

Transcript of the Sheku Bayoh Inquiry

Friday, 10 March 2023

(10.00 am)

(Proceedings delayed)

(10.05 am)

DETECTIVE CHIEF SUPERINTENDENT PATRICK CAMPBELL (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning.

THE WITNESS: Good morning.

LORD BRACADALE: Ms Grahame.

MS GRAHAME: Thank you.

Good morning, Detective Chief Superintendent.

A. Good morning.

Q. Just at the close yesterday, we were about to turn to
Martyn Dick's house.

A. Yes.

Q. And I asked you to explain why the house was of interest
to your investigation, and you talked about being aware
at that time that Mr Bayoh had gone to watch the boxing
at Martyn Dick's, and you were looking at what
Zahid Saeed's position was at that time --

A. Yeah.

Q. -- and you noted that the deceased was acting out of
character, there was mention of maybe someone, or
Mr Bayoh considering that someone had disrespected him?

A. Yeah.

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1 Q. And then he left that house, and you talked about
2 keeping an open mind in the investigation. We'd talked
3 about the various hypotheses that you were --

4 A. Yeah.

5 Q. -- considering.

6 And you said at the end you thought:

7 "It's quite easy to say the fact there was no
8 relevance but we didn't know at that time how relevant
9 the house would prove to be"?

10 A. Yes.

11 Q. And that's why you were keeping an open mind.

12 Am I right in saying that you had delegated the
13 loci, including Martyn Dick's house, to Stuart Houston;
14 is that right?

15 A. That's correct.

16 Q. And what would you have expected to be done by
17 Stuart Houston in relation to the Martyn Dick house?

18 A. So, as I was saying yesterday, it was about keeping
19 an open mind, we were aware that Mr Bayoh's behaviour
20 was erratic, out of character, from what we got from
21 Mr Saeed. The mention of disrespectful. So again, with
22 that information, who disrespected him; was it someone
23 within that house, had there been some sort of
24 altercation within there as well? Had his behaviour
25 deteriorated whilst within there due to intoxication or

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1 taking something within that property?

2 So again, it was about keeping that open mind, being
3 transparent and open around it, and ensuring that we
4 had -- we had control of that location at that time.

5 Q. When you say "control", what do you mean?

6 A. Just we had secured it -- we'd secured it as such, we
7 had removed Martyn and his partner Kirsty from the
8 house, and we were thereafter just assessing exactly
9 what was required in it. So again, the options around
10 looking at crime scene manager deployment, do we need
11 a bring a search adviser in, we're looking at do we need
12 any other specialists from the forensic side,
13 biologists, chemists and such. So again, that
14 discussion was delegated to DCI Stuart Houston in
15 consultation with the individual crime scene manager for
16 that location and they would have worked out a strategy
17 around exactly what was required in it.

18 Q. Before we move on to that, let's look again at the
19 forensic strategy document which is PS01298, and I think
20 Mr Dick's house is on page 4 of 7. That's on the
21 screen. Listed as locus 4.

22 A. Yeah.

23 Q. And it says here:

24 "In this initial phase this locus will remain under
25 protection with a scene entry log in place."

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1 A. Yes.

2 Q. So in the initial phase was the plan to seize the house?

3 A. Yes.

4 Q. And that's the keeping control of the house?

5 A. Yeah.

6 Q. And seizing the house means removing the occupants,
7 effectively?

8 A. Yeah, it's maintaining the integrity of the house for
9 any subsequent examination that we may want to carry out
10 on that property, but also removing the occupants, yeah.

11 Q. There's no mention in the forensic strategy log of
12 a search being conducted. Bearing in mind you're
13 keeping an open mind, explain that process where you
14 initially have a decision to seize the house, but then
15 you ultimately decide to search the house. Can you
16 explain how that progression happens?

17 A. Yeah, so the locations that are identified within the
18 forensic strategy document are locations that the
19 deceased, through the timeline of his activity from
20 2 May into 3 May and thereafter, through to the
21 altercation in Hayfield Road, that he basically was
22 involved in, so he came into contact with individuals
23 within each of the loci.

