39 of your Inquiry
23 statement and this is where you were asked about the
24 investigation, and you say you kept an open mind about
25 the investigation:

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1 "I don't know what caused the death of Mr Bayoh.
2 I wanted to speak to people to find out as much
3 information as I could to understand what happened. It
4 is a hypothesis that criminal police actions may have
5 caused the death, or something that he's taken, is it
6 a medical matter, or is there something that happened in
7 the lead-up to it that caused it. In the absence of
8 specific information we don't know what caused it."

9 I think yesterday I asked you about the idea of you
10 having an open mind about all the different hypotheses
11 and possibilities of what may have caused Mr Bayoh's
12 death and you said that you had kept that open mind.

13 A. (Nods).

14 Q. And you're nodding.

15 A. Yes, sorry.

16 Q. And then at 41, you say:

17 "I didn't consider race being a factor in
18 Sheku Bayoh's death."

19 I just wondered about reconciling those two
20 statements: on the one hand, keeping an open mind about
21 what would appear to be all the possibilities and, on
22 the other, saying that you didn't consider race being
23 a factor in his death.

24 A. So I think a better line would be, I didn't see anything
25 on that day, or get reported to me anything that

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1 involved -- that I thought straightaway was, "This
2 incident involved race".

3 Q. So it wasn't that you didn't consider it, but you didn't
4 see anything to support it at that time?

5 A. At that point, you know, there was nothing that I can
6 think was directly involved in Mr Bayoh's death that
7 involved race.

8 Q. Right, thank you. Can I ask you about that, you not
9 seeing anything on that day. At paragraph 12, we have
10 looked at -- you have talked very frankly about the
11 training, that that wasn't something that you had
12 proactively gone and read. You hadn't had a lot of
13 training in diversity over your service at that stage.

14 At paragraph 191, you had said you don't remember
15 doing anything in terms of race training when you joined
16 the police. You did talk about an impactful two-day
17 training course, at 192, involving talking to people
18 from different backgrounds, but you had said that was
19 about 20 years ago, almost 20 years ago. And, at 194,
20 you talk about not having had any training relating to
21 unconscious bias.

22 Looking back now to 3 May 2015, how do you think
23 the -- if I can call it, the lack of training on race
24 related issues, what impact do you think that had on
25 your ability to see issues on 3 May that might have had

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1 a factor in his death, Mr Bayoh's?

2 A. I would like to think although the police have not -- we
3 have not done training since 2003, I think in my
4 personal life and the police in general that if I had
5 seen something or was aware of something, I would
6 challenge and I would -- I wouldnae let that go,
7 you know.

8 If there had been training, yes, that would have
9 been good, I might have been able to see something
10 potentially I have not seen or not recognised, but the
11 truth is we didn't have the additional training.

12 Q. What sort of thing would you have been looking for if
13 you had -- you know, to recognise the fact there was
14 maybe some race issue?

15 A. I would be looking for -- well, in terms of the
16 police officers and their reaction and how they were
17 dealing with this?

18 Q. Just information that would have come to your knowledge
19 as part of the investigation.

20 A. No, if anyone was saying anything in terms of the
21 officers that I found was derogatory or any comments in
22 relation to what had taken place, that's the type of
23 stuff that I would look for and you would challenge if
24 you were aware of it.

25 Q. So something overt or --

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1 A. Yes.

2 Q. -- obvious?

3 A. Yes.

4 Q. Something said?

5 A. Yes.

6 Q. Maybe particular language used?

7 A. Yes.

8 Q. That type of thing. Would you have felt comfortable
9 recognising that as race related on 3 May?

10 A. Yes, yes.

11 Q. What about more subtle covert elements? Would there
12 have been any part of the investigation that would have
13 looked at that?

14 A. Not by me, at that point, no. Have I missed something?
15 You know, possibly, if there's been something there, but
16 I have not seen anything like that.

17 Q. Can I ask you about paragraph 198, please. We will see
18 that on the screen:

19 "Overall, Sheku Bayoh's race played no role in my
20 actions on that day. I wouldn't want to speak about
21 others, but for me personally I was aware a man had died
22 in police custody who was black, you don't want the
23 public thinking that he died because he was black.
24 I don't think the colour of Mr Bayoh had anything to do
25 with the response. I would hate for others to think

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1 this had an effect on the investigation. I did think
2 about it but I wouldn't want the public thinking I was
3 doing anything different. On the day we're on autopilot
4 and I'm dealing with what's in front of me."

5 I would like to ask you some questions about that.
6 When you say there that you didn't want the public to
7 think that race was a factor in how Mr Bayoh had been
8 treated, when did you start -- first start to think that
9 you didn't want the public to think that?

10 A. That's a statement I made in August last year when I was
11 asked, you know -- I can just say that I would hate for
12 the public to think that me, as a police officer, or the
13 team that I'm working with, would have done anything
14 different on that day because Mr Bayoh was black.

15 Q. Do you feel -- you have been in the service since 1996.

16 A. Yes.

17 Q. And your career has been with the police.

18 A. Yes.

19 Q. Do you feel protective towards the police service?

20 A. Yes. I'm a police officer, I really like it and I enjoy
21 being a police officer.

22 Q. And it means something to you that the public respect
23 the police and believe in the work that they're doing?

24 A. Yes.

25 Q. Did you feel on 3 May defensive or protective towards

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- 1 the officers in relation to the events?
- 2 A. No, I just -- I felt for the officers, you know, they
3 have been involved in something horrific. But at the
4 same time, I didn't know actually what had happened.
5 So, you know, you've got to actually think, "Right,
6 let's just deal with what's happened", ey.
- 7 Q. And was it because you were a police officer that you
8 felt for the officers who had been involved, or do you
9 normally feel --
- 10 A. Well, I felt that day, you know, that could have been
11 any -- I could have been first at that call, ey,
12 you know, anybody could have been sent to that and you
13 just think, you know, position to be in, ey, and for
14 them to be in. So yes, I did think it was really hard.
- 15 Q. And you didn't want the public to think it was anything
16 to do with Mr Bayoh being black?
- 17 A. I would hate if anyone -- if any of the police officers
18 did anything different that day because of somebody's --
19 because he was black. You know, it would just be
20 totally wrong.
- 21 Q. And would it be -- it would be difficult for you as
22 a police officer if that was the case?
- 23 A. Yes, it would be.
- 24 Q. How would it be difficult for you?
- 25 A. Well, say if somebody did do something on that day

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1 because of the fact that Mr Bayoh is black, you would
2 want to get that -- you would want to get that dealt
3 with and you would want to get that person. But -- and
4 that's why I would hate if that was the case, because
5 then criticism comes on the police as always, as opposed
6 to an individual, so when you get a police officer doing
7 something, it makes you cringe inside and you think,
8 "How has that happened, ey?"

9 Q. And all officers would feel that?

10 A. Well, I certainly do. But yes, yes, the people that I'm
11 friends with in the police, I believe, are like me.

12 Q. Do you think those feelings in May 2015 might have had
13 an impact on your objectivity and your ability to
14 investigate?

15 A. No, because although I've got a -- although, you know,
16 I'm saying I'm a police officer and that, I love
17 the police and everything like that, I have also
18 investigated police officers, I also know there is not
19 good police officers there. So that's why I'm saying
20 you keep an open mind and if there's something they have
21 done that's wrong, I would be more than happy to arrest
22 a police officer, you know. If the circumstances
23 dictated, I would do that.

24 Q. But if you had concerns about the actions of an officer,
25 that maybe they were affected by racial discrimination,

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1 would you hesitate to investigate and deal with that
2 officer appropriately because of your feelings that you
3 have described, or would you not hesitate?

4 A. It would actually make me more determined to get them in
5 jail or lock them up or, you know, deal with it
6 properly.

7 Q. Can I ask you to look at paragraph 201:

8 "I've never seen discriminatory behaviour by
9 police officers. I'm not aware of any racist views of
10 police officers. I've never heard any racist jokes or
11 racist comments by police at any time."

12 And you have been in the service for a long time,
13 you have worked with many officers, senior and junior to
14 you in terms of rank. You have no doubt spent a lot of
15 time in canteens and even perhaps socialising with
16 officers.

17 A. Yes.

18 Q. There's been quite a lot of media interest recently in
19 relation to WhatsApp messages and text messages in
20 relation to other police forces. You have never seen
21 any discriminatory behaviour in all of those years by
22 any police officers?

23 A. I've never been -- seen or in terms of racist jokes, no.
24 No.

25 Q. What about discriminatory behaviour, not just racist

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1 jokes?

2 A. Discriminatory -- it depends what you mean by
3 "discriminatory behaviour", I suppose, ey. You know, is
4 there, over a period of time, you know, things being
5 said in a canteen when I joined in the mid-1990s to what
6 you would say now? Yes, okay. In terms of race, no.
7 Is there -- I'm just trying to think back to when I was
8 young. I was only 17 as a cadet in 1995, you know, it's
9 completely different days. Is there anything I could
10 think about there now going, "Well, that was" --
11 I cannae put my finger on anything that I could define
12 to you just now, but things have changed.

13 Q. The Chair has a statement -- and we will be hearing
14 evidence from this witness later in the hearing -- who
15 does say that there were inappropriate jokes at times,
16 inappropriate racist jokes at times, jokes about
17 nationalities. They might be telling us there's often
18 jokes about -- many of us will recall jokes about the
19 Englishman, the Scottish man and the Irishman, things
20 like that. Are these the types of jokes that you may
21 have heard?

22 A. Yes, there is jokes like that in the past, but again,
23 things like that have gone for me, you know. That's
24 a time ago.

25 Q. Do you think more junior officers will hide that type of

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1 comment from someone such as yourself who is an
2 inspector now?

3 A. I would like to think they're not doing that, you know.
4 Especially the younger ones actually, you know,
5 especially the younger officers. They're -- you know,
6 they're brought up in a different time where I think
7 they are getting better.

8 Q. So it's maybe the older officers that are hiding the
9 comments?

10 A. Well, I'm not saying that at all, but I think younger
11 officers coming through are much more aware nowadays.
12 And, you know what, the younger -- youth society get
13 a bit of a hard time at times, but I actually think
14 they're not as bad as people think.

15 Q. Given what you have said earlier today, if you had seen
16 behaviour that was discriminatory, racist, for example,
17 are you confident that you would recognise that even
18 though you have not had as much training --

19 A. I would like to think I would. I would like to think
20 I would.

21 MS GRAHAME: Could you give me a moment, please.

22 (Pause).

23 Thank you very much.

24 LORD BRACADALE: Are there any Rule 9 applications?

25 Ms Mitchell.

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1 Detective inspector, I wonder if you would withdraw
2 to the witness room while I hear a submission.

3 (The witness withdrew)

4 Yes, Ms Mitchell.

5 Application by MS MITCHELL

6 MS MITCHELL: Touching on the last point first in relation
7 to the issue of discrimination, the witness was asked
8 about the issue of discrimination and he says that it
9 depended what you meant by "discrimination". And what
10 I was wanting to test with him to see whether or not he
11 was aware of other types of discrimination, such as
12 gender discrimination within the police force and
13 whether or not he was aware of that type of
14 discrimination, sexual comments, things of that nature.
15 It's actually just a follow-up question.

16 Moving back to earlier matters, the -- I'm obliged
17 to my learned friend for covering the issue of consent
18 very thoroughly, but one issue I think that arises is
19 the consent in relation to seizing a scene or what was
20 described as a crime scene and the issue of consent.
21 And the Inquiry might remember that when we were
22 listening to Mr Saeed senior, he came back to the police
23 station and basically said, "We want back in, we want
24 back in to our house", and what I would like to explore
25 with the witness is what did he consider was the basis

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1 once they had seized it? Could consent be revoked and
2 were they entitled to say, "We would just like back into
3 our house"?

4 So to explore with the witness what he thought the
5 legal status was after it was seized for that reason.

6 The next matter arises from his first PIRC
7 statement, PIRC 00136, and this was in our application,
8 our Rule 9, and I spoke to my learned friend about it
9 and I think she made a decision based on the fact that
10 the witness could not remember the conversation --
11 telephone conversation he had with Zahid Saeed, so she
12 didn't pursue this matter further.

13 However, I would respectfully submit that I should
14 be able to ask questions about this, because in his
15 statement, he speaks of explaining to police officers to
16 tell -- to give Colette the death notice and then he
17 said:

18 "I thereafter made telephone contact with witness
19 Zahid Saeed on his mobile telephone to confirm his
20 welfare and current location. I explained to witness
21 Saeed that we were concerned for his friend (now
22 deceased) and that the police required to speak to him."

23 And what I would like to explore with the witness
24 was in the face of already having instructed officers to
25 give the death notice to Colette, why he would tell the

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1 witness Saeed that they were concerned for his friend
2 when they already knew he was dead.

3 Moving then on to the issue of police contact, this
4 is something that comes about as a result of a response
5 to a question he was asked at page 88 of yesterday's
6 transcript. He was talking about how he was becoming
7 increasingly concerned that the family had to be given
8 some notice and he said:

9 "I don't know when I found out about the sister, but
10 I remember thinking we've got to get information out
11 there in relation to -- well, the police contact and the
12 confirmation of his death."

13 And what I would like to explore with the witness
14 was what was the urgency for him of getting the
15 information out in relation to police contact.

16 And finally, in relation to again an issue arising
17 in relation to consent of Zahid's family, and I can put
18 that in at the same point, he said at the end of his
19 evidence that one of the things that he would perhaps
20 now consider to do is go back and check with his
21 officers in relation to the issue of consent.

22 And what I was wanting to ask him was -- he explains
23 that the issues that were raised by the family in
24 respect of the police, the fact that one of the members
25 of their family was quadraplegic, that one was a nursing

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1 mother, the child had had an operation, those factors,
2 was, he says, when asked:

3 "Was any of that shared with you by the officers?"

4 He says:

5 "I don't remember anything to do with that."

6 And what I would like to explore was should the
7 officers have contacted him and made him aware of that?
8 Is that something that if those police officers were
9 faced with people who said, "No, we're not leaving our
10 house", is that something he would have expected would
11 be brought back to his attention?

12 Those are my questions.

13 LORD BRACADALE: Thank you. Well, I will adjourn to
14 consider these submissions.

15 (Pause)

16 MS MITCHELL: (Mic turned off).

17 Sorry, I'm obliged. I asked for a reference to be
18 given to me. When he speaks of discrimination, there
19 was one issue I would like to raise with him and that is
20 the question of stereotyping of racial groups.
21 The court will come -- sorry, the Inquiry will come to
22 hear about people being described in certain ways by one
23 of his colleagues, Mr Robson, and I was going to ask
24 this witness whether he recognised that as being
25 stereotyping a group of people.

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1 LORD BRACADALE: Thank you.

2 MS MITCHELL: And that's at paragraphs 33 and 34 of
3 Mr Robson's statement. I'm obliged.

4 (11.16 am)

5 (Short Break)

6 (11.47 am)

7 Ruling

8 LORD BRACADALE: Ms Mitchell raised a number of points.

9 I have previously taken the view that the exploration of
10 sexual discrimination goes outwith the Terms of
11 Reference. I shall not permit that.

12 It seems to me that the issues of consent and
13 withdrawal of consent have been comprehensively explored
14 with this witness and are likely to be explored again
15 later, so I shall not permit any further questioning on
16 that.

17 I shall allow Ms Mitchell to ask questions in
18 relation to this witness' telephone conversation with
19 Zahid Saeed.

20 I do not consider further exploration of this
21 witness' position in relation to the death message,
22 which again has been thoroughly explored, would assist
23 me. I shall not permit any further questioning there.

24 As to the proposal to put to this witness the
25 evidence of Chief Inspector Robson, at paragraphs 33 and

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1 34 of his Inquiry statement, Counsel to the Inquiry has
2 already alluded to this evidence to come. Mr Robson
3 will be giving evidence today, so I do not think I would
4 be assisted by exploration of these issues with this
5 witness.

6 So I shall allow questioning in relation to the
7 telephone conversation with Zahid Saeed only.

8 Can we have the witness back, please.

9 (The witness returned)

10 MR GRAEME DURSLEY (continued)

11 LORD BRACADALE: Mr Dursley, Ms Mitchell, who represents the
12 Sheku Bayoh family, will ask you a few questions.

13 Questions from MS MITCHELL

14 MS MITCHELL: I wonder if we could have up on the screen
15 PIRC statement 00136 and if we could go to the second
16 page of that. Inspector Dursley, this is a statement
17 that you gave, that you took yourself on 4 May 2015 at
18 11 am and we have seen that before in the Inquiry.

19 Could I ask you to look in particular about the
20 third paragraph there that starts, "About
21 1045 hours ..."

22 And do we see there in that paragraph of the
23 evidence that you have already given, that you in effect
24 told officers to pass on the death notice?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. In the next paragraph, you talk of making contact with
2 the witness Zahid Saeed. Now, we had heard from you
3 that this was an important thing that you wanted to do
4 and you explained to us why that was. Can you repeat
5 that for us just now, why it was important?

6 A. It was important because Mr Saeed -- sorry, Zahid Saeed
7 had been in the company of Mr Bayoh that morning,
8 because that was the information we had got from
9 Colette Bell and he would have been one of the last
10 people that had been with him that morning, so he was
11 important in relation to trying to fill in the timeline
12 of what had happened.

13 Q. So when you spoke to him, you say you can't remember
14 this at all?

15 A. No.

16 Q. I would like to explore with you this: you said that --
17 this is on the next day and obviously working as an
18 aide memoire, you said that you wanted to confirm his
19 welfare. Might you be able to tell us anything about
20 that?

21 A. From recollection, the first information I got from the
22 officers was that there had been some sort of
23 altercation between Mr Bayoh and Zahid Saeed, so make
24 sure he is okay is one of the first things you would
25 look to do.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. And his current location, presumably that's quite
2 self-explanatory?
- 3 A. Yes, where he was.
- 4 Q. And the next thing, if I can ask you to read out the
5 next sentence.
- 6 A. "I explained to witness Saeed that we were concerned for
7 his friend (now deceased) and that the police required
8 to speak to him."
- 9 Q. Now, by this time, you of course knew that Mr Bayoh was
10 dead.
- 11 A. No. We knew someone was dead, but not Mr Bayoh.
- 12 Q. You were confident enough to give his partner a death
13 notice.
- 14 A. That was at 10.45 after I got the information -- in
15 fact, sorry, that was after -- yes, you're right,
16 apologies. The timing is wrong. So yes, we had told
17 Colette Bell by that point, yes.
- 18 Q. Yes, so you were confident enough to pass the death
19 message on to Colette Bell and you knew that Mr Saeed
20 had been involved in an altercation with Mr Bayoh
21 earlier. Why did you tell Mr -- why did you tell
22 Zahid Saeed that you were concerned for his friend when
23 you already knew he was dead?
- 24 A. We still never had formal identification of Mr Bayoh at
25 that stage. I believed it was him, but there was not

Transcript of the Sheku Bayoh Inquiry

1 certainty, so that death message that was passed to
2 Ms Bell was that a male was dead. We believed it
3 was Mr~Bayoh, but we didn't have certainty for that.