24 So it was important, as we would do for any
25 investigation, that relevant locations that are -- that

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1 the deceased has been involved in throughout that
2 timeline, that we basically secure as best we can the
3 property at that time, or the street or the location or
4 the motor vehicle, and thereafter we will thereafter
5 pull together, as I say, the forensic strategy briefing
6 around that.

7 Now, the forensic strategy document is a high level
8 document, it does not go into detail round about,
9 "Search the bedroom, make sure you search the bathroom,
10 can you look at the back garden". So that would come
11 with the briefing, the one-to-one, through the crime
12 scene co-ordinator, with the crime scene manager who's
13 waiting to be disappointed there, so they would have
14 that more informal briefing round about exactly what do
15 we have here and what exactly are we looking for here.

16 And ultimately what we are looking to do in any
17 incident we deal with is return the house or the
18 property back to the owner as soon as reasonably
19 practical. We don't have any benefit of holding on to
20 these properties because we have resources tied up
21 securing them, standing by them in cordons. So again,
22 as soon as we can stand some of these locations down and
23 give them back to the owner, we do that.

24 Q. So when you were discussing the forensic strategy
25 document with Houston, was the decision in relation to

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1 Martyn Dick's house that you would take control of that
2 property?

3 A. Yes.

4 Q. Seize it?

5 A. (Witness nods).

6 Q. So that decision was made before anyone had even gone to
7 the property?

8 A. No. So we'd already seized the house, once that
9 document's developed. We had the property, we had
10 secured the property and the occupants had been removed
11 from it at that time.

12 Q. So tell me who had made that decision?

13 A. So that decision was -- it ultimately came to myself to
14 make that decision.

15 Q. When did you decide that?

16 A. So that was during the course of the morning, once we
17 basically began to have that more definitive timeline
18 around the deceased's movements, and the relevant
19 locations thereafter became apparent. So my decision,
20 my overarching decision round about the relevant scenes
21 was to basically secure and maintain the integrity of
22 all the scenes at that particular time and thereafter
23 basically stand back from it, pull together a forensic
24 strategy briefing with the PIRC, who were also round the
25 table at that time, and explain to them exactly how we

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1 would plan to basically thereafter take on the
2 examination of each of the locations.

3 Q. Looking at your daybook, that we looked at yesterday,
4 I think, page 5, do we see what time you made that
5 decision to seize Martyn Dick's house?

6 (Pause).

7 When we talked yesterday, you see on the left-hand
8 side of this page Collette Bell?

9 A. Yeah.

10 Q. And we discussed the information she was sharing with
11 officers, and we see the names Martyn Dick and
12 Zahid Saeed.

13 A. Yeah.

14 Q. Then can we see on any part of the other pages --

15 A. No. Ultimately, because it's not written down doesn't
16 really mean it didn't happen. I mean, these things are
17 really fluid, so as we're going out to each of these
18 locations the direction from myself via Stuart and via
19 Colin Robson was, "Let's just secure what we can at this
20 stage", and thereafter, once PIRC become involved, 1.30,
21 1.35, we'll have a better assessment of it. And, as
22 I say, thereafter we went into a meeting with the PIRC
23 round about the assessment of the properties and who
24 would do what, who would take the lead on each of the
25 different locations as such. And thereafter Gold Group.

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1 Occurred after that as such.

2 As I say, a normal course of any activity for any
3 major incident or major investigation is that we would
4 simply go through the aspect of identifying relevant
5 locations and thereafter securing.

6 Q. So you made the decision to seize the house --

7 A. Yes.

8 Q. -- before anyone's gone to speak to Martyn Dick or to
9 look at the house. What is the rationale for seizing
10 the house before anyone has gone to assess it?

11 A. So we were aware from Zahid and from the earlier
12 discussion with Zahid that there was potential relevance
13 to Martyn Dick's house because of the issues I've
14 already discussed round about his attendance there and
15 him acting out of character, the fact that it
16 appeared -- he indicated that someone had disrespected
17 him. So again, as I said before, we were unsure at that
18 time what that actually meant.

19 So again, it's a judgement call around various
20 locations such as this when you're involved in it, you
21 have to basically make that decision really based on the
22 evidence that you have at that particular time, because
23 the danger is if you do not secure the property and
24 thereafter it becomes relevant for a particular matter
25 later in the investigation, it's extremely difficult to

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1 go back retrospectively and thereafter emphasise why you
2 didn't take it at the time and why you didn't maintain
3 the integrity when you were aware there was some sort of
4 relevance to it.

5 So again, it's about treating the scenario and the
6 incident, as we would any such, as a homicide, so we
7 start at the worst case scenario with any investigation
8 and secure what you can, and thereafter look at it, and
9 if you have to thereafter bring it back down to a more
10 reasonable level as the day progresses or the
11 investigation progresses, you've not lost anything at
12 that stage, so it's easy enough to basically stand it
13 down at that point.

14 Q. So before any officers even attend at Martyn Dick's, the
15 decision has been taken by you to seize that property,
16 and what then was your thought process in terms of what
17 would happen next?

18 A. So basically we would assess through the forensic
19 strategy briefing, there was a further meeting before
20 that with PIRC around the scene assessment which we went
21 into a meeting just before the forensic strategy meeting
22 just round about the prioritisation of what we were
23 looking at. So with the resources we had, in particular
24 the resources for scene examination with
25 SPA Forensic Services, we wanted to prioritise the

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1 scenes that we deemed to be most significant. So
2 Hayfield Road was obviously a significant scene, the
3 deceased, obviously we were looking to do what we had to
4 do in the hospital before conveying him to the City
5 Mortuary, so that was a significant scene. So again it
6 was about that prioritisation and thereafter how we
7 would work through almost, this is a priority down to
8 number 5, this is ...

9 Q. Where did Martyn Dick's house come in terms of your
10 order of priorities?

11 A. So it was further down the list of priorities, to be
12 honest with you. It was important, we didn't know how
13 significant it was, but regarding the various -- the
14 prioritisation exercise that I was taking in my head and
15 running through was that Hayfield Road was more
16 significant, the deceased was more significant,
17 Collette Bell's house was more significant, and
18 thereafter you had Saeed's house, car and also you had
19 Martyn Dick. So again probably to the end of that level
20 of kind of high prioritisation, they were at the lower
21 level as such.

22 Q. So when we look at the forensic strategy document and it
23 is locus 4 but Zahid Saeed, his family home address and
24 the car is locus 5, was the car more of a priority than
25 Martyn Dick's house?

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1 A. Not particularly, no.

2 Q. So was Martyn Dick's house and the car and Zahid Saeed's

3 home address were they on a par really --

4 A. Yeah, and that's why they're locus 4 and 5, as you see,

5 it's that kind of level of prioritisation.

6 Q. Then what was your intention in relation to --

7 I appreciate this wasn't a priority, but what was your

8 plan in relation to actually searching the house?

9 A. Yeah, so my intention through discussion at the forensic

10 strategy briefing was that we would search all

11 properties.

12 Q. When did you make that decision?

13 A. So that was a discussion at the forensic strategy

14 meeting.

15 Q. Was this the one that we looked at the minutes of --

16 A. Yeah.

17 Q. -- at the end of the -- so that was 4.45 on 3 May,

18 page 6 of 7. So had you made the decision to search all

19 the properties at that meeting?

20 A. Yeah, so there was a general discussion that we had,

21 every location that was relevant to the investigation at

22 that stage.

23 Q. You had them all seized by then?

24 A. Yes. So it was a case of, as I say, that prioritisation

25 exercise and also some of the work that PIRC would want

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1 us to prioritise as well was discussed. But in general
2 through the membership that was there it was that we
3 would be carrying out a search on all the properties,
4 just about anything of any relevance.

5 We did not discuss that in detail, as I say, that
6 was more delegated through to DCI Stuart Houston who had
7 a number of separate forums with crime scene managers,
8 with PIRC crime scene individuals, and thereafter kind
9 of drawn down into the kind of -- more the mechanics of
10 what they were going to do at each of the locations.