4 Q. So why did you tell Mr Saeed that you were concerned for
5 his friend?

6 A. Because we were -- still were concerned for his friend
7 if -- although I believed it was him, there were still
8 concerns.

9 Q. So I understand what you're thinking. Why did you tell
10 Zahid Saeed that?

11 A. Because we had -- we were looking to speak to him about
12 the circumstances we had him on, we wanted to speak to
13 him in relation to what had occurred.

14 Q. But it wasn't correct in the sense that you already
15 believed that Mr Sheku Bayoh was dead.

16 A. Yes, but we didn't have certainty for that at that
17 point.

18 MS MITCHELL: No further questions.

19 LORD BRACADALE: Detective Inspector Dursley, thank you very
20 much for coming to give evidence to the Inquiry.

21 We're going to rise briefly in order that the next
22 witness can be introduced and you will then be free to
23 go.

24 (The witness withdrew)

25 (11.54 am)

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1 (Short Break)

2 (11.56 am)

3 LORD BRACADALE: Good morning, Chief Inspector Robson.

4 Would you raise your hand and take the words of the oath
5 after me.

6 CHIEF INSPECTOR COLIN ROBSON (sworn)

7 Questions from MS GRAHAME

8 MS GRAHAME: Good morning.

9 A. Morning.

10 Q. You are Colin Robson?

11 A. That's correct.

12 Q. What age are you?

13 A. I'm 43.

14 Q. And your rank is currently chief inspector?

15 A. That's correct.

16 Q. In 2015, you -- what rank were you at that stage?

17 A. I was a detective inspector.

18 Q. Detective. And how many years' service do you have?

19 A. I've got 24 years, 25 years this year.

20 Q. So, in 2015, I think you had 17 years service?

21 A. Correct.

22 Q. And you have also spent some of your time with
23 the police in the Professional Standards Department?

24 A. That's correct.

25 Q. And you did that for about two and a half years, is that

Transcript of the Sheku Bayoh Inquiry

- 1 right?
- 2 A. Yes.
- 3 Q. And do you want to explain briefly your current role
4 with the police?
- 5 A. I'm currently part of the -- it's a project, it's
6 policing a digital world programme that looks in
7 relation to developing the cyber strategy for
8 Police Scotland and partners.
- 9 Q. Let me just tell you what's in front of you. There
10 should be a folder, a blue folder.
- 11 A. Yes.
- 12 Q. And what we have done is we've got hard copies of your
13 various statements and I'm going to go through those
14 with you to check we've got them, but you're very free
15 to look at them, or consider them if you prefer. When
16 I ask for a particular paragraph to come up, it will
17 come up on the screen in front of you, but if there's
18 something else around or another area you want me to
19 look at feel free to tell me and we can have that
20 brought up on screen as well.
- 21 A. Thank you.
- 22 Q. In addition, I think there should be a spreadsheet which
23 is called, "The combined audio and video spreadsheet".
24 It is A3. Is it just to your left?
- 25 A. It is.

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1 Q. That's it. And I will talk you through that when we
2 come to it, but you can use that as well and refer to it
3 as you wish.

4 Now, as well as your statements, we have also been
5 given a document, which should be at the rear of that
6 blue folder, which covers your rank, your postings and
7 your training record. Do you have a copy of that there?

8 A. I do, yes.

9 Q. And that's up-to-date and we have been given copies of
10 that, so if you wanted to refer to that at any time, you
11 have a copy there at your disposal.

12 Let's look, first of all, at the first operational
13 statement that you prepared and that should be the first
14 one in the blue folder for you. It's PS00280. If you
15 just move down the screen slightly, we will see that
16 this was prepared on 4 May 2015 at 13.30 in Kirkcaldy.
17 I think you prepared this yourself?

18 A. I did, yes.

19 Q. And I think in your most recent Inquiry statement, you
20 say that you did your best when you prepared this to
21 give a true and accurate account of your involvement in
22 the events on 3 May, is that correct?

23 A. That's correct.

24 Q. And then can we look at PIRC 00223 and this is another
25 statement by you, slightly later on 2 June 2015 at 9.40,

Transcript of the Sheku Bayoh Inquiry

1 and it was given -- a statement given to PIRC. And if
2 we just move down the screen a little, we will see that
3 it was taken by DSI Keith Harrower in the presence of
4 investigator Ross Stewart -- they're both from PIRC --
5 and it was taken at Kirkcaldy Police Office.

6 A. Correct.

7 Q. Now, in paragraph 44 of your Inquiry statement, you say
8 at the beginning of this statement, there was a slight
9 anomaly about "care" positioning or something. We will
10 come back to that in due course. So -- but subject to
11 that anomaly that you have mentioned later, you did your
12 best to be true and accurate in this statement as well?

13 A. That's correct. I think it was the car positioning.

14 Q. Oh, car, yes, sorry. That's my typing. "Car"
15 positioning, not "care".

16 And I think at paragraph 45 of your Inquiry
17 statement, you say, in the event of a discrepancy
18 between your Inquiry statements, your operational
19 statement and/or your PIRC statement, you would prefer
20 the PIRC one:

21 "... because they compared my original and asked me
22 addendum or additional questions on that."

23 And you're happy with the PIRC statement because it
24 has greater detail in it.

25 A. That's correct.

Transcript of the Sheku Bayoh Inquiry

1 Q. And that's the statement that we see on the screen at
2 the moment.

3 A. Yes.

4 Q. Thank you. Let's then look at PIRC 00224 and this is
5 a statement dated 24 November, which we will see --
6 there we are. 24 November 2015 at 8 in the morning and
7 again it's a self-statement, so does that mean you have
8 prepared this yourself?

9 A. Yes, I think it was maybe supplementaries from the
10 original statement that I was asked to provide.

11 Q. This is in November of 2015?

12 A. Yes.

13 Q. And this was prepared at divisional HQ in Glenrothes?

14 A. Correct.

15 Q. And can you explain why you prepared this statement?

16 It's very brief.

17 A. I think it came from -- it was part of the
18 investigation, PSD became the conduit between PIRC and
19 Police Scotland, that I was contacted by somebody from
20 the Professional Standards Department, again just an ask
21 or an action from PIRC to clarify a certain part of my
22 statement.

23 Q. All right, thank you very much. Again, you did your
24 best to be true and accurate in your statement on this
25 date?

Transcript of the Sheku Bayoh Inquiry

1 A. Correct.

2 Q. Then let's look at your first Inquiry statement, please.
3 That's SBPI 00133. I think originally you were spoken
4 to by somebody in the Inquiry team and a statement was
5 taken from you on Wednesday 23 March last year and this
6 was 30 pages long.

7 And if you can look through your hard copy, you will
8 see that you have actually signed it on every page. And
9 just so that people understand, your statement is
10 prepared, it is returned to you and then you are given
11 the chance to read through it and make sure if there's
12 any changes you want to make, or alterations or
13 deletions, additions, and then you can sign every page.
14 I think normally it's done digitally.

15 A. Yes, that's correct.

16 Q. And that's what happened with this statement?

17 A. Yes.

18 Q. And if we look at the final page, please. It is -- we
19 see it is 126 paragraphs long and your signature is on
20 this page on 31 May of last year. So although it was
21 taken in March, it was signed by you on 31 May last
22 year.

23 A. Yes, that's correct.

24 Q. And although we can't see -- you will see on the screen
25 that your signature is redacted.

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1 If we look at paragraph 126, it says:

2 "I believe the facts stated in this witness
3 statement are true. I understand that this statement
4 may form part of the evidence before the Inquiry and be
5 published on the Inquiry's website."

6 And you understood that when you signed it?

7 A. I did, yes.

8 Q. And then can we look at your second Inquiry statement,
9 which is SBPI 00251. This was taken from you on
10 Wednesday 4 October and Wednesday 9 November last year.

11 A. Correct.

12 Q. So it was two occasions that you were spoken to and it
13 is 60 pages long. And if we go to the final page, we
14 can see, although it is redacted, that you have signed
15 that page and in fact you have signed all the pages
16 again of this statement, and it was signed by you on
17 27 January this year.

18 A. Correct.

19 Q. And the last paragraph on this second Inquiry statement
20 is 283 and it is in exactly the same terms as the
21 previous one:

22 "I believe the facts stated in this witness
23 statement are true. I understand that this statement
24 may form part of the evidence before the Inquiry and be
25 published on the Inquiry's website."

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1 Again, you understood that when you signed the
2 statement?

3 A. I did, yes.

4 Q. So I think in paragraph 46 of your Inquiry statement,
5 you said that all -- you have endeavoured with all your
6 statements to be true and accurate in what you have
7 said?

8 A. I have, yes.

9 Q. And I think in paragraphs 44 to 47 of your Inquiry
10 statement, you have given a detailed explanation about
11 the circumstances surrounding giving statements in 2015
12 when they were both written by you alone and also given
13 to PIRC?

14 A. That's correct, yes.

15 Q. Lovely. I would like to start by asking you some
16 questions about 3 May 2015. And let's go, first of all,
17 to SBPI 00133, please. You will see it has come up on
18 the screen. This is your first statement that you gave
19 in March of last year, so it's the first Inquiry
20 statement. And if we look please at paragraphs 79 and
21 then 80, and if we can have both of them on the --
22 that's fantastic, and it says:

23 "I have been referred to my PIRC statement ..."

24 And then you quote:

25 "I was generally happy I was aware of the

Transcript of the Sheku Bayoh Inquiry

1 circumstances and I didn't require any further
2 information from her at that stage. However, during the
3 journey she came out with a purely ..."

4 Sorry, I think I'm on the wrong statement, after all
5 that. I think it was SBPI -- let me just check
6 before -- that can be taken off the screen for a moment.
7 Best laid plans. Yes, I'm on the wrong statement. It's
8 the second Inquiry statement I'm looking for and so that
9 is SBPI 00251. We will come on to that earlier
10 paragraph later today.

11 But, first of all, let's have paragraphs 79 and 80
12 of your second Inquiry statement and this one reads:

13 "I was temp DI from May 2014, so I'd been SIO for
14 pretty much the best part of a year. During that time,
15 I did an awareness course to equip me in the absence of
16 the full course. I'd done various seminars, conferences
17 etc. There's a shadowing period where you do the role
18 but have advice and guidance.

19 80. I was SIO for the whole of Fife that day.
20 I didn't ordinarily work out there, but no doubt the
21 staff that I was overseeing that day from a crime
22 management perspective were in Kirkcaldy, so I started
23 there. And again, there is a process to the day in
24 terms of morning meetings, overseeing other, as I say
25 incidents and crimes, providing guidance that

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1 supervisory oversight from an investigative perspective.
2 I was providing advice and guidance for all staff
3 on duty that day. I was SIO at the start of my shift so
4 I oversaw other incidents and crimes."

5 I want to explore these paragraphs with you if
6 I may. I would like to talk about primarily 3 May 2015
7 and I think at that date you have said you had been
8 a temporary DI since May 2014?

9 A. That's correct.

10 Q. And so that was roughly a year you had been in the role.
11 Was that as a temporary role but for around a year?

12 A. Yes.

13 Q. And had you been doing it full-time for that year?

14 A. I had, yes.

15 Q. And you say that you had done an awareness course in the
16 absence of the full course. Can you explain what you
17 mean by that?

18 A. Again, obviously performing that role ordinarily you
19 would then be put forward to carry out the senior
20 investigators course at the college. Obviously, in
21 terms of demand and the timing, you're given an
22 awareness course to best equip you to carry out that
23 role in the interim period.

24 Q. Is there a difference between the awareness course and
25 the full course?

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1 A. I think obviously the full course would be more
2 comprehensive, so this was basically covering the kind
3 of basic principles of the role of SIO, appreciating
4 obviously I had significant crime management experience
5 prior to conducting that role.

6 Q. And was that experience of crime management from your
7 year as a temporary DI, or just generally in your
8 service?

9 A. Pretty much for the 14 years prior to that in various
10 roles within crime management and investigations.

11 Q. Do you want to tell us what those roles were?

12 A. I was pretty much coming to the CID, crime management
13 fold, early in service after a couple of years. I
14 carried out the detective constable role within the CID
15 and the detective sergeant role and then got sent to the
16 temporary role as detective inspector.

17 Q. And if the Chair wants to know a little more about that,
18 is that available in the document --

19 A. It is.

20 Q. The roles and -- rank and roles and training documents?

21 A. In terms of my postings, yes.

22 Q. Yes. And tell me, is the awareness course of
23 a particular duration and how does that differ from the
24 full course?

25 A. Again, it's changed over time. I think maybe at that

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1 time, it was just a couple of days and I think there was
2 a few of us that were going to be performing similar
3 functions. So it was just an opportunity to try and --
4 as I say, an awareness raising of the role that we were
5 likely to conduct during that period on the temporary
6 basis before -- in advance of the formal course.

7 Q. And how long was the formal course at that time, or the
8 full course?

9 A. I think it would be a couple of weeks.

10 Q. And you talked about SIO. We have heard that's senior
11 investigating officer?

12 A. That's right, yes.

13 Q. And what does an SIO do?

14 A. Depending obviously -- I've obviously explained the name
15 of it. Naturally, you can perform various functions in
16 that. On that day I was the on-call SIO or duty SIO for
17 the whole of Fife, just to more give that investigative
18 oversight of every element of ongoing matters from major
19 crime, critical incidents, sexual crime, missing
20 persons, domestics. So it's an investigative footprint
21 and oversight with complementing other police functions
22 that are involved as well.

23 Q. And, as an SIO, do you have a team of officers
24 underneath you of less rank?

25 A. Yes, so you would -- in terms of that line management

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1 structure, as the inspector, you would have -- obviously
2 under that you would have your sergeants and constables
3 as well.

4 Q. So you would have one sergeant or more than one
5 sergeant?

6 A. It would vary. So again, on that weekend, in terms of
7 the duty cover, there would be sergeants and detective
8 sergeants in various locations across Fife, just
9 depending on the resource that was on that weekend, but
10 it would vary in terms of the availability of resource.

11 Q. And the nature of the incident itself?

12 A. Yes.

13 Q. And you were SIO for the on call or on duty that day,
14 SIO for the whole of Fife that day?

15 A. That's correct.

16 Q. And part of that work covered Kirkcaldy?

17 A. It did, yes.

18 Q. It sounds like that would have been quite a big burden
19 or a big task for the whole of Fife. Can you give us
20 some impression of the level of work that that would
21 have involved?

22 A. Again, it would just vary in terms of the demand and
23 obviously the number of incidents that were taking
24 place. Naturally, the demand in incidents would
25 outweigh the resource available. It was all about how

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1 you would prioritise through the kind of threat, risk
2 and harm, how you would -- what you would focus on in
3 terms of that risk management.

4 So there would be a process that you would come in
5 and there's obviously -- there's a divisional log that
6 would pretty much articulate everything that was ongoing
7 within, at that time, the kind of preceding 24 hours,
8 that would obviously give you an understanding of where
9 we needed to focus our attention and resources to.

10 Q. And was it a matter for your discretion where you
11 prioritised your own attention on a particular day?

12 A. So it would vary, because naturally -- because of the
13 various amounts of matters ongoing, it wouldn't
14 naturally fall to the CID or crime management to
15 progress. But we would, as I say, maybe give that
16 advice and guidance and oversight on the various kind of
17 multitude of events and incidents that would take place.
18 So it would just -- it would just vary. And again,
19 there's always the other roles and responsibilities
20 within that kind of command structure covering the area
21 on that day.

22 Q. And tell us about those other roles that you maybe
23 performed on 3 May?

24 A. The other roles that were performed?

25 Q. You talked about other roles?

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1 A. Yes, so as part of me as the SIO, I would always have
2 the PIO, so the police incident officer, more in terms
3 of the kind of uniformed element of policing on that
4 day. You would also have your duty chief inspector, who
5 would again be the layer above me, and it would be for
6 us to sit down and discuss what matters were arising,
7 what matters needed priority attention and how we align
8 the resources to those priorities.

9 Q. And that was something you were doing, or part of, on
10 3 May?

11 A. It would have been the intentions, but obviously events
12 then came before that, yes.

13 Q. And you have mentioned a moment ago the divisional log.
14 Tell us about that.

15 A. So it's effectively a Word document and it's on
16 a template that would list those elements that I talked
17 about in terms of 1, the available resource, the line
18 management structure that was on that day. It would
19 then go through your more serious matters in terms of
20 major crimes, critical incidents, sexual offences,
21 deaths, missing persons, domestics, hate crime. So it
22 would just pretty much list the whole kind of workload
23 that the division would have and then for us to go
24 through and manage that with the line resources if and
25 where necessary.

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- 1 Q. And is part of that process delegating different
2 incidents to different people within the Fife area?
- 3 A. Yes. And something that could be deferred, because it's
4 maybe not as a priority or as risk, that it could just
5 be left to kind of day business effectively.
- 6 Q. Had you had that discussion of allocating resources
7 before events -- you have talked about events
8 overtook --
- 9 A. Yes.
- 10 Q. Was that allocation of resources done by the time you
11 heard about this incident, or was that still to be done?
- 12 A. No, in terms of times, it would normally happen say,
13 for instance, half past 8. There would be local
14 meetings in terms of the different areas of Fife and
15 then obviously the overarching divisional meeting where
16 the senior management team would meet to discuss. At
17 that time, you are briefed on these matters. At that
18 time, you could obviously concur with the action, the
19 intended action, or if there needs to be further advice
20 and guidance provided. So that time hadn't come.
- 21 So at that time, when I first started, was more just
22 that information gathering and briefing myself on the
23 matters that had been taking place.
- 24 Q. Looking at the divisional log?
- 25 A. Yes, pretty much, and then that's supplemented by

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1 station logs as well.

2 Q. Bringing yourself up-to-date on what had happened at the
3 previous shift?

4 A. That's correct.

5 Q. Can I look for a moment at what we understand is
6 a daybook, PS18495, please. Now, I've got six pages of
7 this on PDF on the screen. You may have a hard copy of
8 this in the blue folder.