11 Q. I don't see anything in the minutes of this meeting
12 about a discussion to do with searching the properties.

13 A. Yeah.

14 Q. But it may be that I'm missing --

15 A. No.

16 Q. Would you help me see if there's anything in these
17 minutes?

18 A. No, they're very, very brief, the minutes, and at that
19 time the priority was, as I say, Hayfield Road, which we
20 were progressing it. Even at that stage there was work
21 getting done at the scene at Hayfield. But the priority
22 for ourselves and the discussion at the forensic
23 strategy meeting was round about the deceased and about
24 ensuring integrity of the deceased and his remains and
25 thereafter the conveyance to the City Mortuary in

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1 Edinburgh for the post-mortem examination. So you'll
2 see there's all that detail about what we were going to
3 do.

4 Q. Yes, on page 6 of 7 there's some detail there.

5 A. So the aspect of the general search of a property, that
6 was just a general discussion that we would naturally
7 search a property to see if there was anything linked to
8 the investigation at that stage, unless it became clear
9 that there was no relevance and we would simply hand the
10 property back. But, as I say, the mechanics of each of
11 the particular scenes was delegated through to Stuart
12 and crime scene managers from both PIRC and from
13 Police Scotland.

14 Q. Is it pretty much automatic that once you've seized
15 a property that you will search and see if there's
16 anything of relevance?

17 A. No.

18 Q. No?

19 A. It's not the case. If we -- I mean, there's been
20 occasions whereby I can recall we've seized such as
21 multiple vehicles that we believe that the injured party
22 maybe touched or came across and there was maybe blood
23 on, but thereafter when we've viewed CCTV the injured
24 party has not went that particular way and basically has
25 gone down a side street. So again, if there's no

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1 requirement we basically stand the area -- the cars
2 down, we don't need any involvement in them at that
3 particular stage because they're eliminated.

4 Q. So you've kept an open mind, you're not sure about the
5 relevance of Martyn Dick's house?

6 A. No.

7 Q. You decide to seize the house --

8 A. Yeah.

9 Q. -- which you do, and we've heard about officers and
10 scene entry logs and things like that?

11 A. Yes.

12 Q. We've heard evidence about that. At what point do you
13 decide that there is relevance to the investigation and
14 you will instruct a search to be carried out?

15 A. That was delegated to DCI Stuart Houston just round
16 about the mechanics of that.

17 Q. The decision, however, the decision to --

18 A. No, no, the decision was mine to basically search the
19 property so --

20 Q. So when did you decide that?

21 A. So that was at the forensic strategy meeting. They were
22 all relevant scenes and we were going to search every
23 one of them.

24 Q. So it was at that meeting you made that decision?

25 A. Yes.

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1 Q. Is there any record in any of your policy file or your
2 daybook that would help us understand what you were
3 thinking the relevance was at that stage?

4 A. I'd need to check my policy file again.

5 Q. Do you want to look at that again? You've got a hard
6 copy of that. So it's PS17854.

7 (Pause)

8 A. I don't think there is any. I think there's certainly
9 mention of the house being given back to the householder
10 at the time.

11 Q. Well --

12 A. Through discussion with PIRC. But there's nothing at
13 all, no -- that discussion in the documentation, the
14 forensic strategy document we've produced, the minutes
15 are the footprint for that discussion.

16 Q. Right. There's certainly mention of the forensic
17 strategy --

18 A. Yes.

19 Q. -- on decision 15, which is 61463, and you certainly
20 note:

21 "Endorsement of the forensic strategy~..."

22 A. Yeah.

23 Q. I think that says:

24 "... by DCI Stuart Houston."

25 A. Yeah.

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1 Q. And you told us yesterday that Stuart Houston had
2 prepared it?

3 A. Yes.

4 Q. It's 15, please, 61463. So then we see that that was
5 endorsed and then the reasoning, perhaps you could read
6 that for us, if we move down the page, please.

7 A. So:

8 "Governance/framework around investigation and
9 recovery of all identified loci".

10 Q. Right, so nothing really there about specific
11 properties?

12 A. No, and to be honest with you I would -- I was surprised
13 if I would find it in my daybook or in my policy file,
14 it is something that really is just discussed at the
15 forensic strategy briefing. We wouldn't naturally
16 detail, I mean, the reasons for search in a policy file
17 or I certainly wouldn't.

18 Q. Can you explain, between the decision to seize the
19 property at Martyn Dick's house and your decision to
20 then search it, what new information came to light or
21 what crystallised your view that a search should be
22 carried out?

23 A. There was no real change from what we had at the start,
24 from the statement from Zahid and we knew that of the --
25 the presence of the deceased there, his behaviour within

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1 that property, and the aspect of being disrespected. So
2 again, going back to the hypotheses and keeping an open
3 mind, exactly what did occur? Was there an altercation
4 within there with someone? Had he taken something, some
5 controlled substance within the property, either been
6 given to him or taken by his own accord? Why had his
7 behaviour changed so dramatically whilst within
8 Martyn Dick's house?

9 So again, it was extremely reasonable and the
10 rationale was there to seize and search the property as
11 far as I was concerned.

12 Q. We talked yesterday about the authority, and I think you
13 talked about consent --

14 A. Yes.

15 Q. -- as being a possibility, a warrant as being
16 a possibility --

17 A. Yeah.

18 Q. -- and I think your Inquiry statement talks about having
19 common law power.

20 A. Yeah.

21 Q. When you made the decision to have the property
22 searched, tell us what your thought processes were about
23 how you would gain the legal authority to search
24 Martyn Dick's house?

25 A. So that was with consent.

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1 Q. With consent?

2 A. Yes.

3 Q. And did you make that clear to Houston?

4 A. Yeah, so that was discussed at the forensic strategy

5 meeting, that there was -- we had no indication from any

6 of the householders that there was any conflict with

7 consent to search the properties, and if there was that

8 we would simply be referred to the Procurator Fiscal for

9 application for a warrant.

10 Q. When you say that there was nothing to indicate they

11 weren't consenting, were you satisfied that the officers

12 had obtained consent for a search from Martyn Dick when

13 they'd removed him and his partner from the house?

14 A. Yeah. So, I mean, the forensic strategy meeting, as you

15 see the membership there, it is not with the officers

16 who had dealt particularly with Martyn Dick, so the

17 information is coming second-hand to Colin Robson,

18 Stuart Houston and thereafter they're feeding into the

19 forensic strategy meeting which I'm chairing. So the

20 information I'm getting is that consent has been agreed

21 for all the properties to search.

22 Q. So when you say the information you're getting, does

23 that mean somebody had said to you, "We've got consent"?

24 A. Yes, so there was a discussion --

25 Q. Who was that?

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1 A. -- around about searching the properties and about the
2 powers around that, and, as I say, the discussion was
3 around the fact that every individual that we had, all
4 the properties that we'd seized, they were all
5 witnesses, there were no suspects, so they were
6 categorised as witnesses, and the information as chair
7 of that forensic strategy meeting and as SIO was that
8 they were -- there was no conflict with the fact, that
9 they were quite content for us to search under their
10 consent, it had been explained to them by the individual
11 officers the reason and the rationale why we were there.
12 So again, there was nothing coming back to me as SIO
13 causing me any concern round about what we were planning
14 to do.

15 Q. Where did you get that information from?

16 A. So that came through the forensic strategy meeting, from
17 Stuart Houston.

18 Q. That was from Stuart Houston?

19 A. Yeah.

20 Q. Who was the crime scene co-ordinator at the time?

21 A. Correct.

22 Q. Would you have expected any issues about complaints or
23 concerns to be shared by --

24 A. Yeah.

25 Q. -- the lower rank officers and come through Houston to

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1 you?