9 A. I do, yes.

10 Q. Oh, do you?

11 A. Yes.

12 Q. There are some pages that appear to have been copied
13 twice, both individually and as part of a double spread.
14 Do you recognise this document?

15 A. I do, yes.

16 Q. What is it?

17 A. It is the photocopies from my daybook.

18 Q. Was this the daybook that you prepared or completed on
19 Sunday 3 May 2015, which is the date at the top of that
20 first page?

21 A. That's correct, yes.

22 Q. And where it says "0910", is that when you started the
23 daybook this day?

24 A. No, I think that's an entry that would relate to the
25 matter that we're intending to discuss being declared as

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1 a critical incident.

2 Q. Can you tell us what circumstances gave rise to you
3 starting your daybook on Sunday 3 May then? Do you have
4 more than one daybook?

5 A. No, it would be just the one.

6 Q. And what dictates what you've got a daybook about or
7 what you put in the daybook?

8 A. I think, in fairness, I have obviously had the reference
9 before in terms of distinguishing between the daybook
10 and the notebook, which is obviously more for kind of
11 procedural recording. This is effectively because of
12 the kind of multitude of matters that were brought to my
13 attention is a book to take my own notes in terms of to
14 refer to it later and obviously roundabout the kind of
15 decision-making.

16 Q. And we have heard yesterday from Graeme Dursley about
17 how he completed his daybook.

18 A. Yes.

19 Q. And can you tell us a little bit about your practice
20 when you complete your daybook.

21 A. Well, ordinarily, again, before obviously events took
22 place that day, and it's maybe reflected in Saturday and
23 the days before, would just be as I reviewed the logs
24 that were referred to would just be more teasing out
25 what the priorities were and either triggers from myself

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1 that then during these meetings, I would obviously seek
2 clarity on. Then it was to make then further notes to
3 again assist in the decision-making processes around
4 that.

5 Q. So does your daybook contain information potentially on
6 3 May regarding incidents across the Fife area?

7 A. It would have, but obviously didn't get a chance to use
8 my daybook on that day before events unfolded.

9 Q. So it looks like there's only a few pages in this
10 daybook. Is that because the events overtook you?

11 A. They did. So -- and again, with the times there,
12 I think it was important, it is triggers to me to note
13 those two times. One relates to the declaration of the
14 critical incident. The other one I think is the first
15 of the Gold Group meetings, which I think it was
16 probably my first -- like a notebook, the first
17 practical opportunity you have to make the notes.

18 Obviously, I was otherwise engaged and it wasn't
19 practical to use my daybook for the kind of actions that
20 I was involved in and the --

21 Q. Did you use a different type of book, a notebook?

22 A. I didn't have the opportunity.

23 Q. So in terms of notes that you took on the day,
24 contemporaneous notes, is the daybook the full extent of
25 those?

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- 1 A. Yes, but also supplemented, because at a very early
2 stage, or when I started making the notes, I also
3 recorded them on separate policy action books.
- 4 Q. And do they -- are they called policy action books?
- 5 A. There is an action log and again with the kind of
6 differentiated -- because in the infancy of
7 Police Scotland, those took -- it was action logs with
8 policy bit at the back, or there was actually action
9 logs with a separate policy book, I'm not sure what
10 I used that day.
- 11 Q. And in terms of notes taken that day, would they be in
12 the action log and perhaps with the separate policy
13 note?
- 14 A. It's anything noted by myself, so either in the daybook
15 or transposed onto the action book.
- 16 Q. If things were noted in the daybook, would they be, as
17 you say, transported, so copied into the action log, or
18 would they be separately noted in the action log?
- 19 A. I certainly think that what was noted in the daybook
20 would be the triggers for obviously the actions that
21 would be recorded probably more in-depth and articulated
22 better than the notes on the daybook.
- 23 Q. But the first point of noting would be into the daybook?
- 24 A. Yes, that's correct.
- 25 Q. And if we see the entry 9.10 and 11.30, is that the

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- 1 first entries that you have made into that daybook?
- 2 A. I actually think there's potentially writing at the
3 bottom of Saturday 2 May. I know that's obviously
4 blanked out. I think it is only maybe the call card
5 number for the incident that they were discussing.
- 6 Q. Can we move down the screen, just to double check.
7 I see that part of Saturday is redacted. Do you see
8 just at the --
- 9 A. Yes.
- 10 Q. Just at the very bottom there, it says, "Garry McEwan",
11 I think, and then "0910 Critical incident", is that the
12 first entry that you made?
- 13 A. I think above it, there's the call card number and
14 another reference number to a police database.
- 15 Q. And we have heard previously that Garry McEwan had
16 declared a critical incident at 0910 hours?
- 17 A. That's correct.
- 18 Q. On the Sunday. So the entries we see on the right-hand
19 side, at the top, are subject -- other than the
20 reference to Garry McEwan declaring a critical incident,
21 that's the point at which you start filling in the
22 daybook.
- 23 A. That's correct, yes.
- 24 Q. So some time after a critical incident has been
25 declared?

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1 A. And at the first opportunity.

2 Q. Now, before I move on to the events of Sunday 3 May, can
3 we look briefly at paragraph 34 of your Inquiry
4 statement. This is your second Inquiry statement. I'm
5 just checking myself. It's paragraph 34, please, and
6 you were asked here about some of your experience
7 leading up to May 2015 and you said:

8 "... I didn't have experience of dealing with
9 a death in police custody from the SIO ownership
10 element, but I remember a couple of occasions as
11 a police officer or a detective where I was involved in
12 it."

13 Can you give us a little bit more information about
14 this.

15 A. Yes, as I say, I think barely in the infancy of my
16 career, having joined in 1998, whether I was in uniform
17 or I had joined CID by that time, it was the awareness
18 of a death in custody. And, as I explained about the
19 whole kind of management structure and directing
20 enquiries, I think I was part of the investigation or
21 just actioned to go and carry out an enquiry as part of
22 that investigation, whether it was noting a statement
23 from a witness, I can't be too sure.

24 Q. So you had been part of a team investigating a death,
25 maybe as a constable?

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- 1 A. Yes, and just more action led in terms of going and
2 doing a specific task to then feed that element of the
3 result of the task back into the investigation.
- 4 Q. DI Dursley had talked about priority actions and fast
5 actions and tasking constable level -- constable rank
6 officers with individual tasks as part of an
7 investigation. Is that the sort of involvement you had
8 had before?
- 9 A. Yes, I would have been briefed on the circumstances that
10 would have enabled me to go and carry out that action
11 and, as I recall, it was noting statements from
12 associates of the person that had died.
- 13 Q. So when you say you didn't have experience from the SIO
14 ownership element, did that mean you hadn't been acting
15 as SIO in any of those deaths?
- 16 A. No. So the supervision levels would have been above me
17 at that time in terms of directing me and carrying out
18 stand-alone actions, as opposed to being aware of the
19 broader investigation.
- 20 Q. So you had not acted as SIO in any deaths in custody
21 prior to 3 May 2015?
- 22 A. No.
- 23 Q. Had you been involved in deaths after police contact?
- 24 A. Not as an SIO.
- 25 Q. In any investigations maybe been tasked with particular

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- 1 jobs to do, actions to do?
- 2 A. I can't recall obviously in distinguishing me talking
3 about deaths in custody to deaths following police
4 contact, because obviously in the infancy of my career,
5 I probably couldn't distinguish the two. But now with
6 my professional standards experience, I think that kind
7 of influences my kind of broader knowledge of it now.
8 So if I was, it would simply be having task driven from
9 the investigation team, the management team, to go and
10 do single focused actions, feed it in. That may have
11 resulted in additional actions, but probably to the
12 extent of only statement noting.
- 13 Q. Okay. Had you been involved before or had experience of
14 dealing with any investigations where PIRC were
15 involved?
- 16 A. No.
- 17 Q. Before 3 May obviously?
- 18 A. No. Naturally, I'm aware of their existence obviously
19 because they came into the profession at the same time
20 as Police Scotland.
- 21 Q. Which we have heard was 1 April 2013?
- 22 A. Yes.
- 23 Q. How much awareness did you have prior to 3 May 2015 of
24 PIRC and the work they did?
- 25 A. Very little to be honest.

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1 Q. I would like to ask you about the incident at
2 Hayfield Road. Let's begin with your operational
3 statement from 4 May 2015, so that's PS00280. If we can
4 turn to page 2 and look at paragraph 1. I think what
5 you say here, which is your statement from the day
6 after:

7 "About 0715 hrs, same date I was made aware via
8 personal airwave radio that call had been received from
9 a member of the public who was near to Hendry Road,
10 Kirkcaldy to the effect that a black male was walking
11 along on road in possession of a knife and was
12 attempting to stop vehicles."

13 And was that the first you became aware of a call
14 having been made?

15 A. Correct.

16 Q. And were you on duty at that time that morning?

17 A. Yes.

18 Q. And then this might be a good opportunity to speak to
19 you about the spreadsheet that's in front of you, if you
20 look at the first page of that, have you watched
21 evidence from previously in the Inquiry?

22 A. I have seen some, again with my work commitments as
23 well, and also extracts in the media as well.

24 Q. So you may have seen reference to this --

25 A. Potentially, yes.

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1 Q. -- where I used it with other witnesses. It is A3 as
2 you see. On the left-hand side, we have a column which
3 gives video timings and timings. In the second column
4 from that, it is audio timings of Airwaves. And then in
5 the third column, you see -- or fourth column, you will
6 see names of people who have made Airwaves
7 transmissions. You will see a description, an event
8 Airwave transcription of any messages over the Airwaves.
9 And then just to the right of centre, you will see
10 a description, a thumbnail description of events that we
11 can see on CCTV.

12 Then, on the far right, you will see there's
13 a source given. It is in chronological order.

14 A. Yes.

15 Q. And I have spoken to various witnesses about events in
16 it. So you will see that all the pages are numbered at
17 the bottom and if I -- say just looking at page 1, for
18 example, if I ask you to look at an Airwaves
19 transmission at 7.16.32, you will see that time in the
20 second column from the left. And then we can look
21 further along and see what the transcription of that
22 Airwaves message was.

23 Now, in combination with this spreadsheet, you may
24 have seen from previous footage of an evidence video
25 timeline that we have, which brings together lots of

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1 images of CCTV, mobile phone footage, that type of
2 thing, dash cams.

3 A. Okay.

4 Q. You might have seen that on the television media and
5 what I will do with this is when I maybe play parts of
6 that for you, but you can always look at the spreadsheet
7 yourself, so you can use that as you wish and I will
8 direct you to particular parts when I'm asking you
9 questions.

10 A. Okay.

11 Q. Sorry, that was a bit of a long explanation, but I want
12 you to be able to see what we have.

13 Can we look at, first of all, page 1 of the
14 spreadsheet and you will see at 7.16.32, which I just
15 mentioned, there was a caller ID is Con 1, which we
16 heard is someone in the control room number 1:

17 "I need you to divert to Hendry Road, a disturbance
18 ongoing, male armed with a knife. African-looking male
19 chasing. Someone may be carrying a knife. Described as
20 big with muscles, about 6 feet tall wearing a white
21 T-shirt and dark coloured jeans. There's another job
22 coming in about it. Stand by."

23 We have heard evidence about calls coming in from
24 the public and we have heard evidence about call cards
25 or STORM cards being prepared. Is this likely to be

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1 roundabout the time that you became aware via your
2 personal Airwave radio that a call had been received and
3 near to Hendry Road about a black male walking in
4 possession of a knife?

5 A. That's correct, yes.

6 Q. So in your original statement, operational statement,
7 you said around about 7.15, it is probably around this
8 sort of time?

9 A. That's correct, yes.

10 Q. Let's go to your first Inquiry statement, please,
11 SBPI~00133, paragraph 60. Let me just check I'm on the
12 right one. Yes. You will see it is on the screen and
13 you have also got your hard copy, and you talk about it
14 being a command and control structure:

15 "It's all part of the information gathering phase
16 that you try and glean as much as you can to assist the
17 cops that are attending, and also to identify or the
18 best response. That time, a male with a knife, there
19 was a conventional response; it would be up for the
20 officers on arrival to say 'this is what we've got, this
21 is what we need'. But you'll see in the Airwave
22 transcript that, when they were asking for an update, as
23 soon as they arrive, it just becomes bedlam because they
24 immediately are engaged by the male."

25 Let me just take you through that paragraph and ask

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1 for a few more details. What do you mean by "a command
2 and control structure"?

3 A. I think you referred to it as kind of Con 1 in terms of
4 the control room that obviously calls into the police
5 are triaged and assessed by our D3 command and control
6 division, whether that's 999 or 101. When the calls are
7 received and the units are dispatched, they will
8 obviously give that initial command and control of the
9 response.

10 Q. So we have heard that it was the area control room that
11 deployed officers to the Hendry Road area in response to
12 calls from members of the public?

13 A. That's correct.

14 Q. And then you say:

15 "It's all part of the information gathering phase
16 that you try and glean as much as you can to assist the
17 cops that are attending, and also to identify or the
18 best response."

19 What do you mean by that?

20 A. Again, I think it's part of the call -- any call to
21 police, the call handlers will glean as much information
22 from the person phoning in, in terms of to assist us in
23 preparing what we're dealing with.

24 Q. And then you say that:

25 "... male with a knife, there was a conventional

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1 response ..."

2 What do you mean by "conventional response"?

3 A. Just an overt uniformed response. So, at that stage,
4 there was no request for CID to attend. It would just
5 be a uniformed policing response to that initial call.
6 So once they arrive at any call, they will make that
7 judgment if they are a sufficient response -- resource
8 to respond to that, sorry, or if they require additional
9 units, specialisms.

10 Q. And you say that's for the officers on arrival to say
11 what they need or --

12 A. It is usually, it's the dialogue between them,
13 potentially their supervision, but more importantly
14 obviously the command and control will still have
15 oversight of that call until conclusion.

16 Q. And that's -- you're listening to that call or those
17 calls on the Airwaves radio?

18 A. I'm aware of it, but I'm not listening to it probably,
19 because Airwaves --

20 Q. What does that mean?

21 A. So there's obviously a multitude of calls received to
22 the police on a daily basis. The Airwave is very
23 busy -- not on that day, or at that time I should add,
24 but I wouldn't -- my job is not to listen out to the
25 Airwave. I was just aware of it coming in. Again,

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1 there was discussion in the office about that's a call,
2 a male with a knife. It probably didn't grab my
3 attention at that stage, if I'm honest, because I have
4 explained about my role that day in terms of the kind of
5 broader picture in terms of what was going on in Fife.
6 So again, with that commitment, I can't focus my
7 attention on the Airwave. I just had that general
8 awareness at that time.

9 Q. So you've got your radio on?

10 A. Yes.

11 Q. You can hear things coming in, but are you tuned to
12 a particular station, if you like?

13 A. Always where I'm based, again it's Kirkcaldy, so I would
14 turn the radio on and put it to Kirkcaldy, because
15 that's where I was located. If my attention was drawn
16 or directed to something else going on in the division,
17 I would turn it to that to give -- or to hear it, to
18 listen in to the messages, to help inform my awareness
19 should I become involved.

20 Q. So you were in Kirkcaldy Police Office and you were
21 tuned in with your radio to Kirkcaldy and you had that
22 on, but you weren't listening or monitoring --

23 A. No.

24 Q. -- should I say -- not monitoring --

25 A. And I think because of the sequence of the call to then

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1 hearing the officers attend, whether I asked obviously
2 the officers in the CID office what it was or they have
3 spoken in open conversation, "That's a call, a male with
4 a knife", I was aware of it, but probably at that time,
5 it didn't need my further attention.

6 Q. And we have heard from the police incident officer that
7 day, so he was an acting Inspector Stephen Kay --

8 A. Yes.

9 Q. -- and, as I understand it, he was listening to the
10 radio that day. Is that the type of role that a PIO
11 will be carrying out?

12 A. In terms of the uniformed response, yes, that initial
13 uniformed response, and I think he would have been based
14 out of headquarters in Glenrothes.

15 Q. And what would the responsibilities of the PIO be?

16 A. He is more monitoring that, the uniform conventional
17 response, until obviously he was satisfied that it had
18 concluded, or like I mentioned whether other resources
19 and specialisms are required.

20 Q. Well, a PIO should be -- not just have their radio on,
21 but should be monitoring, you said?

22 A. Yes, and I think it would obviously -- again, because
23 they've got responsibility for the whole of the division
24 in terms of Fife, they would potentially be directed
25 or -- to that call by command and control.

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1 Q. And then you say:

2 "But you'll see in the Airwave transcript that, when

3 they were asking for an update ..."

4 Had you seen the Airwave transcripts prior to this

5 statement?

6 A. No.

7 Q. So when you're giving this Inquiry statement and you

8 say, "You'll see in the Airwave transcript", is that you

9 suggesting to the Inquiry team that's where they should

10 look?

11 A. Yes, because I knew it was -- I knew it was audited, so

12 I wasn't personally aware. But from the transcript, you

13 would be able to tell what messages were passed.

14 Q. Thank you. Now, could I ask you to look at PIRC 00223,

15 please. This is your PIRC statement from 2 June 2015 at

16 9.40. This is the one we discussed earlier and you said

17 was more detailed.

18 A. (Nods).

19 Q. And can we look at page 3, paragraph 5. Actually, we

20 will begin at paragraph 4 and you mention -- sorry,

21 page 3 -- let me just check where we are. There we are,

22 so paragraph 4 was:

23 "About 0720 hours ... an emergency button on an

24 Airwave terminal had been activated. In effect this

25 gives free dialogue on that radio for between 20 and 30

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1 seconds without interruption. My understanding is that
2 no one else can broadcast on that channel at the time.
3 It sounded like chaos with a number of voices being
4 heard. I could also hear what I thought was a female
5 screaming and a lot of shouting. I could not make out
6 much of the dialogue, but I could hear some sort of
7 scuffle and a male officer ... shout 'officer injured'
8 or 'officer down' or words to that effect. There was
9 also some mention of a knife just before the update on
10 the officer being down.

11 At this point I decided to attend the locus.
12 Primarily, I made this decision as a police officer to
13 assist my colleagues, not as a supervisory officer."

14 So you have explained what prompted you to decide to
15 attend the locus. Was it shortly after you heard the
16 emergency button, or realised the emergency button had
17 been pressed on one of the terminals?

18 A. Yes, because that's got a different type of alert in
19 terms of the tone. So again, that would draw my
20 attention to that.

21 Q. And did you simply travel to Hayfield Road straightaway?

22 A. That's correct, yes. And then I think obviously it was
23 my CID colleagues who had travelled just a short time
24 before, again with that purpose of supporting our
25 uniformed colleagues.

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- 1 Q. You said there:
- 2 "Primarily, I said this decision as a police officer
- 3 to assist my colleagues, not as a supervisory officer."
- 4 Does that mean really you went as reinforcement?
- 5 A. Yes, just -- I obviously didn't know how I would be able
- 6 to support, but yes, just to provide support to our
- 7 uniformed colleagues.
- 8 Q. Did that mean that you were no longer attending and
- 9 retaining your duties and responsibilities as an SIO?
- 10 A. I would always have them, but in that first -- it was
- 11 just a police response to support my colleagues.
- 12 I wasn't really thinking until I got there how I would
- 13 then be required potentially in terms of that level of
- 14 supervision.
- 15 Q. What time did you arrive at Hayfield Road, do you
- 16 remember?
- 17 A. I don't know if I referred to it, but it would only
- 18 take -- at that time of the morning with the traffic, it
- 19 would be minutes, to be honest. So I'm saying 7.20
- 20 potentially, five minutes' later.
- 21 Q. How long did it normally take to get from Kirkcaldy
- 22 Police Office to Hayfield Road?
- 23 A. I would estimate it's potentially a distance of about
- 24 2 miles. So, as I say, by car, it would be a matter of
- 25 minutes to be honest.

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1 Q. Did you listen to the Airwaves messages on the radio as
2 you travelled to the scene?

3 A. I tried my best, yes, just to again understand what
4 I would be attending, what would be occurring when
5 I arrived.

6 Q. What did -- sorry, I interrupted you. What did you
7 travel to Hayfield Road in, what vehicle?

8 A. It was a works vehicle. It was an unmarked Vauxhall
9 Astra, I think.

10 Q. What were you wearing?

11 A. I was in civilian clothes.

12 Q. I'm going to now play some footage from the combined
13 audio and video timeline. It's SBPI 00047. You have
14 probably seen this before and I'm going to ask you if
15 you can identify the vehicle that you arrived in. The
16 section I'm going to ask to be played is from page 6 of
17 the spreadsheet, so if you want to have page 6 open,
18 sort of -- if we could just wait a second, please.

19 I'm going to play it from 7.23.57 to 7.24.11, so
20 it's a short segment and we will just -- we can't always
21 be 100% on the seconds, but it will be roughly that
22 period of time.

23 And if we look at page 6 just in advance of that, if
24 we look at 7.23.57, you will see that's towards the
25 bottom of page 6, and if you look at the description on

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1 the right-hand side of that sheet, it says:

2 "A dark coloured vehicle approaches the roundabout
3 from south Hendry Road and appears to have some flashing
4 lights at the rear window. It passes the light coloured
5 vehicle that is on the roundabout and turns right into
6 Hayfield Road and continues up Hayfield Road coming to
7 a stop just past ..."

8 Do you see that?

9 A. Yes.

10 Q. So that's what we're going to be looking for and we will
11 play it. And then I will ask you some questions, if
12 you're happy -- if it's too quick and you want to see it
13 again, that's not a problem at all. So if we could
14 maybe play from 7.23.57 which is on the screen.

15 (Video played)

16 Thank you very much. So did you see that vehicle
17 coming? Perhaps we can go back to 7.23.57 and you will
18 see in the CCTV at the bottom of the screen that -- when
19 I ask that this be played, you will see it arriving from
20 the bottom right, travelling up towards the roundabout,
21 that's on the left-hand side of the screen, and it will
22 turn right into Hayfield Road. And we will see as it
23 turns right that there do appear to be lights in the
24 back of that vehicle. It's a dark grey vehicle.

25 A. That's the vehicle I was driving.

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- 1 Q. I was going to say, do you recognise --
- 2 A. That's the Vauxhall Astra with lights on the rear and
3 also unmarked, it's got lights in the front grill and in
4 the rear window.
- 5 Q. So if you have to respond to an emergency, you can put
6 the lights on?
- 7 A. That's correct.
- 8 Q. And I think in your statement you refer to strobe
9 lights. Would that be the lights that you're talking
10 about?
- 11 A. (Nods).
- 12 Q. Let's look at that again.
- 13 (Video played)
- 14 Can we just stop there, please. So we see you
15 going -- effectively cutting the roundabout, turning
16 right and then travelling into Hayfield Road. And is
17 that where you park the car that day?
- 18 A. That's correct, yes.
- 19 Q. When you arrived, the male, who we now know to be
20 Mr Bayoh, was on the ground.
- 21 A. That's correct.
- 22 Q. And officers were around him. How long after you
23 arrived in that grey vehicle, did it take you to realise
24 that somebody was on the ground?
- 25 A. Very quickly, I think. I think I explained that my CID

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1 colleagues had attended just in advance of me, so when
2 I turned up, they were kind of the first port of call
3 just to really get an understanding of what had taken
4 place, what they had witnessed.

5 Q. And what were the names of your CID colleagues?

6 A. So it would be at that time DS Sammy Davidson, Samantha
7 Davidson, and DC Derek Connell.

8 Q. I was going to say DC Connell as well.

9 A. Yes.

10 Q. And you had also been listening to the Airwaves
11 transmissions?

12 A. I had, yes.

13 Q. So were you aware by that stage that the male was on the
14 ground?

15 A. I can't say for certain, but naturally when I arrived
16 within the minutes, I could see that he was on the
17 ground, yes.

18 Q. After you parked the grey vehicle, how far were you from
19 the male on the ground with the officers around?

20 A. Potentially 10, 15 yards, perhaps.

21 Q. Now, in PIRC 223, page 4 -- so this is your PIRC
22 statement from June, 2 June, page 4, paragraph 7, so
23 it's the second last paragraph on that page -- here we
24 are. It starts:

25 "My recollection ..."

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1 And the third line, you say:

2 "I had a clear view of the group of officers, three
3 of whom I know from working at Kirkcaldy Police
4 Station."

5 Do you see that?

6 A. Yes.

7 Q. Now, in your first Inquiry statement -- and I don't need
8 to take you to this -- at paragraph 13, you say:

9 "I know all of the officers in the Team 4 response
10 team."

11 On 3 May 2015, did you know all the officers in the
12 Team 4 response team?

13 A. Within reason, I think. Again, as part of the Inquiry
14 statement, there was maybe a couple of named officers
15 that were introduced that I either don't remember seeing
16 on that day, maybe knew the name but maybe not as well
17 as the rest of the team. And again, as I started that
18 day, I couldn't tell you that was the team that was
19 working, that just obviously developed once I was there
20 and recognised them.

21 Q. When you said in this statement, the PIRC statement, you
22 had a clear view of the group of officers, three of whom
23 you knew, you give their names as constables Alan Paton,
24 Craig Walker and Alan Smith. Are those three of the
25 officers that you saw --

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- 1 A. Yes.
- 2 Q. -- around the male on the ground?
- 3 A. Or in the vicinity, not necessarily --
- 4 Q. Or in --
- 5 A. Yes.
- 6 Q. So tell us what you saw.
- 7 A. So again having -- and, again, this is where we talked
8 about the anomaly that I think in the original statement
9 I thought I stopped in the car, spoke to Sammy and then
10 went round perhaps and then come back. It transpired
11 from the CCTV that -- because that was the Gallaghers
12 CCTV, I think --
- 13 Q. Yes, that's correct.
- 14 A. -- that PIRC showed me on that day that they were noting
15 my statement, that that wasn't the case and as it is
16 depicted there. So I got out of the car, went to
17 DS Davidson and she obviously explained what --
- 18 Q. Where was she?
- 19 A. She was more standing in the middle of the roadway,
20 again a short distance away from the officers and
21 Mr Bayoh.
- 22 Q. And what direction was she facing?
- 23 A. I couldn't tell you.
- 24 Q. Towards the officers who were round the man?
- 25 A. At that time, potentially, but as we started to discuss

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- 1 we were obviously surveying the whole area where the
2 incident had happened, with various considerations in
3 mind.
- 4 Q. And tell us where you could see -- let's start with
5 Constable Paton.
- 6 A. Again, I think I've tried to -- I've tried to articulate
7 in the statement ...
- 8 Q. Is that in the next paragraph, the final paragraph?
- 9 A. Potentially, yes. And again over time what I have seen
10 in the media is how that's influenced it. They were
11 definitely the three notable because I probably knew
12 them not the best but the most out of them, and in terms
13 of their description as well they probably stood out for
14 me.
- 15 Q. I'm really interested in your own recollection of the
16 events that day. Have you listened to a lot of media
17 and watched a lot of media since then?
- 18 A. Aye, not through a conscious effort, it's just obviously
19 been how it's played out. In terms of thinking about it
20 now and not being tainted by that, would be the majority
21 of people on -- so they would be on the side of Mr Bayoh
22 with -- and that was the majority of them, with one
23 person -- and this is where Alan Smith stands out for me
24 the most because that's the person that I heard and also
25 noted in terms of his previous experience in terms of

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1 officer safety because he was an officer safety
2 instructor, so that's why I mentioned the three
3 predominantly all on the one side, so not on both sides,
4 on the one side of Mr Bayoh, and then one person who
5 I thought was Alan Smith kind of directing their actions
6 in terms of what at that time was the after-care.

7 Q. Right, so let's try and get a clear picture of what you
8 saw. You see the car arriving on the video.

9 A. Yes.

10 Q. You get out of the car, out the driver's seat, you're
11 driving, and you can see the officers with the man on
12 the ground?

13 A. Yes.

14 Q. Where is the man's head?

15 A. Facing south towards the houses.

16 Q. So we have heard that there's houses on one side of
17 Hayfield Road?

18 A. Yes.

19 Q. And on the other side of Hayfield Road, opposite the
20 houses, is a sort of grass verge area with trees.

21 A. That's correct and with me in the middle of the road,
22 his feet would be closest to me as opposed to his head.

23 Q. And you have said you were about 10 to 15 yards away?

24 A. Yes, in close proximity, but obviously as my statement
25 outlines, that wasn't the main -- predominantly the main

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- 1 focus of my attention.
- 2 Q. And when you talk about officers being on one side of
3 the male, was that the side closest to you or the side
4 furthest away from you?
- 5 A. I think there was obviously an angle, but they would
6 be -- so they would be facing me.
- 7 Q. They were facing you away, on the other side of the
8 male.
- 9 A. Yes, so their backs would be to the houses.
- 10 Q. And describe what position they were in as you saw them.
- 11 A. They were pretty much in one line from the feet to
12 the head and, again, I can't recall now three or four.
13 As I say, I do -- my attention was drawn to Alan Smith
14 in terms of the instructions and guidance to his
15 colleagues in terms of the after-care because at that
16 time he had been restrained.
- 17 Q. Where was Alan Smith?
- 18 A. I've got him at the head end facing me, so again his
19 back would be -- so if they're aligned with the back of
20 Mr Bayoh, he was at the head, as I say, giving that
21 after-care instruction.
- 22 Q. So his back was to the houses?
- 23 A. Yes, so he would be facing me and then there was --
24 I think there was then left a couple of officers on the
25 kind of periphery which we've used for basic enquiries,

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- 1 or basic actions at that time.
- 2 Q. You have mentioned Paton, Walker and Smith. You have
3 told us where Smith was. Where was Paton, as far as you
4 remember?
- 5 A. I couldn't tell you what order, but I've got them
6 Alan -- sorry, Alan Paton and Craig Walker as part of
7 the officers that are aligned to Mr Bayoh.
- 8 Q. And they were facing you, you said?
- 9 A. Yes.
- 10 Q. You have said in the -- if we can stick with this page
11 and the final paragraph on this page. This is PIRC 223,
12 page 4, paragraph 8:
- 13 "I could see that the man was a black male and he
14 was lying in the recovery position on his left side with
15 his head facing towards me and his body was essentially
16 at right angles to me."
- 17 Do you remember that?
- 18 A. By the way I have just depicted it there, he would be
19 lying on his right-hand side.
- 20 Q. So do you think your PIRC statement is more likely to be
21 correct?
- 22 A. My recollection is correct. I think I've maybe just
23 mistaken the left to the right.
- 24 Q. So when you saw the male lying, tell us your
25 recollection now?

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- 1 A. He's on his right-hand side.
- 2 Q. He's on his right-hand side?
- 3 A. Yes.
- 4 Q. So do you think your PIRC statement is incorrect?
- 5 A. Potentially, yes. I don't know if that's then been
6 clarified in the Inquiry statement, or if it's not been
7 noted.
- 8 Q. Well, just from your own recollection then.
- 9 A. No, my recollection now and how I tried to recall it on
10 the day, he would be on his right-hand side.
- 11 Q. And you say:
- 12 "I could only clearly see his head and his legs from
13 the knees down. He was wearing leg restraints on the
14 lower sections of his legs and he didn't appear to be
15 moving."
- 16 So do you agree with that --
- 17 A. Yes.
- 18 Q. -- part of your PIRC statement, so when you saw him leg
19 restraints had been applied and he didn't appear to be
20 moving, as far as you could see?
- 21 A. He was no longer struggling, as it had been reported to
22 me as part of the initial response.
- 23 Q. "I couldn't see his arms or if he was handcuffed."
24 Is that correct?
- 25 A. That's correct.

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1 Q. "Although I do recall being told by DS Davidson at some
2 time, either over Airwave or personally, that he had
3 been handcuffed to the rear."

4 Is that your recollection of what DS Davidson told
5 you?

6 A. Yes.

7 Q. And we may have heard other evidence that he was
8 handcuffed to the front. Could this PIRC statement be
9 incorrect, or is your recollection?

10 A. No, as I said, that would be my recollection and I think
11 it's obviously the fact that I couldn't see it or
12 either -- even if he was handcuffed to the front in
13 terms of clarity.

14 Q. Then if we can look at the same statement, paragraph 67,
15 paragraph 1 please. So this is the next page at the top
16 and you say -- it is more than halfway down this
17 paragraph you say:

18 "The man (now deceased) was still there lying on the
19 ground ..."

20 Do you see that?

21 A. Yes.

22 Q. "The man ... was still there lying on the ground, there
23 appeared to be no change. I did not see him move."

24 Do you see that as well?

25 A. Yes.

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1 Q. Can I just be clear, at any time when you were there did
2 you see the man move?

3 A. No.

4 Q. You certainly seem -- though both paragraphs of your
5 PIRC statement say you didn't see him move --

6 A. No.

7 Q. -- was there any point where you did see him move?

8 A. No.

9 Q. Did you see the man being moved by officers?

10 A. No.

11 MS GRAHAME: That might be an appropriate time.

12 LORD BRACADALE: Very well, we will stop for lunch.

13 2 o'clock.

14 (1.00 pm)

15 (The luncheon adjournment)

16 (2.01 pm)

17 LORD BRACADALE: Yes, Ms Grahame.

18 MS GRAHAME: Thank you.

19 I would like to move on to ask you about the knife
20 at Hayfield Road and very quickly let's just look at
21 PS00280, which is a statement that you prepared on
22 4 May 2015. And if we look at page 3 of that statement,
23 at paragraph 10, which is the second last paragraph on
24 that page -- I'm reading the wrong bit, sorry. It's
25 page 3, paragraph 4. And you mention that there was

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1 a suggestion to look in the north side in Hayfield Road
2 in the grass area and DC Connell was instructed to look
3 for this item. So he is one of the other CID officers
4 that had come with, you mentioned earlier, Samantha
5 Davidson.

6 A. That's correct.

7 Q. And in relation to the recovery of this knife, I think
8 at paragraph 9, so just a little bit below the third
9 last paragraph on this page, it starts:

10 "Owing to the risk ..."

11 You say:

12 "Owing to the risk that this posed with members of
13 the public being in the immediate vicinity and the
14 potential evidential value I instructed DC Connell and
15 DS Davidson to record the position of the knife and take
16 possession of same. The inclement weather conditions
17 were also a factor in this decision with regards to
18 securing best evidence. I also noted at least 3 police
19 batons on the roadway near to the male and the officers
20 and instructed that these be recorded and recovered by
21 DC Connell and DS Davidson from a public safety
22 perspective."

23 Can you tell us a little bit more about the
24 rationale in terms of the knife at Hayfield Road?

25 A. Obviously, before the break, I was asked questions in

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1 terms of the kind of location of Mr Bayoh and the
2 officers, and I think when myself and DS Davidson spoke,
3 we were trying to understand what our role would then
4 be, understand what crimes or offences we would be
5 looking at investigating and whether there was a role
6 for the CID.

7 So with Mr Bayoh under control, we then looked at
8 the other elements in terms of evidence, so we spoke
9 about the knife, spoke about the batons, and I think at
10 that time, I was under the impression that we didn't
11 need to preserve them in situ and that the matter had
12 concluded.

13 So in terms of the officer safety perspective, the
14 public safety perspective and evidential value, I was
15 satisfied at that time for officers to go and record and
16 recover them with the intention then that the police
17 would soon be leaving that scene following the
18 conclusion of the incident.

19 Q. And can we look at paragraph 72 of your first Inquiry
20 statement, which is 133, and let's look at paragraph 72,
21 please. You were asked in this section about the knife
22 and you have said:

23 "The method that we did that was basically photos on
24 the phone. Was it the right thing to do? Yes, at the
25 time, on reflection. Now? No, because I know what

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1 ensued with cops getting their phones taken off them.
2 But the reality of the incident of what seemed minor at
3 that stage wouldn't have merited Scenes of Crime coming
4 to record the knife. Also the whole provision of
5 custody cameras was a disaster back then. So the
6 process was that with technology and digitally-enabled
7 phones, take a photo. We could get a printout with the
8 Bluetooth printers, we can get a printout of the knife,
9 and we could put production label on it, and that was
10 common practice."

11 Can you tell us a little bit more about this
12 paragraph. You say that basically it was photos on the
13 phone?

14 A. Yes, so the decision -- my decision that we would
15 basically record and recover the items that's outlined
16 in the previous paragraphs in terms of the police
17 equipment and the knife, we could do it with the methods
18 of recording accurately in the notebook in terms of
19 a narrative, but naturally photos would generally tell
20 a better picture in terms of helping to outline for any
21 future prosecution where these items were recovered
22 from.

23 Again, the limitations at that time and access to
24 what would be a scenes of crime officer attending in
25 terms of availability on that day, the time that that

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1 would take and also when I talk about the provision of
2 a custody camera, it's a production camera, which are
3 usually on-site within police stations, which is
4 effectively a digital camera that would be used for
5 productions in the station and there was a direction at
6 the time they weren't to be taken out to any scene.

7 So again, with the technology that existed with
8 phones, there became a culture of officers recording
9 images on their phone of any types of property or
10 evidence, digital printers that we had access to,
11 thereafter effectively then becoming physical items in
12 terms of documented productions that would then be
13 submitted as evidence for whatever any particular case
14 or incident that was under investigation.