2 A. Yes.

3 Q. So it's not a situation where you would have spoken

4 direct to lower level --

5 A. No.

6 Q. -- lower rank officers or --

7 A. And I said yesterday there has been occasions where

8 consent has not been granted and we've had to basically

9 re-assess that and go for a warrant in respect of

10 searching the property, at other investigations I've

11 been involved in.

12 Q. And if consent had not been sought or obtained from

13 Martyn Dick --

14 A. Yeah.

15 Q. -- you've explained the process would be to go to the

16 Procurator Fiscal?

17 A. Yes.

18 Q. And to seek a warrant?

19 A. Yes.

20 Q. Would that be done by lower rank officers as well?

21 A. Yes.

22 Q. Would Houston have an involvement in that if a warrant

23 was ultimately to be sought?

24 A. He would have oversight of it but it was likely to be

25 the crime scene manager or one of his team who would

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1 actually phone the Fiscal and basically ask for
2 authority for a warrant.

3 Q. Do you know who the crime scene manager for
4 Martyn Dick's house was?

5 A. I don't, apologies.

6 Q. That's not in any of the paperwork --

7 A. No.

8 Q. -- we have. What would the grounds of a warrant have
9 been in relation to Martyn Dick?

10 A. So the grounds would be --

11 Q. For searching his house.

12 A. Yeah. So basically the location is extremely relevant
13 and the fact that we had identified -- we were
14 investigating an unexplained death at that particular
15 stage, and again with the hypotheses that were still
16 open at that point we really didn't know what we were
17 looking at in respect of restraint, drink, drugs
18 overdose, medical condition.

19 So again, all of these hypotheses were still very
20 much open, so it was relevant that we searched that
21 property and again there would be that discussion with
22 the Procurator Fiscal who would be on call around: this
23 is what we have at this particular stage. We would
24 probably need to put it on paper, I would imagine, to
25 them, saying: these are the circumstances and this is

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1 the relevance of this location, identifying he'd been
2 there, he began to act erratically and out of character
3 whilst he was there. There was indication that there
4 was some aspect of he'd been disrespected whilst within
5 there. So again, we were unsure exactly how relevant it
6 is and what is within there that we would be looking for
7 as such. So again, it was just -- there would be that
8 discussion with the Procurator Fiscal round about the
9 relevance of that and ultimately it would be the
10 Procurator Fiscal's decision whether or not that's
11 granted.

12 Q. And we understand that that would be a decision for the
13 Fiscal?

14 A. Yes.

15 Q. It's not something the police can simply go to
16 a sheriff --

17 A. No.

18 Q. -- and seek a warrant?

19 A. No.

20 Q. In relation to the warrant, if it had been sought in
21 relation to Martyn Dick's house, would you have been
22 seeking that for searching the whole entire house or
23 parts of the house?

24 A. It would be the whole entire house. It generally is
25 with any search warrant, it usually is the property plus

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1 any outbuildings, that's usually how it's worded.

2 Q. But that was not done --

3 A. No.

4 Q. -- in relation to Martyn Dick's house?

5 Were you satisfied at the forensic strategy meeting

6 that you had the necessary authority to search

7 Martyn Dick's house?

8 A. Yes.

9 Q. And that had been as a result of information you

10 received from Stuart Houston?

11 A. Correct.

12 Q. I wonder if we can actually have a look at

13 Stuart Houston's statement. He's given us an Inquiry

14 statement. So it's SBPI 00214, please. You'll see this

15 is a statement in the same sort of idea as the statement

16 you've given us. It was taken by a member of the

17 Inquiry team on the dates on the screen, last year, and

18 it's a number of paragraphs, it's been signed by him.

19 Can we look at paragraph 249, first of all. He's

20 been asked to tell us about his involvement with

21 the enquiry, and actually if we move up the page

22 slightly, we'll see that the heading of this section is:

23 "Sheku Bayoh's address~..."

24 Which is also Collette Bell's address:

25 "... and Martyn Dick and Kirsty MacLeod's address."

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1 Which we're talking about.