15 Q. And was that a culture that existed only in Kirkcaldy,
16 or was it wider throughout Fife?

17 A. I think it was -- well, at that time, I can only speak
18 for Fife, but policing in general, just because of the
19 limitation in terms of the -- without access to
20 technology to do our job better.

21 Q. And in paragraph 73 -- sorry, let's remain with 72 for
22 a moment. You say:

23 "Was it the right thing to do? Yes, at the time, on
24 reflection. Now? No, because I know what ensued with
25 cops getting their phones taken off them."

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- 1 Can you explain that sentence or sentences to me?
- 2 A. So I was satisfied that we had the pictures, I suppose
3 it was just the method and it was the right thing to do
4 at that time with what we had access to. I'm satisfied
5 that the photos exist as opposed to if we were just to
6 recover and for then the officers just to have to speak
7 to the location and recovery of that simply through
8 a statement and how obviously statements can be
9 construed/interpreted. So it was to support a statement
10 and obviously by taking the photo to give an indication
11 to where these items, as we have described, would be.
- 12 Q. And were these personal phones owned by the officers or
13 were they police phones?
- 14 A. No. So again, I think, at that time, I would be the
15 only one with a work or organisation phone. Again, the
16 limitations with that would just be more phone and
17 emails as opposed to any kind of digitally enabled, but
18 it was the officers' phones.
- 19 Q. Their own personal phones?
- 20 A. Yes. And in terms of the regret of that was that their
21 phones were subsequently seized, rightly so, as
22 productions in the case. So they were minus their
23 phones, so in terms of the personal level, in terms of
24 them having their phones seized, but, at that time, it
25 was probably as I thought the best thing to do.

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1 Q. So that was personal inconvenience to officers who had
2 their personal phones seized?

3 A. Yes.

4 Q. And then in paragraph 73, you say:

5 "I know the implications of that now, with
6 hindsight."

7 What do you mean by that?

8 A. I think it was the implication of them having their
9 phones taken off them. If it was a Police Scotland
10 issued device, obviously that would have been approved
11 in the fact that there would then be a process to how we
12 then download/transfer the imagery or footage taken from
13 that. And I think I go on to say that we now have
14 PDAs -- officers are now issued with PDAs which could --
15 can capture digital evidence.

16 Q. Instead of using their own personal phones?

17 A. Yes.

18 Q. They've got equipment?

19 A. Yes.

20 Q. But, in 2015, was the only option really on that morning
21 their personal phones?

22 A. It wasn't the only option, because there was the option
23 to leave these items in situ. Again, it was balancing
24 again that justification rationale of what we were
25 assessing to have at that time in terms of crimes or

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1 offences. I think we would -- or I, instead of saying
2 we, in consultation with my colleagues just to
3 understand that we're of a view that the matter had
4 concluded and this was a case of just recovering the
5 items, evidence there with a view to leaving the area
6 shortly thereafter.

7 Again, how I saw it playing out was that Mr Bayoh
8 had been taken into custody and the police presence from
9 the area diminishing, maybe a bit of residue in terms of
10 door to door, et cetera, but more straightforward
11 conventional enquiries.

12 Q. So the alternative you mentioned earlier was a scenes of
13 crime coming to record the knife. What would that have
14 involved?

15 A. So -- and I think as I have -- I referred to earlier in
16 terms of the couple of officers that we have used for
17 effectively traffic control in terms of that officer
18 public safety element. We would have put in scenes of
19 crime measures and retained the integrity of that scene,
20 appreciating now on what played out that I wouldn't have
21 ever touched those items. They would have been left in
22 situ and we would have put a locus protection around
23 that to maintain the integrity.

24 Q. When you talk about integrity are you talking about
25 forensic integrity?

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1 A. Just the best evidence, it's just really leaving that
2 scene as we found it and then thereafter you can put
3 protocols in place to work through in how you would
4 retrieve and recover the best evidence from that scene.

5 Q. So in removing items from the scene, it wasn't left as
6 it had been because of the actions of the officers
7 removing items?

8 A. No, and I was happy at that time with what we thought we
9 were dealing with, I was happy with that audit trail
10 that that was the decisions that we made and for those
11 reasons.

12 Q. And then if we can look up 73, just move up the screen
13 a little, you talk about:

14 "In hindsight, if we knew what was going to play
15 out, and that stuff would have been left in situ for
16 Scenes of Crime. But it was the right thing to do with
17 information at the time in terms of what was
18 proportionate with inclement weather, it was light
19 drizzle ..."

20 What did you mean about the weather? What impact
21 did that have on your decision-making?

22 A. So we know that inclement weather can diminish
23 potentially the forensic value of any items. Again, by
24 leaving them in situ, there's other measures we can put
25 in place depending on what the circumstances are in

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1 terms of to cover these items, again with the intention
2 of leaving them in situ for best evidence, but there is
3 obviously times, if the weather was to play a factor, we
4 would do the same.

5 Q. And would it have been possible to leave things in situ
6 at that time and cover them?

7 A. Yes. Again to where the access or where we went to get
8 the access to these tents, and we do have other articles
9 that we can put across, even if it was getting a box,
10 just again all part of that justification rationale.

11 Q. And then you also mention losing control with the
12 members of the public that were starting to congregate.
13 Tell us about that.

14 A. So again, taking in the size of the integrity of the
15 scene with being in a public place, I think with the
16 attendance of the police and just its location near to
17 a garage, there started to be a bit of traffic in terms
18 of vehicles and with pedestrians, so as part of that
19 locus protection would be keeping them away from the
20 risks of the scene, including the knife.

21 Q. Thank you. Can we move on to a period of time, 7.25.17,
22 so can I ask you to look at the spreadsheet again,
23 please. This is on page 7 of the spreadsheet. 7.25.17.
24 It is an Airwaves transmission from PC Smith:

25 "Roger, this male now certainly appears to be

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1 unconscious, breathing, not responsive, get an ambulance
2 for him."

3 As I understand, you remained at the scene at that
4 time when that Airwaves transmission was relayed over
5 the radios. Do you remember hearing that?

6 A. I don't recall that. I was of a view that I had
7 obviously taken on another role by transporting
8 an officer to the hospital.

9 Q. I will come on to that in a moment then. If you look at
10 page 10 -- so we're on 7 at the moment. If you look at
11 page 10 and look at 7.28.40, it's halfway down page 10,
12 and it's an Airwaves transmission from yourself,
13 DI~Colin Robson:

14 "Control from Papa Whisky 400, just giving you
15 ambulance attend for the male on the ground. I'm going
16 to convey PC Short down to A&E, a short distance, they
17 just complained of an injury to the back of her head so
18 I'll get her checked out."

19 When you transmitted that message at 7.28.46, did
20 you remain at the scene at that time?

21 A. If the message -- in terms of the chronological order,
22 so that Airwave message that you have just referred to,
23 I would have been at the scene, but I don't think --
24 I was aware that an ambulance had been requested in
25 terms of to check over the male. I don't think I was

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1 aware that he had lost consciousness.

2 Q. Right, let's look at page 7 again, please, and look at
3 halfway down, 7.25.17, the message from PC Smith, so
4 this is three pages back. You were at the scene at this
5 time?

6 A. Yes.

7 Q. And it says:

8 "Roger, this male now certainly appears to be
9 unconscious, breathing, not responsive, get an ambulance
10 for him."

11 So that was a message where an ambulance was called
12 for the male.

13 A. Okay.

14 Q. And it seems to be saying, "Unconscious, breathing", do
15 you remember that?

16 A. I don't, no.

17 Q. So let's go back, please, to the time of 7.26.52, so
18 this is on page 8. So it's about a third of the way
19 down, 7.26.52, it's an Airwaves transmission from Acting
20 Police Sergeant Scott Maxwell. It says:

21 "Just for the log, the initial on attendance, this
22 male's attacked PC Short quite violently and as a result
23 he was sprayed with CS and PAVA and batoned there.
24 There may be a suggestion that he has been batoned to
25 the head area. 41 over."

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1 Do you remember hearing that transmission?

2 A. No, all I recall is that an ambulance had been requested
3 to check him over, I think. If I was in receipt of that
4 other information that -- I don't think that would have
5 changed actually the initial justification rationale.
6 I knew that there had been physical contact between
7 the police and Mr Bayoh and that an ambulance had been
8 called to check him over.

9 Q. When you say "initial justification rationale", what do
10 you mean?

11 A. In terms of my actions and decisions round -- in terms
12 of recovery of the items. I think if I knew from the
13 outset that we were dealing with an unconscious male and
14 the fact that that could have unfortunately been the
15 outcome, I think there would have been a stop and pause
16 at that time in terms of not recovering that. So
17 I think I was working on the premise that more as
18 a precautionary measure, we were asking for an ambulance
19 for the male as opposed to that he was in need of urgent
20 medical assistance.

21 Q. So if we look back at page 7 and there have been
22 requests for an ambulance for PC Short, but on page 7,
23 we see the message from Smith, 7.25.17, which is halfway
24 down that page:

25 "The male appears to be unconscious, breathing, not

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- 1 responsive, get an ambulance for him."
- 2 So that is a request for an ambulance for the male.
- 3 A. Yes.
- 4 Q. And you were aware of that request?
- 5 A. Simple request, not the further detail -- the finer
6 detail. And again, within hearing the conversation and
7 actually on reflection knowing if my Airwave was
8 potentially in the car at that time, obviously because
9 I was out physically speaking to the officers, and with
10 everything else ongoing, I don't recall the finer detail
11 of that message. I was simply told that an ambulance
12 had been requested for him.
- 13 Q. Who told you?
- 14 A. I think it was in discussion with either DS Davidson,
15 I know Sergeant Maxwell was there as well.
- 16 Q. We have heard a lot of officers wear their radios on
17 their uniform, often on their shoulder, is that not
18 something -- you wouldn't take your radio with you?
- 19 A. So I was in civilian clothes, so I didn't have the
20 option for that. And even if I did take my handheld
21 out, the car, when I stopped, I think because I was in
22 conversation, I wasn't -- because I was there at that
23 time, I suppose the radio message weren't as important
24 as to when before I attended.
- 25 Q. So you weren't listening to the Airwaves message when

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1 you were at the scene?

2 A. Mainly because everything -- because I was at the scene
3 interacting with the officers that were there.

4 Q. So although you knew or had been told about the
5 ambulance, you weren't aware that he was unconscious?

6 A. I -- no.

7 Q. When did you become aware that he was unconscious?

8 A. My recollection, I think it is reflected in the
9 statement, was -- and again, accurate in terms of I made
10 that message about taking Nicole Short to the hospital,
11 again assessing my involvement and my need to be there,
12 having discussed with my colleagues in terms of each
13 element of the incident, that I thought my role was
14 done.

15 Had I attended as the police officer as opposed the
16 SIO, that kind of ceased my involvement. So in
17 assistance to my colleagues, I had known -- I didn't
18 know the ETA of an ambulance and if it was going to be
19 one -- if it was going to be one ambulance, I would
20 rather it went to Mr Bayoh as opposed to Nicole, and the
21 hospital is only a short distance away, so as a kind of
22 conclusion, I suppose, to my involvement, I took Nicole
23 to the hospital.

24 Q. Did you think the ambulance would come from the hospital
25 nearby?

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1 A. With our previous experience, no. It could come from
2 various locations, knowing the demand on the
3 ambulance service, and it's once I had dropped Nicole
4 Short off at the hospital, when I came out -- I'm
5 assuming I didn't take my Airwave in, I heard on the
6 Airwave or the unit within the vehicle, there was
7 a sense of urgency around about the estimated time of
8 arrival for the ambulance and that's when I knew that
9 circumstances had changed.

10 Q. I will come back to your statement in a moment.

11 When you took the decision to take PC Short to A&E,
12 at that time, you have told us you were duty SIO for the
13 Fife area.

14 A. Yes.

15 Q. Were you the most senior officer at the scene at that
16 point?

17 A. I was, yes.

18 Q. And would it -- why did you decide to take Nicole Short
19 to the hospital yourself instead of asking one of the
20 other ranks of officers, maybe lower ranks, DC, PC --

21 A. So obviously, I think as it -- the chronology of it,
22 I had already -- I had kind of tasked and we had decided
23 between DS Davidson that they would do the record and
24 recover element, so I suppose they had a job.
25 DS~Maxwell was obviously overseeing his uniformed

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1 officers. The other -- any spare uniform officers were
2 then doing their role in terms of traffic control or the
3 wider kind of public safety element.

4 I was -- Nicole Short could have been there and we
5 could have waited for the ambulance. I was intending to
6 leave and it was more, as I say, to conclude my
7 involvement that I would provide the support by taking
8 her to hospital, because the intention again was that
9 I would go back and continue on with my prescribed
10 duties in terms of SIO for the division.

11 Q. So when you took -- when you initially left with
12 Nicole Short, what was your plan after you had dropped
13 her at the hospital?

14 A. I would have returned to the police station.

15 Q. You hadn't originally intended to return to
16 Hayfield Road?

17 A. Because I didn't see the need to. As I say, my --
18 I felt my role had concluded.

19 Q. You have described in one of your statements that you
20 took PC Short to hospital and you described it as
21 a two-minute journey and we have heard other evidence
22 that it's very -- Victoria Hospital is very nearby.

23 A. You could see it from where we were, yes.

24 Q. And if we could look at PS00280, please. This is your
25 original operational statement and if we can look at

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1 page 3, please, paragraph (n), which is the second last
2 on -- here it is:

3 "I then conveyed PC Short to Victoria Hospital,
4 Kirkcaldy and placed her in the care of medical staff.
5 During the journey which would have lasted approximately
6 2 minutes, PC Short recalled being on the ground and
7 seeing the male's foot coming towards her head."

8 Was that -- where was she when she shared that with
9 you? Was it in the car or in the hospital?

10 A. In the car. I didn't have -- I had very little dialogue
11 with her at the hospital once I put her into the care of
12 the staff.

13 Q. Describe her demeanour in the car?

14 A. Very upset. Upset and a bit confused, I would suppose,
15 kind of dazed.

16 Q. Was there any mention of any other injury by her at that
17 time?

18 A. If there was, it would be contained within this
19 statement.

20 Q. So in the absence of anything else in your statement,
21 can we assume there was nothing else said?

22 A. I'm not -- I don't recall anything.

23 Q. Can we look at your first Inquiry statement, which is
24 the 133 statement. And if we can look at paragraph 76,
25 please. It's really so we can be completely clear. You

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1 say in paragraph 76 of this statement, you can't really
2 recall the conversation:

3 "I think to her it seemed a bit of a blur, but she
4 did indicate that she'd been stamped on the head."

5 And then at 77, you say:

6 "There wouldn't be a conversation, because it
7 wouldn't be long enough. She was upset, no obvious
8 injury, but did say that she'd been stamped on, her head
9 stamped on. That's about it. If anything, it would
10 just be that ..."

11 But then I think it was explained to you in your
12 original statement, which we have just looked at, that
13 you recalled at that time on 4 May that she saw a foot
14 coming towards her head rather than saying she had been
15 stamped on her head. And I think at paragraph 80, you
16 say:

17 "I made an assumption. If she's complaining of
18 a sore head and all she can remember is a foot coming
19 towards her, then the assumption is she's been stamped
20 on. Did she say that 'He'd stamped on my head'?
21 Couldn't recall, to be honest. What I'm saying might've
22 been tainted to what I've read in the media since,
23 potentially. But she was definitely complaining of
24 a sore head, no overt injury, upset, and the
25 recollection of a foot."

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1 And so, again, you have obviously clarified that you
2 think that was an assumption you made and you prefer
3 your original statement as to what she said. I'm
4 interested again in the idea of maybe things you have
5 read in the media having tainted your own recollection
6 and trying to assess to what extent that's happened with
7 your recollection regarding Nicole Short, for example.
8 Obviously you said different things at different times?

9 A. Yes, my initial statement would be probably the most
10 accurate. And I know -- probably even just to support
11 it, but I know prior to taking her to the hospital,
12 I think I was told during conversation with DS Davidson
13 and Sergeant Maxwell that she had been stamped on. So
14 I have obviously -- potentially not relayed that to me
15 in terms of the original statement in terms of a foot
16 coming towards her and that's all she can remember,
17 that's maybe more accurate to then how I have
18 effectively potentially joined the two in terms of what
19 I was told, my recollection to then what's played out
20 since.

21 Q. So you're getting information from lots of different
22 sources?

23 A. Yes.

24 Q. Maybe the radio messages, maybe DS Davidson, or other
25 officers and since then -- since the events in 2015, you

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1 have obviously seen some media which might have
2 influenced your recollection?

3 A. Definitely. But I would say the original one was
4 probably more accurate given the fact that that was
5 within a 24-hour time period and that not then -- I have
6 not then potentially been influenced by what I have been
7 told by Sergeant Maxwell and DS Davidson, again knowing
8 that that would be third hand as well effectively.

9 Q. And then I think in your first Inquiry statement, which
10 we have on the screen, if we look at paragraphs -- well,
11 from 121 to 125, I think you do try to give an
12 explanation to the Chair about what you have seen on the
13 media and although you have tried to watch very, very
14 little of it, sometimes it's been unavoidable, as you
15 say.

16 A. That's correct.

17 Q. And you have listened to some views expressed by others
18 and that's prompted a reaction in relation to the things
19 you think are maybe wrong or incorrect or subjective,
20 I think is the other word that you use.

21 Then just to be clear, because you did mention it
22 a moment ago, if we go back to 280, page 3,
23 paragraph 11, you said a moment ago -- and I said
24 I would come back to it, you said:

25 "I then made my way back in the direction of locus

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1 (Hayfield Road) and was aware of radio traffic which
2 confirmed that the male had appeared to have stopped
3 breathing. Police officers had commenced CPR and there
4 was a request on the ETA of the ambulance which at that
5 time was 4 minutes."

6 And so you were in the car coming back from
7 Victoria Hospital with Nicole Short when you heard that
8 Airwave message?

9 A. I had literally got in the car and again probably in
10 support that prior to getting out of the car, going to
11 the hospital, I wasn't aware that he was unconscious.

12 Q. And then just for completeness, if we look at page 11 of
13 the spreadsheet, combined audio-video timeline, you will
14 see towards the top of that page, 7.29.30, this is an
15 Airwaves message from Acting Police Sergeant
16 Scott Maxwell. Do you see that? And it says:

17 "Control, can you get a move on with the ambulance.
18 This accused is now not breathing. CPR is commencing.
19 Over."

20 Is that the message you think you probably heard in
21 the car coming back?

22 A. Definitely. Whether it was that one or the emphasis on
23 "Where is this ambulance?"

24 Q. Could we look at page 13 of the spreadsheet. I'm going
25 to ask that a section be played of the evidence video

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1 leaving with the intention obviously of dropping
2 Nicole Short off and then returning to the police
3 station, that I suppose how I thought it would play out
4 is that maybe Mr Bayoh would be removed -- conveyed back
5 to the police station by the officers having been taken
6 into custody. At that time, also DS Davidson,
7 DC Connell, would have recorded and recovered the
8 officer safety equipment and the knife, and more or less
9 that would have negated the majority of the police
10 presence if there was -- and again, I would probably
11 have then left that to the sergeant of what enquiries
12 needed to be done around the initial incident in terms
13 of --

14 Q. Would that be Sergeant Maxwell?

15 A. Maxwell, yes.

16 Q. Sorry to interrupt.

17 A. So it was, effectively, I was happy to leave that and
18 for the uniformed officers to deal with the matter.
19 Whether it required CID consultation, I don't know, but
20 I envisaged that we would leave -- we would all leave
21 that area shortly thereafter and the police presence
22 would be stood down.

23 Q. Once you realised that the male was unconscious and not
24 breathing, he required an ambulance, what then did you
25 do?

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1 A. It's then appreciating that that's going to be
2 a protracted scene potentially. So again, the basic
3 principles of needing locus preservation in terms of
4 protecting, preserving the integrity of what was left,
5 having explained that I would already record and remove
6 key items. I think obviously it's shown there and on
7 the footage, there's officers standing at the roundabout
8 with I think the barrier tape and I think I have
9 explained about the natural boundaries that by using the
10 houses on the south, and also I think there's a fence
11 just north of the grass area, that we could contain that
12 in terms of no person could get within -- without -- no
13 person could get within that scene unless obviously
14 with -- authorised.

15 Q. And what are the reasons for implementing locus
16 protection measures?

17 A. Really just to preserve what you have in that area in
18 terms of, at that stage, not knowing what the kind of
19 forensic yield or potential would be. So it is a case
20 of you cast your net round it and thereafter when you
21 work through -- and it would be the kind of strategy
22 round that locus protection and what form of examination
23 to what extent you would -- but by securing it there,
24 allows you -- you've got control of that and you don't
25 then need to make any other immediate actions or

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1 decisions until we've got further information.

2 Q. So once you heard the Airwaves message you rerouted to
3 Hayfield Road?

4 A. That's right.

5 Q. And then the procedures you put in place were different
6 to what you had originally intended?

7 A. That's correct, but with the exception of the barrier
8 tape and the officers covering any kind of route, be it
9 vehicle or foot traffic, there wasn't much to do to then
10 preserve that.

11 Q. And you say at 7.36.48 -- so that's back onto page 14 of
12 the spreadsheet -- 7.36.48, just above the middle, and
13 you talk about:

14 "Once the ambulances do leave and the officers are
15 checked for injuries, they will have to be stood down
16 and returned to the station, obviously not to be spoken
17 to in relation to this matter."

18 And then you say you will go and look at CID
19 resources across division. Explain what you meant when
20 you said, "Obviously not to be spoken to in relation to
21 this matter"?

22 A. So I think, again, that kind of working strategy at the
23 time, there's various strands to any investigation, so
24 locus is one element of that, but various strands round
25 victims, witnesses, door to door, so then I was thinking

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1 that these officers are obviously witness to what's
2 taken place. They were no longer deployable, because
3 they formed part of the investigation, they would have
4 to be stood down effectively and taken back to the
5 police station. Again, by getting control and once that
6 control is in place can allow then for that further
7 information gathering and decisions around the next
8 steps.

9 Q. At that time, did you have a clear idea of who the
10 officers were that would have to be sent back and taken
11 off deployment?

12 A. It was more or less -- as I understand, the whole shift
13 had responded, or the available resource of that morning
14 at that time had responded, so there was the whole shift
15 effectively off the scene -- off the road. I know,
16 obviously, we have used officers -- I think potentially
17 the officer there on the camera was part of that shift.
18 So again, that would be once resources had been sourced
19 from elsewhere, basically relieve them of their duties
20 and again become part of the officers that were to be
21 taken back to the police station.

22 So first and foremost, from the welfare perspective,
23 I think it's outlined there in terms of being subject to
24 PAVA spray, but it was more just, let's get them back
25 first and foremost and then the next steps would be

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1 identified thereafter.

2 Q. When you say "the whole shift", do you mean the response
3 team effectively?

4 A. Yes, and Scott Maxwell. So Sergeant Maxwell was going
5 to oversee that in my eyes.

6 Q. So although Sergeant Maxwell had been at Hayfield Road,
7 you thought he would continue to take the role of
8 overseeing the response team?

9 A. At that time -- because I was of the view he had
10 attended in that periphery element, like DS Davidson and
11 DC Connell, and not attended as part of the initial
12 response. Not that I was trying to differentiate, but
13 as responsibility for the sergeant on the shift, he was
14 going to -- I was satisfied for him to ensure that the
15 remaining officers there that hadn't been taken to
16 hospital and didn't need to go to the hospital in terms
17 of the purpose of the second ambulance, would be
18 returned to the police station.

19 Q. And how did you reassure yourself that Sergeant Maxwell
20 could continue that day with his responsibility?

21 A. At the time, I probably -- at the scene there, I didn't,
22 because we were going to have to leave and we were going
23 to have to get back to the station in some way. And on
24 reflection, I don't know if I ever did, so that's
25 something I would need to consider in terms of his

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- 1 welfare. I just -- he was -- like the other
2 supervisors, including myself, in having that
3 supervisory responsibility, again appreciating I'm
4 talking about the welfare of the officers that I maybe
5 should have considered his welfare as well.
- 6 Q. Looking back now, do you think that's -- how would you
7 have gone about checking on his own welfare?
- 8 A. Asking him if he had the capacity and his own resilience
9 to do it. So again, just directly, "Are you okay to
10 continue?"
- 11 Q. That's not something you did at the time?
- 12 A. It's not something I probably would have done at
13 Hayfield, but on reflection, it's something I probably
14 should have considered in the kind of timeline that
15 you're going to go onto in terms of interaction at the
16 police station.
- 17 Q. When you were away from the scene taking Nicole Short to
18 the hospital, who was the most senior officer at the
19 scene at that time as far as the situation was when you
20 left?
- 21 A. It would be joint collectively in terms of DS Davidson
22 doing the record and recover bit of the items and then
23 Sergeant Maxwell in terms of the staff.
- 24 Q. In terms of seniority, were they on a par?
- 25 A. Both the same rank, yes, just different

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1 responsibilities.

2 Q. When -- you had obviously tasked DC Connell with
3 recovering the knife.

4 A. Yes.

5 Q. And then can we look at PS00280, page 4, paragraph 3:

6 "Whilst dealing with the male I was aware that
7 DS Davidson ..."

8 Do you see that bit, paragraph?

9 A. Yes.

10 Q. "... had arranged for DC Connell to accompany the male
11 in the ambulance to assist the medical staff with CPR to
12 provide updates on his condition and attempt to
13 establish his identity."

14 Was there any concern in your mind about forensic
15 integrity, given that the knife had been recovered by
16 DC Connell, but he was also the officer in the ambulance
17 with the male?

18 A. I suppose not, in terms of obviously the actions in
19 terms of the recovery of the knife where pre the
20 decision to accompany, but in terms of the reality,
21 there was nobody else available. That was explained in
22 terms of how the incident had kind of consumed the whole
23 uniform presence. The other officers were used for the
24 locus protection. DC Connell was pretty much the only
25 alternative and I was satisfied -- and again, it's about

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1 the justification rationale, that yes, potential
2 cross-contamination down the line, but as long as we
3 have not hidden the fact that DC Connell has went
4 because that strand -- I mean, in terms of the victim,
5 that they become a scene in themselves.

6 Q. Is this a rationale that you're providing now with
7 hindsight, or is it a rationale that you went through in
8 your mind, reasoning that you went through at the time?

9 A. I was never going to stop and pause and decide if
10 DC Connell, being effectively the only officer left,
11 could do it, because the priority was to get Mr Bayoh to
12 hospital.

13 Q. And looking back now, do you have any concerns about
14 forensic integrity in that situation?

15 A. No, because I think not knowing -- unfortunately,
16 because I wasn't involved in the full investigation of
17 what the forensic intentions were, but if there was to
18 be forensic anomalies, they could be potentially
19 explained because DC Connell was involved in the knife
20 and then potentially has contact with Mr Bayoh.

21 Q. Can I ask you to look at page 15 of the spreadsheet.
22 You will see at 7.43 -- sorry, moving on to page 16 of
23 the spreadsheet, 7.43.05, this is an Airwaves
24 transmission from you:

25 "Just for the call card, DS Dursley from Levenmouth

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1 is arranging a CID resource from division to attend at
2 Kirkcaldy Police Station in relation to the aspect of
3 the investigation. Chief Inspector Stones' updated and
4 is going to contact the on call Super."

5 Tell us what you were doing roundabout that time
6 when you made that transmission?

7 A. So again, and obviously leading -- taken from the
8 limited resource we had, there actually was going to be
9 actions and investigation we needed to do as a result of
10 what had played out. So DC Connell is at the hospital,
11 DS Davidson is obviously overseeing things at the scene,
12 Sergeant Maxwell was looking after his staff and going
13 back to the station. As I say, there was no other
14 police resource in Kirkcaldy, and I suppose part of the
15 benefits of divisional cover in the organisation is that
16 we do have resources elsewhere, so I would be aware of
17 who would be on and it was to contact them to attend to
18 assist with any actions and investigations that needed
19 to take place thereafter.

20 Q. And was it you that contacted DS Dursley at that time?

21 A. I would imagine so. I don't recall, but I would imagine
22 via mobile phone, knowing that I had no resource would
23 be to phone where I did know there was resource. And
24 yes, I would probably have just phoned DS Dursley
25 direct.

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- 1 Q. And it says:
- 2 "Chief Inspector Stones' updated ..."
- 3 Was it you that updated him?
- 4 A. Yes, if I recall, maybe -- and I think I explained at
- 5 the very start in terms of that kind of on-call duty
- 6 weekend cover, that there would have been
- 7 a chief inspector on for Fife division and that was
- 8 Chief Inspector Stones, as I recall. He was based at
- 9 Dunfermline. And again, it was just to contact him to
- 10 keep him apprised of what my intentions and actions
- 11 were.
- 12 Q. Was he your sort of senior manager?
- 13 A. For the structure that was in place to cover that
- 14 weekend, yes, and he would be effectively the most
- 15 senior on duty officer.
- 16 Q. In Fife that day?
- 17 A. On that day, with the provision of an on-call structure
- 18 beyond that, that obviously gets activated as well.
- 19 Q. We have heard his name mentioned by Inspector Kay,
- 20 Acting Inspector, who was the PIO, and he had also
- 21 mentioned him in relation to speaking to Chief Inspector
- 22 Stones that day. So was that -- he was part of that
- 23 area, that Fife division, was he, that day?
- 24 A. Yes, and given his role ordinarily whether the PIO would
- 25 probably have more contact, regular contact with

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1 the Chief Inspector, just due to the variety of matters.
2 If I was (inaudible) in terms of investigation being
3 management orientated, there's a parallel on-call
4 structure as well.

5 Q. And then there's mention of "and is going to contact the
6 on-call Super", was that Stones that was going to
7 contact the on-call Super?

8 A. In terms of the uniform on-call superintendent as
9 opposed to what would be my detective on-call
10 superintendent, so you see there's parallels, again just
11 for the variety of roles and responsibilities and
12 matters that go on across policing on a daily basis.

13 Q. So if Stones was going to contact the on-call uniform
14 super, who was that?

15 A. I couldn't tell you.

16 Q. And did you contact the on-call --

17 A. Detective.

18 Q. -- detective super?

19 A. Yes. So probably simultaneously, again with a different
20 purpose and intention.

21 Q. And the detective super on call that day was
22 Pat Campbell we have heard.

23 A. That's correct.

24 Q. So you contacted him?

25 A. (Nods).

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- 1 Q. And in terms of the CID part of this, which you were
2 part of, can you explain what their role would be that
3 day then?
- 4 A. So it would be for me to update them on all priority
5 matters. I think as I outlined that kind of structure,
6 my roles and responsibilities of the on-call or the duty
7 SIO is that ordinarily -- and I phoned him early, fairly
8 quickly after we know how the direction it was going,
9 but ordinarily I would phone him on a daily basis to
10 update him on all matters Fife related to what I thought
11 had the threshold to bring to his attention. And it was
12 more that kind of quality assurance, peer review of
13 "This is what we've got, this is my actions, decisions",
14 more for him to concur or maybe give me other
15 considerations to take into account as part of that kind
16 of peer support and then his role as the wider
17 organisational would be anything that he needed to feed
18 in to senior management.
- 19 Q. So when did you view this incident at Hayfield Road as
20 a priority event?
- 21 A. As soon as I came out of the hospital and heard about
22 the change in circumstances.
- 23 Q. So either as you were travelling back -- rerouted back
24 to Hayfield Road?
- 25 A. Yes, which is again the short distance and I only drove

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1 out effectively a short distance and stopped where
2 I relayed those radio messages in terms of the locus
3 protection and that pretty much happened the same time
4 that I was speaking to Inspector Kay, shortly thereafter
5 making the phone call to the detective superintendent.

6 Q. And earlier we spoke about you initially responding to
7 the calls that you had heard as -- I used the word
8 "reinforcements", and asked about your responsibilities
9 as on duty SIO. So can you explain when you first
10 arrived at Hayfield Road, if we could summarise that as
11 you being there to support your colleagues, but then the
12 second time you arrived at Hayfield Road, after you have
13 dropped off Nicole Short at hospital, what was the
14 reason and the basis on which you arrived the second
15 time?

16 A. Yes, as I say, my role and purpose had changed that
17 I had the SIO thinking cap on in terms of the needs and
18 priorities of that investigation.

19 Q. So was that the point -- the second time you arrived,
20 the point at which you were there as senior
21 investigating officer?

22 A. Yes, more or less, albeit when I first attended and we
23 have had the discussion with DS Davidson and DC Connell
24 about the recovery, it wouldn't need an SIO to give that
25 instruction. If, in my absence, DS Davidson and

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1 DC Connell could have arrived at the same decision and
2 done that, it wouldn't essentially need my authority,
3 but I was there so I was consulted and I effectively
4 gave that decision.

5 Q. And you, at that time, when you were there the first
6 time, were the most senior officer there?

7 A. That's correct.

8 Q. But on the second time you arrived at Hayfield Road, you
9 were there as on duty SIO effectively?

10 A. Yes.

11 Q. So when you arrived the second time, was -- you were the
12 most senior officer and were you in charge as SIO?

13 A. That's correct.

14 Q. So from that time you were in charge of the
15 investigation?

16 A. Yes.

17 Q. And in relation to DS Dursley, you have mentioned him in
18 the call, can you explain to us what his relationship
19 and his role was in relation to your role that day?

20 A. So he was the equivalent of DS Davidson but his natural
21 function would be covering Levenmouth. Again, just
22 a different area, but performing the exact same function
23 as DS Davidson.

24 Q. But he was brought to Kirkcaldy to help?

25 A. Yes, in the same vein as my interaction with DS Davidson

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1 in terms of that discussion of what we were trying to
2 achieve.

3 Q. So if DS Davidson is in the same role, the same rank,
4 why bring DS Dursley from Levenmouth?

5 A. Because I think I have obviously explained that refined
6 resource, that may effectively -- so DS Davidson is
7 effectively being -- her priority is the locus, also as
8 part of overseeing DC Connell that went with Mr Bayoh to
9 the hospital. So again, it's that whole resilience
10 piece is that -- I mean, they've only got limited
11 capacity and we want them to do those roles obviously to
12 the fullness and best ability. So it's just that
13 resilience and extra resource.

14 It's also helping in terms of that independence, the
15 fact that DS Dursley and the officers that would come
16 are not directly involved. So as you're saying, you've
17 talked about the kind of forensic integrity and that
18 kind of cross-contamination, they're effectively not
19 involved, so could conduct investigations outwith being
20 at locus.

21 Q. Did you have any other DSs working with you in that
22 investigation?

23 A. Not on that day, no. And I'm even not too sure if
24 there's others on duty. Again, it would just depend on
25 the resource levels of that day or on other commitments,

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- 1 it kind of fluctuated in terms of the weekend for other
2 commitments.
- 3 Q. So we have heard other evidence that DS Davidson went to
4 Victoria Hospital, was engaged with the identification
5 of the male. You have talked to us about the locus
6 protection she helped with. Was the person at Kirkcaldy
7 Police Office that day mainly involved in the DS role,
8 was that DS Dursley?
- 9 A. It became DS Dursley, yes.
- 10 Q. So from the moment he arrived at Kirkcaldy?
- 11 A. Yes, correct.
- 12 Q. And was it you that briefed him on his arrival?
- 13 A. Yes. I provided him obviously with the details of what
14 had taken place to that time. But again, it was him and
15 effectively two DCs that we had managed to muster in
16 terms of the available resource.
- 17 Q. How long were you at Hayfield Road before you went back
18 to Kirkcaldy?
- 19 A. I don't think it was long. Again, with the locus
20 protection measures in place, overseen by DS Davidson,
21 more or less negated my need to be there, conscious of
22 the various other strands of the investigation that
23 I needed to turn my attention to.
- 24 Q. What were they?
- 25 A. They are more or less listed on the daybook.

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1 Q. Yes. Let's look at your daybook, just to see your list,
2 and I think they are the first couple of pages. Maybe
3 get that back on screen. It's PS18495, I think. And
4 there's a list on page 1. Does this assist you?

5 A. Yes, that's better, landscape. Yes, I don't know --
6 again it would help with the timings. The 0910 hours is
7 the time that McEwan declared it a critical incident.

8 I don't know if I briefed -- whether I was conscious
9 of briefing DS Dursley and the DCs on the events to
10 deploy them to carry out these actions before I was able
11 to sit down and start to note some of the considerations
12 and timings, so it would be around about the same time.

13 Q. So there would have been briefings going on that -- are
14 they not noted in the daybook?

15 A. No, I don't think so and I think I was more conscious of
16 getting them briefed and effectively getting them out
17 the door to see how they could assist, because it was
18 part of that information gathering stage. We know there
19 had been calls, we know -- so there was lots to do and
20 again it was just trying to work out in the fashion and
21 priority to do that. It makes sense that I briefed
22 them, especially in the knowledge that the call from
23 Colette Bell came before 0910, so -- and obviously,
24 DS Dursley and the two DCs were involved in contacting
25 her. So it would make sense that when I have come

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1 back -- I think on the left-hand side, which is
2 redacted, likely there was the call card number.
3 I think that would be probably the first origin of
4 source of information to me would be to print that.

5 Q. So we have heard that DS Dursley arrived at Kirkcaldy
6 shortly after 8 o'clock in the morning. We have heard
7 evidence that DC Parker had noted in his notebook at
8 8.20, a briefing, along with DC Mitchell, and we have
9 heard that at 08.36 hours that there was a call from
10 Colette Bell to the police from her home in Kirkcaldy,
11 reporting her partner missing. You have already given
12 evidence today to say that at 0910 a critical incident
13 was declared by Garry McEwan.

14 So you returned to Kirkcaldy Police Office, you have
15 briefed various members of the police service, including
16 DS Dursley. You have talked about some of them being
17 briefed from the scene. Was there anyone else you
18 briefed in that period of time between sort of after 8
19 and 9.10, so prior to Garry McEwan declaring it
20 a critical incident?

21 A. As I say, the first phone call, once I had obviously
22 spoken divisionally with Inspector Kay and the Chief
23 Inspector, my first call was to the detective
24 superintendent and the first call obviously resulted in
25 numerous calls thereafter. So -- but in the meantime --

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1 Q. Is that Pat Campbell?

2 A. Yes, sorry. And interim period I have returned,
3 probably on the phone and making various calls, because
4 naturally he has briefed up the way as well, which has
5 resulted in either questions or clarity that has
6 resulted in another phone call. So it was managing that
7 whilst trying to brief the available resource to go and
8 carry out those priority actions.

9 Q. So you are briefing up the chain and down the chain?

10 A. Yes.

11 Q. And Pat Campbell, you briefed him. Senior to him would
12 have been Garry McEwan.

13 A. In terms of rank, yes, but in terms of the structure of
14 that day, probably not. Garry McEwan was the commander
15 of Fife. I actually don't know how he was made aware or
16 contacted. It wouldn't be within that kind of crime
17 management on-call structure, because there would be --
18 from Detective Superintendent Pat Campbell, there would
19 be a detective chief superintendent on call from the
20 crime management element and that's -- I think
21 I explained about the parallel advisory ranks as well in
22 terms of chief inspector, superintendent. So naturally,
23 he has been contacted by somebody, but I don't think it
24 would potentially be Pat Campbell's first call.

25 MS GRAHAME: Right, thank you.

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1 I'm conscious of the time.

2 LORD BRACADALE: We will take a 15-minute break then.

3 (3.02 pm)

4 (Short Break)

5 (3.28 pm)

6 LORD BRACADALE: Chief Inspector, I wonder if you could help
7 me to clarify a matter at this point. Just going back
8 to the scene at Hayfield Road and your decision in
9 relation to dealing with, what I might call, the
10 forensic aspects of the knife and the batons and so
11 forth, and you explained your decision to just have
12 these collected and photographed in situ.

13 Now, a little later in your evidence, you said that
14 if you had known from the outset, as you put it:

15 "I think if I knew from the outset that we were
16 dealing with an unconscious male and the fact that that
17 could have unfortunately been the outcome, I think there
18 would have been a stop and pause at that time in terms
19 of not recovering that. So I think I was working on the
20 premise that more as a precautionary measure, we were
21 asking for an ambulance for the male ..."

22 Do you remember saying that?

23 A. That's correct, yes.

24 LORD BRACADALE: Now, do I take it from that that if you had
25 known that he was unconscious at that time, you would

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1 have taken steps to preserve the scene?

2 A. That's correct.

3 LORD BRACADALE: And in relation to the other evidence that
4 you gave about your role as the SIO, might that have
5 meant that you would have taken charge at that point as
6 the SIO?

7 A. Yes, I think I was trying to convey that -- and as
8 I portrayed, we were attending initially just as
9 an officer in support of my colleagues. I think the
10 actions and decisions that we took, I would be satisfied
11 that a sergeant could take them at that time as well,
12 but appreciating I was there, I became in charge.
13 I gave that instruction to record and recover the items,
14 based on the information that I had been provided and
15 the assessment of the circumstances at that time.

16 LORD BRACADALE: But if you had realised that the man was
17 unconscious, as you described, would that have affected
18 the way in which you would have taken command?

19 A. Yes, definitely, because I think the way I thought
20 undoubtedly it would play out, as I portrayed, is that
21 the male would be taken into custody, in that the
22 provision of an ambulance to check him was
23 a precautionary measure. If I knew that he was at that
24 stage in need of urgent medical attention, I would have
25 obviously put in the locus protection measures at that

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1 time, which would have involved the knife and the
2 officer equipment remaining in situ.

3 LORD BRACADALE: Against that background, I wonder if you
4 could help me with this. If we could have on the screen
5 your operational statement that you wrote the next day,
6 which is PS280 and at page 3. Now, it's about halfway
7 down the page. Yes, you see the second last paragraph
8 on the page, it says:

9 "At that time I was made aware that the male was
10 unconscious but was breathing and an ambulance had been
11 requested.

12 "DC Connell thereafter contacted me and informed me
13 that he had located the knife on a grass area on the
14 north side of Hayfield Road, Kirkcaldy."

15 If you can scroll down to the next paragraph, it
16 says:

17 "Owing to the risk that this posed with members of
18 the public being in the immediate vicinity and the
19 potential evidential value I instructed DC Connell and
20 DS Davidson to record the position of the knife and take
21 possession of same. The inclement weather ..."

22 You referred to that, as you did in your evidence,
23 and also to the batons, and you ordered that these be
24 recorded and recovered. And then the next paragraph,
25 you say you then conveyed PC Short to Victoria Hospital.

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1 Now, it would appear from that operational statement
2 that you wrote the following day, that the sequence of
3 events was that you did know that he was unconscious
4 before recovering the productions at issue.

5 A. I think it was probably more the emphasis about the
6 unresponsive bit that I then became aware of.

7 LORD BRACADALE: I'm sorry, say again.

8 A. The unresponsive element that obviously once I conveyed
9 Nicole Short to the hospital and came out, he was
10 unresponsive. So whether there was an implication that
11 he was responding at that time in terms of whether he
12 was breathing, I don't think I made the assessment that
13 he was in need of urgent medical assistance.

14 LORD BRACADALE: If you knew that he was unconscious would
15 he not be in need of urgent medical assistance?

16 A. I just think it was the unresponsive bit that I become
17 aware of that I wish I had reflected obviously on those
18 actions.

19 LORD BRACADALE: Thank you. Ms Grahame.

20 MS GRAHAME: Thank you. Could I ask you to go back to
21 page 7 of the spreadsheet, please. I have referred you
22 to this earlier. I think page 10 was the call -- the
23 Airwaves transmission from you at 7.28.46, page 10,
24 halfway down the page, where you say that you're going
25 to convey PC Short to A&E. So page 7 is a time at which

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1 we have agreed earlier you were actually at the scene.

2 A. That's correct.

3 Q. And the information that was available on the Airwaves
4 at that time from PC Alan Smith -- so page 7, 7.25.17 --
5 is:

6 "Roger, this male now certainly appears to be
7 unconscious, breathing, not responsive, get an ambulance
8 for him."

9 So although you have said you thought maybe your
10 radio was in the car, certainly officers at the scene,
11 PC Smith in particular who makes a transmission, and any
12 officers listening to the radio transmissions, would
13 have known that he was unconscious and not responsive.
14 Do you remember being aware of the not responsive part?
15 I'm not sure how someone who was unconscious could be
16 anything other than unresponsive?

17 A. No, you're right and obviously it's -- that's obviously
18 to outline that. The reality is that the knife and the
19 equipment should have been left in situ is on reflection
20 now and if I had my time again that would be the case.

21 Q. Thank you. Just remaining with forensic recovery at the
22 scene for a moment, could we look at paragraph 75,
23 please. This is 75 of 133, your first Inquiry
24 statement. I think you say here:

25 "After recovering the knife, I find myself a bit

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1 redundant by that time, thinking that the matter was
2 under control. An ambulance had been requested, but you
3 were literally half a mile from Victoria Hospital on
4 Hayfield Road. I thought that I would be best used by
5 just nipping Nicole Short along to the hospital. So
6 whether she'd been put in my car by that time, I'm not
7 sure, but she was front seat passenger as I drove the
8 short distance to A&E."

9 And you -- was that part of your thought process as
10 well? Did you feel at that time that you were a bit
11 redundant at that stage?

12 A. All of my initial response in support of my colleagues
13 and, as I say, having had the discussion with DS Sammy
14 Davidson and Sergeant Maxwell, yes, at that time,
15 I thought my involvement had ceased.

16 Q. And going back, I was asking you before the break about
17 the different roles that everyone was taking and I was
18 asking you about DS Dursley. I would like to move on
19 and ask you about Acting Inspector Stephen Kay. He was
20 the PIO, we have heard evidence about this, and just ask
21 you to give an explanation about some of the comments
22 you have made in your statements.

23 A. Okay.

24 Q. So the PIRC statement, first of all, from 2 June 2015,
25 which is 223, and this relates to yourself, it's page 2,

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1 paragraph 3. Page 2, paragraph 3, you say:

2 "As part of this role ..."

3 That's your role as being on duty SIO for Fife:

4 "... particularly during a weekend, where a serious
5 incident occurred I would be expected to respond and
6 take initial control, where appropriate."

7 And then can we look at your first Inquiry
8 statement, which is 133, at paragraph 88, and you're
9 talking about the welfare of the officers. You had to
10 think about the welfare of the cops involved. It was
11 that resilience and looking at what other staff members
12 were on across Fife, and you talk about the PIO on that
13 day was Stevie Kay, this is the last few lines:

14 "He's got the day-to-day running of incident
15 management, day business, plus resources resilience
16 where he needs to allocate or realign staff."

17 And then if I can look at your second Inquiry
18 statement at paragraph 66, and this is SBPI 251, in
19 paragraph 66, you talk about:

20 "[Inspector] Stevie Kay would be more in charge of
21 the uniform response as the Police Incident Officer
22 (PIO)."

23 I'm just wondering if you can give a more detailed
24 explanation to the Chair about how he can interpret all
25 of these different comments about you being expected to

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1 respond and take initial control, but Kay being more in
2 charge and just trying to understand how to interpret
3 those different comments.

4 A. I think in the initial statement in terms of the
5 expected to respond to the critical incident, that
6 doesn't ordinarily mean physically, it could just be to
7 the area where it's taken place and I could have that
8 remote control over what has taken place, based on the
9 information that was being fed to me. Because
10 ordinarily, you're not in the -- on this day, I was in
11 the location where this took place, but if I was in
12 another location, that control might have been remote
13 and I might have been giving the instructions from afar,
14 naturally, and attending, given that the gravity of it.

15 It's appreciating that there's that collective
16 responsibility and various strands to investigations
17 that I had the criminal investigation element, in terms
18 of the structure and response, whereas you've got the
19 PIO in terms of your parallel colleague, who would be
20 dealing with the uniform element in terms of what maybe
21 resources I needed from the uniform, but also on this
22 instance and correlated with this was the uniform
23 resilience that was required to come and police
24 Kirkcaldy, because policing had to continue on that day,
25 but also support the investigation as well.

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- 1 But it is a collective, just us having clear
2 different roles and responsibilities.
- 3 Q. So would it have been an option for you to have taken
4 remote control of the incident at Hayfield Road at any
5 point?
- 6 A. If I hadn't attended from Kirkcaldy and I had been based
7 elsewhere, the instructions may have come over the radio
8 or over the phone. I may have had a call from
9 DS Davidson to report and based on that -- obviously
10 I'm -- I'm glad I was there. Obviously, it naturally
11 reflected on some of the actions and decisions that
12 I took, but it was easier to be there and see what was
13 going on, base the decisions round that as opposed to
14 relying on something that was being conveyed over
15 a phone or over a radio.
- 16 Q. And your control to that extent would have been as SIO,
17 on duty SIO that day?
- 18 A. Yes.
- 19 Q. And explain briefly what the SIO does in terms of an
20 investigation. You have talked previously about
21 priorities.
- 22 A. So it would be, as I say, the investigative oversight of
23 any matter. It doesn't have to be a crime, it could be
24 a death, and it is providing that assisting guidance and
25 support of the investigation, whether it is actions,

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1 reporting it to your colleagues, just giving that
2 overall, as I say, kind of peer review. And if it's
3 just the one incident, the actions and priorities that
4 are required as part of that. Naturally, we don't
5 always deal with just one, there's competing demands
6 across policing ordinarily on a daily basis.

7 Q. Can you be used as a resource by other officers who are
8 seeking guidance?

9 A. Yes, definitely so. Depending on the matter that's
10 brought to your attention, it depends on the response or
11 level of support that's required. It could be just like
12 consultation, the fact there's that soundboard of an
13 incident they're dealing with, what actions have taken
14 place, what their intended actions and that agreement
15 that they would go and progress that.

16 There's obviously other matters like this that would
17 need more of a focus and direct involvement from me.

18 Q. We have heard other evidence that you were in charge
19 initially at Kirkcaldy Police Office, but ultimately
20 directed by Detective Superintendent Campbell and you
21 would direct the investigation and decide on the
22 priorities. Do you agree with that description of your
23 role?

24 A. Yes, there was obviously a point -- and I think it's
25 obviously policied as well that the transfer of SIO did

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- 1 take place and that Detective Superintendent
2 Pat Campbell became the SIO.
- 3 Q. When was that?
- 4 A. I think it was first Gold Group meeting, so was that at
5 11.30?
- 6 Q. Yes. And if we look at your daybook for the moment,
7 page 1 of your daybook, which we looked at earlier, you
8 will see that initially your handwriting was 0910, we
9 have heard that was critical incident, and then 11.30 is
10 the time given. If we go on to the next -- I think it
11 might be page 2, and we see that the Gold Group, which
12 was a Gold Group meeting, was at 11.30. So as far as
13 you were concerned, were you in charge of the
14 investigation up until 11.30?
- 15 A. That was my understanding.
- 16 Q. How did you gain that understanding?
- 17 A. Because I was there, naturally I was seeking -- having
18 the initial update to Detective Super Campbell. He was
19 obviously giving me -- not saying instructions
20 straightaway, but after the initial brief then in terms
21 of my intended actions, the agreement around that about
22 what the course of action would be, because at that
23 time, he was remote, I think he was obviously somewhere
24 in the west of Scotland.
- 25 Q. When did he give you your initial brief?

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- 1 A. So I gave him the initial brief.
- 2 Q. You gave him the initial brief.
- 3 A. Yes. As I say, just having come into the hospital and
4 the conversation around the locus, the conversation with
5 Inspector Kay and the involvement of Chief Inspector
6 Stones. The next call was to the on-call detective
7 superintendent.
- 8 Q. So when we looked at the spreadsheet earlier towards the
9 end, there was the mention of Dursley and Stones, and
10 you said you were going to call the detective super, it
11 was shortly after that that you called Pat Campbell?
- 12 A. Definitely, I think I obviously wanted to get that
13 support notified and on the way as opposed to any
14 further delay. I think, at that time, it would have
15 been the opportunity to phone the detective
16 superintendent.
- 17 Q. And you remained in charge of the investigation until
18 Pat Campbell attended the 11.30 Gold Group meeting?
- 19 A. Physically, yes. But naturally, as the time passed,
20 there was obviously instruction and dialogue with him of
21 matters that he would look for us to progress, or
22 secure.
- 23 Q. Was there a moment in time where he was in charge of the
24 investigation and you were relieved of that
25 responsibility?

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1 A. It never felt as a -- well, the Gold Group felt as the
2 handover, because the structure of the Gold Group,
3 I gave -- I remember I gave that investigatory update in
4 terms of what led us to be in the room at that time up
5 until that stage. That would have included as part of
6 my update the information I relayed to the detective
7 superintendent. Naturally, the mechanisms that took
8 place after that which basically meant that the senior
9 officers descended on Kirkcaldy on that morning.

10 Q. Well, we will come back to the Gold Group meetings.
11 Now, we have heard evidence that Acting Inspector Kay
12 arrived at the scene of Hayfield Road at 7.40. In fact,
13 we have a note on the spreadsheet that he arrived at
14 7.40.54, which is page 15, if you wanted to look at it.

15 I think in paragraph 88 of your Inquiry statement,
16 you say that you were the most senior officer at the
17 scene at the time you were there and you were the same
18 rank as Stevie Kay, so when Inspector Kay arrived, were
19 you -- you were the same rank as him, but were you still
20 the most senior officer at the scene?

21 A. I actually don't recall ever seeing him at the scene.
22 I don't think we -- it was more remote contact that we
23 had.

24 Q. You have said in one of your statements that Stevie
25 Kay -- this is your second Inquiry statement at

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1 paragraph 66. You say:

2 "... Stevie Kay would be more in charge ..."

3 And again, I'm just trying to understand what you
4 mean by that, so you say here:

5 "[Inspector] Stevie Kay would be more in charge of
6 the uniform response as the Police Incident Officer ...
7 On that day we responded as a collective (as
8 police officers) without the initial thought about the
9 supervisor element and to who was in charge. Post
10 incident and given how it developed I assumed SIO
11 ownership/oversight."

12 When you say that "Stevie Kay was more in charge",
13 what is it you mean there?

14 A. It was naturally his officers in effect that attended in
15 terms of the uniform response. So on a day-to-day
16 basis, he would prioritise the deployment of uniform
17 resources across Fife, depending on that kind of threat
18 risk and harm. So they were his officers, so he
19 attended in terms of their welfare and support, but also
20 appreciating the wider requirements in terms of that
21 resilience of officers continue to police Kirkcaldy and
22 also there was elements that he would take
23 responsibility for in terms of the locus protect, the
24 officers that did the locus protection.

25 Again, once I made him aware of the requirement, he

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1 would then go and find that suitable resource to perform
2 those functions.

3 Q. So if we were to narrow this down, he is more in charge
4 of the uniformed officers?

5 A. Yes.

6 Q. You're more in charge of the investigation?

7 A. That's correct.

8 Q. And how that's conducted?

9 A. But naturally, on that day, the uniformed officers
10 became part of the investigation which on a day-to-day
11 basis doesn't happen.

12 Q. So there's an overlap, if you like --

13 A. Yes.

14 Q. -- of the individuals involved?

15 A. Yes.

16 Q. And you were going at some point to look at your daybook
17 before the break and tell me about the type of priority
18 actions that you were thinking about that day. Do you
19 want to go back to your daybook, please?

20 Could you read out what we see here as things that
21 you considered in terms of the investigation and what
22 was required.

23 A. Yes, so again, these are kind of triggers of what relate
24 to fairly generic strands of investigation that exist no
25 matter what incident you're dealing with. So I think we

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1 have covered both times there. The TSU, I think, is
2 a prompt there with regards to CCTV relating to one of
3 the vans that attended the incident, so I think that's a
4 trigger for that. And then, thereafter, you would have,
5 as I say, as part of any investigation, victims,
6 deceased, locus, your witnesses. So I think -- so TSU
7 covers the van, the deceased in terms of Mr Bayoh, the
8 locus at that time is Hayfield Road, 360 and photo is in
9 terms of the recording of that scene. So that was when
10 I think I referred to the scenes of crimes officers that
11 they would attend and provide that specialism in terms
12 of capturing the scene visually.

13 Q. We have heard some evidence about that.

14 A. They would be the ones that again if -- would have
15 photographed and recorded the items that we have
16 discussed.

17 I think that -- in terms of my handwriting, I think
18 that's Zahid Saeed and that's TIE, so it's trace and
19 eliminate, evaluate the movements of the witness,
20 because his name had been introduced by Colette.

21 I think that's then -- that's Martyn Dick. After that,
22 it's like DNED, but I don't know what that -- in terms
23 of my own scribbles, but he was identified as a witness
24 again from the information provided.

25 Q. We have heard.

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1 A. The H2H is house to house parameters. So again, from
2 where that incident took place, what houses would fall
3 into that and actually it happened right outside a row
4 of houses, so they would probably be the first port of
5 call.

6 Intelligence profile, so again in terms of any
7 individual linked to an investigation, we would look to
8 as part of building that information and knowledge
9 around it, we would look to see what information was
10 held on police systems to help build the picture of what
11 we were dealing with.

12 CCTV survey, as it says, is we would look to canvass
13 any property. Again, how that's evolved through
14 technology, but any source of CCTV from houses -- notice
15 the Gallaghers had some dash cams.

16 Q. In the area?

17 A. Yes.

18 Q. And then if we move down the page, do we see what other
19 ...

20 A. I think it's not -- is it redacted in my ... so in terms
21 of obviously Kirkcaldy and locus, I don't know what --
22 I can't recall what the redacted --

23 Q. It will be an address in Kirkcaldy --

24 A. So again, as we build that and as the more people were
25 contacted, in those early stages, the more information

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1 would be gleaned and that then led to further decisions
2 and actions around what we needed to do. So we knew --
3 well, for instance, if that is Colette's address,
4 knowing that this seems to be the chronology, as I have
5 noted it, that seems to be information that's been
6 gleaned from the officers' contact with Colette and the
7 consideration is that address.

8 So if there's any address that is associated, has
9 become a locus, it's something that we would look to
10 attend, procure, not knowing what the value was
11 contained within there.

12 Media, again, it's always an early consideration in
13 terms of any proactive messaging, but also recognising
14 the media attention and how we manage that.

15 I think the next one is community. So again, it's
16 that community impact. As a result of that incident,
17 what is the likelihood in terms of community impact?

18 These are not all strands that I would necessarily
19 progress. They would be allocated during a briefing or
20 in this terms the Gold Group.

21 Federation reps was directed in terms of the welfare
22 of the officers, in terms of somebody coming out to
23 support them and I think -- well, the next one is
24 welfare of the officers.

25 Q. So these are all aspects of the investigation that would

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1 need to be dealt with, not necessarily by you
2 individually, but delegated perhaps to others who would
3 task --

4 A. Yes, and some of that would follow, as I say, in
5 discussion at the early stages with Inspector Kay in
6 terms of if we wanted to do them without the formal
7 structure and briefing, if we saw them as those and
8 compared to like the priority actions that I may have
9 looked for resource from Inspector Kay to go and do CCTV
10 at the pub, CCTV at the houses or door to door at the
11 houses.

12 Q. So you were able to tap into assistance from
13 Inspector Kay?

14 A. Yes.

15 Q. And you were able to rely on DS Dursley?

16 A. Yes.

17 Q. And him tasking other officers who had been drafted in
18 to the area?

19 A. Correct.

20 Q. And you also had the support from more senior people up
21 the chain?

22 A. Yes.

23 Q. Can I ask you one last thing in relation to Maxwell and
24 Smith, so thinking about who was in charge of the care
25 and welfare of the officers. Now, you have mentioned

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1 that at the end of your daybook as being a factor,
2 a matter of importance. And in your second Inquiry
3 statement, at paragraph 67, you -- if we just look at
4 that, and I think it says:

5 "If you're talking about who's in charge of care and
6 welfare of Sheku, I'd say Alan Smith. Mr Bayoh was on
7 the ground and the officers were around."

8 So you seem to attribute, certainly at the scene,
9 that PC Alan Smith was in charge of the care and welfare
10 of Mr Bayoh and we have heard evidence before that
11 Alan Smith was a PC and you have said in your evidence
12 that he was an OST trainer.

13 A. Yes.

14 Q. And we have heard he was First Aid trained. We have
15 also heard that Scott Maxwell was acting sergeant for
16 the response team and he was of more senior rank than
17 PC Smith. Can you explain to us why you would attribute
18 in charge of care and welfare of Mr Bayoh to PC Smith
19 rather than Acting Police Sergeant Maxwell?

20 A. More because he was more suitably qualified in terms of
21 his skills and experience and, as I say, it was an
22 observation to me because on my attendance it was the
23 only really officer I could hear and I did then take
24 comfort identifying him, I know his background, that, as
25 I say, he was best placed and with the knowledge and

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1 experience to do that.

2 Q. Were you aware of Alan Smith's training and background
3 when you arrived at the scene?

4 A. Yes, because I think he trained me in OST so ...

5 Q. So it was that, your awareness of him and his
6 background, rather than particular policy or procedure
7 that is implemented that you're aware of?

8 A. Yes, and to be honest I suppose that's when the rank
9 structure would effectively be put to the side. It's
10 the best person for the job and I did take comfort,
11 confidence that with Alan being there that all these
12 initial considerations of fact would be taken into
13 account.

14 Q. So that's why you have said in your statement Smith was
15 in charge of looking after Mr Bayoh --

16 A. Yes.

17 Q. -- rather than Sergeant Maxwell?

18 A. Yes, and I suppose if there was anybody else with
19 similar skills and experience would support that as
20 well, but I wasn't aware of anybody.

21 Q. You then say:

22 "Scott Maxwell would be in charge of the element of
23 the officers and the supervisory oversight that
24 Alan Smith was dealing with care and welfare."

25 What do you mean "in charge of the element of the

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1 officers and the supervisory oversight"?

2 A. I think they're obviously his officers on the team,
3 again whether acting or temporary on it, I don't know
4 how long that had been, but I suppose when he started at
5 the commencement of their shift if there was
6 an opportunity he would be the one briefing them and
7 with supervisory responsibility on that day. Again
8 because he was there at the time, he wasn't directly
9 involved. Again, an important thing of supervisory
10 oversight is that if you were to then become physically
11 involved in one element, I suppose then it limits you to
12 how you can have a holistic view of the incident.

13 Q. Right, thank you. Well, let's go back to looking at
14 Kirkcaldy Police Office. You have returned to Kirkcaldy
15 Police Office and you have given evidence that at 9.10
16 Garry McEwan declared a critical incident and at 11.30
17 there is a handover, if you like, where you give the
18 briefing to the Gold Group meeting, but Pat Campbell is
19 there and there's effectively a handover.

20 I'm interested in what you were doing between 9.10
21 and 11.30 when you attended that first Gold Group
22 meeting. Now, we have looked at page 1 of your daybook.
23 Is there any other sort of information available from
24 your daybook that would assist us in understanding what
25 you were doing personally during that period?

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1 A. Again, knowing the kind of scale and gravity of the
2 matter in terms of that administrative responsibility,
3 instead of what was down in my daybook I started to
4 populate an action book, which is a separate document.
5 To what extent I populated that action book in advance
6 of the Gold Group, I couldn't tell you. I know I was
7 more involved in that in the afternoon, following the
8 Gold Group meetings.

9 Q. Were you involved in any briefings alongside DS Dursley
10 in the morning?

11 A. So definitely on their initial attendance in terms of
12 whether it was just to DS Dursley -- I don't think so
13 because they were a refined resource. This wasn't
14 briefing a cast of a thousand, it was a sergeant and two
15 detective constables and I definitely gave them -- or
16 relayed the information I had at that stage, based on my
17 views and experience, also supported by the call card
18 that we were in possession of.

19 Q. So after returning to Kirkcaldy Police Office, had you
20 reviewed the call card -- we have heard they're also
21 called STORM card messages -- that had come in that day?

22 A. Definitely printed it. In terms of review, to what
23 extent I couldn't tell you at that time, but I know it
24 was -- in terms of the briefing of the limited
25 information I had to hand, any initial action that

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1 I considered was more or less superseded by the call
2 from Colette Bell and then that made -- and that brought
3 about the link of who we had made contact with at
4 Hayfield Road and that's what I used the available
5 resource to be overseen by DS Dursley over those three
6 DCs to deploy.

7 Q. We have heard evidence that Colette Bell's call came in
8 at 0836 and we heard evidence from DS Dursley that there
9 was a potential link made between the call from
10 Colette Bell and the male who had become unconscious at
11 the scene and we have also heard he didn't -- life
12 wasn't pronounced extinct until 09.04.

13 A. Yes.

14 Q. To what extent were you aware of the call from
15 Colette Bell and the link or the connection being made?

16 A. We were altogether, as I say, we were -- effectively
17 that would have been in the midst of, if not just the
18 conclusion of the brief. I think it was in the midst
19 because I don't have anything noted that was said that
20 the DCs that were at our disposal at that time were
21 allocated a certain action before that was then
22 superseded, prioritised by the call from Colette, so
23 I think it was roundabout the same time.

24 Q. We heard DS Dursley say that he was in a room with you
25 at one point, you used a room together.

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- 1 A. Yes.
- 2 Q. Was that in the morning?
- 3 A. I think at the time I potentially got back -- yes, in
4 the morning. The time I got back to the station,
5 Kirkcaldy Police Station, I think DS Dursley and his two
6 DCs had arrived.
- 7 Q. And is that Mitchell and Parker?
- 8 A. That's correct.
- 9 Q. Was there also a Calum Clayton present?
- 10 A. Yes, sorry.
- 11 Q. And once you became aware of the call from Colette Bell
12 and made that connection, was it you that made the
13 connection or DS Dursley?
- 14 A. I couldn't tell you.
- 15 Q. And we have heard from DS Dursley that he tasked
16 Mitchell and Parker and Clayton to go to visit
17 Colette Bell at her home and he sent all three of them
18 there.
- 19 A. That's correct and it's more likely to be DS Dursley
20 given the fact that my, at that time, commitment on the
21 phone to Detective Superintendent Campbell.
- 22 Q. What information -- you have talked about a briefing,
23 you have talked about being there at the time. We have
24 heard about a briefing where Mitchell and Parker were
25 given a briefing on the events. Do you remember what

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- 1 briefing was given?
- 2 A. It was a briefing by me. I would have just relayed
3 pretty much chronological how the day had started and
4 how it had unfolded, just exactly as the operational
5 statement in terms of commencing duty, awareness of the
6 call, the response, the actions at the scene,
7 potentially obviously my actions, the result and outcome
8 in terms of obviously Mr Bayoh being taken to hospital,
9 the locus preservation, just really -- probably I would
10 have walked through in my eyes, because that's what
11 I knew -- in terms of the more detail and our action at
12 the scene, at that stage I didn't know.
- 13 Q. Was there any notes prepared about the briefing, in
14 advance of the briefing, that you used?
- 15 A. No, again just due to the kind of immediacy and urgency,
16 there wasn't. It's -- naturally you take the time to
17 prepare a briefing in terms of what you're trying to
18 achieve, the resource at your disposal and how you
19 allocate that. There's usually some more thought, but
20 because of the dynamic nature and because it was still
21 fast paced and ongoing, it was just hot actions
22 basically, just immediate actions that had come about
23 from the call to Colette and the only effectively
24 resource at that time that were available.
- 25 Q. So there were no notes in the daybook --

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- 1 A. No, no.
- 2 Q. -- about the briefing that was given?
- 3 A. No.
- 4 Q. And do you remember what you were doing when Mitchell,
5 Parker and Clayton went to Colette Bell's?
- 6 A. Again, because of the kind of timeline of events and
7 obviously at that time I would still be in dialogue with
8 DS Davidson as well in terms of events at the hospital,
9 so because there was still new and emerging information
10 I would probably be relaying that to -- on the phone
11 back to Detective Super Campbell, again then just to
12 probably as events changed just kind of checks and
13 balances against are we still doing the right thing,
14 what else do we need to consider.
- 15 Q. Were you aware of conversations between the officers who
16 had gone to visit Colette Bell and DS Dursley?
- 17 A. Potentially not at the time, but I obviously was made
18 aware. First and foremost was to deploy them, Colette
19 had made the call, is to go and speak to her how that
20 would -- I suppose at that time I didn't know where that
21 would take us, but knowing obviously the concern that
22 she was raising and the links that we had made, it was
23 really to deploy in the first instance and then take it
24 from there.
- 25 Q. At some point did you become aware that Mitchell and

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- 1 Parker had returned to Kirkcaldy Police Office with
2 Colette Bell?
- 3 A. Yes and I think in fairness there would have been
4 dialogue between me and DS Dursley, whether it was in
5 person or on the phone -- most likely in person. The
6 only time I was not available was when I would be on the
7 phone, so every time knowing that he was a source of
8 information because obviously what he had deployed the
9 officers to do, would be back in to check if there was
10 any update, so I would probably be aware of a lot more
11 prior to knowing that she was coming, being brought back
12 to the police station.
- 13 Q. How much time did you spend in the room with DS Dursley
14 that morning?
- 15 A. Again, that became our base for the day effectively, but
16 again with the contact that I had with DS Davidson
17 I would probably go outwith to another room for just --
18 not saying the privacy, but just kind of an environment
19 that I could hear the update, so I would have been in
20 and out in the location at various points.
- 21 Q. Was DS Davidson elsewhere in Kirkcaldy that day, in
22 Kirkcaldy Police Office?
- 23 A. So she was at the locus for a period of time to ensure
24 that we had put the locus measures --
- 25 Q. Locus protection measures?

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1 A. -- in place and then I had a call -- she obviously has
2 ended up at the hospital at some point maybe -- I think
3 that was to assist with the identification of -- at that
4 time we had not known the identity of Mr Bayoh.

5 Q. When Colette Bell came back to Kirkcaldy Police Office
6 you were aware -- we have heard from DS Dursley you were
7 aware -- by the time she came to Kirkcaldy Police Office
8 that you were aware that Mr Bayoh had died.

9 A. Yes.

10 Q. And I think DS Dursley was at that stage of the view
11 that there was a connection between her missing partner
12 and the male who had died in Victoria Hospital.

13 A. Yes.

14 Q. Was that something you were fully up-to-date on at that
15 time?

16 A. Because of the introduction of the name and she has
17 called, you know, and we have done enquiries and I think
18 it has obviously been in evidence in terms of us
19 obtaining a photo, I think that was part of
20 DS Davidson's job was to come back and collect that
21 photo to go to the hospital to confirm -- at least give
22 an indication of if Mr Bayoh was the person at hospital.
23 I think couple that with the information about a phone
24 as well that was in his possession, or next to him in
25 Hayfield Road.

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1 Q. Can I ask you about the identification of the male in
2 the hospital. Can we look at PS00280, page 5,
3 paragraphs 3 and 4. You will see it is just beneath the
4 part that is redacted and it says here:

5 "... a social media site provided a more recent
6 picture."

7 Then:

8 "DS Davidson has thereafter attended at the
9 Victoria Hospital and along with DC Connell compared the
10 recent Manning with the deceased and confirmed his
11 identity."

12 I'm interested in this method of identification
13 through the social media picture. Can you tell us
14 a little bit more about what was happening?

15 A. Yes, so I think initially prior to considering that we
16 may have, with the details provided, searched police
17 systems and within that potentially if there was any
18 kind of previous chronology of -- or record on police
19 systems and a photo, we may have used that.

20 I think at that time any kind of evidential value --
21 and again I don't think it's common course that we would
22 use social media images as part of an evidential chain,
23 but I suppose it's an intelligence that we were really
24 keen to know the identity of the male who was at the
25 hospital.

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1 I think given the introduction of Zahid Saeed's name
2 by Colette as well and some form of altercation between
3 him and Mr Bayoh, either -- in the hours previous to our
4 involvement, it was just a really sense of urgency to
5 identify who we had at the hospital.

6 Q. So you're distinguishing what you're calling an
7 evidential chain and intelligence?

8 A. Yes.

9 Q. So whose decision was it to use a photo from social
10 media?

11 A. So again I think, as I have listed in my daybook, the
12 intelligence profiles -- I don't know if at that time if
13 we had some form of -- again, we would have a provision
14 of -- at the weekend -- of staff that worked within our
15 intel offices. We also had support staff that worked
16 within the police stations that may have been actioned
17 with doing those checks once we were provided with
18 a name.

19 In terms of the decision, it may have been ran past
20 me, I can't recall, but I'm quite satisfied that that
21 was the right thing to do.

22 Q. But looking back now you don't think -- you don't have
23 any concerns about using a social media picture?

24 A. No, and in fairness prior to refreshing and obviously
25 the passage of time, I was actually maybe of the opinion

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1 that it was an image sourced from police computer, but
2 again it's the same concept of printing an image from
3 whatever source with a view, in terms of urgency, to
4 identify who we had at the hospital.

5 Q. And generally do you have concerns about using images
6 from social media as a means of identification?

7 A. So we had done it previously -- or it has been done in
8 forms of potentially indicative identification, but
9 that's always then supported with the evidential
10 element.

11 Q. We heard evidence from DS Dursley that I think he would
12 have expected a more formal identification prior to
13 post-mortem. Was that your expectation at that time?

14 A. I think at this stage we weren't -- we hadn't got as far
15 as even considering post-mortem. It was because of --
16 I'm not saying there was ever (inaudible) about who we
17 had, but in terms of confirmation to then understand the
18 next steps of what we would do and what information we
19 may consider disclosing, we had to try and be as sure as
20 best we can, with the limitations of what we're in
21 control of, to identify who that person was at the
22 hospital.

23 Q. And what would your expectation be in relation to a more
24 formal identification prior to post-mortem?

25 A. So again in the experience of death investigations,

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