2 Have you had an opportunity to --

3 A. Yeah.

4 Q. -- have a look at this?

5 Let's start with 249. I'd like to just very quickly

6 refresh your memory on a number of paragraphs and then

7 I'll ask you some questions if that's okay.

8 A. Okay.

9 Q. So at 249 you will see that he says:

10 "The legal basis is that they are scenes that may be
11 linked to this death."

12 So he's talking about the legal basis for seizing
13 and searching the houses and they're linked to
14 Sheku Bayoh's death:

15 "As far as I was aware there were no warrants at the
16 location."

17 That's confirmed, you've confirmed that today?

18 A. Yeah.

19 Q. "But you'd protect the loci in order to get warrants
20 further down the line."

21 I think that's essentially what you've been telling
22 us?

23 A. Yeah.

24 Q. Then 250 he has said towards the end of that:

25 "I'm not sure if the occupiers were asked to move,

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1 that was done before my involvement."

2 So it seems to be suggesting that he wasn't involved
3 at that stage, and he doesn't know if the occupiers were
4 asked to move. But he was made aware that police
5 officers were present at each location.

6 A. Yeah.

7 Q. And then 251:

8 "The fact is, we're not going to get to them on
9 3 May. My thought process was, as long as they're
10 preserved, I don't need to go there at this time. I'm
11 making a guess, but I think they were secured by
12 uniformed police, so you can seize anything that's
13 relevant to an investigation. To be blunt, because
14 they're protected by police, I maybe didn't give those
15 loci the attention they needed at that time. That's
16 prioritisation in doing the things that need to get
17 done."

18 Then 252:

19 "I can't speak to what happened before I was there.
20 My interpretation is if you've got something that might
21 be subject to an investigation, you'd tell them and ask
22 them to leave and examine it as a consensual crime
23 scene ..."

24 That's presumably a crime scene where you have
25 consent?

Transcript of the Sheku Bayoh Inquiry

1 A. (Witness nods).

2 Q. "... or take a warrant. That would be from the people
3 who were there. I know the [redacted] one, something
4 happened at that address, the [redacted] one I'm not too
5 sure about."

6 253:

7 "There was a suggestion that the knife came from one
8 of the addresses. So, again, that would be your
9 justification for shutting the scene down and seeing
10 what was in there."

11 254:

12 "My understanding is the searches were done long
13 after I was done. I've no detail of anybody searching
14 those houses in the time I was involved. I don't know
15 what was found in the searches."

16 255:

17 "I've written in the forensic strategy document~...
18 that the loci are under protection so it falls within my
19 remit. But the SIO is in charge of the overall
20 investigation. Ultimately the SIO agrees the forensic
21 strategy."

22 Two to go. 256:

23 "I've been asked where the occupiers of [redacted]
24 were relocated to. There will be something put in
25 place, I'm not entirely sure, maybe went to family?

Transcript of the Sheku Bayoh Inquiry

1 This specifically I don't know. I would expect who was
2 there would make arrangements."

3 257:

4 "On some occasions I've taken houses for months.
5 I'd like to think it was the original attending
6 officers. It's been seized and shut down by the time
7 I get there. Absolutely if the SIO or someone else is
8 wanting them to take their house there would be
9 a responsibility of who is securing their house.
10 I don't know the answer to that on this occasion."

11 So I think if I can summarise what we've just read,
12 if we can go back up to the top of that, to 249 -- and
13 if you want to look at any of these paragraphs again
14 you're very welcome to do so -- there's no warrants, he
15 doesn't make any comment about how consent was sought
16 from homeowners or even that he knows that consent was
17 definitely sought. He doesn't know if occupiers were
18 asked to move. He says that was before his involvement.
19 He said they were seized and shut down by the time he
20 got there. He's given no detail of anyone searching the
21 houses in the time he was involved. He doesn't know
22 what was found. He's not sure about where occupiers
23 were relocated to, and he expected who was there would
24 make arrangements.

25 So from his description in this -- we've not heard

Transcript of the Sheku Bayoh Inquiry

1 evidence from Houston --

2 A. Yeah.

3 Q. -- but we've got his signed statement which constitutes
4 evidence. From this description it looks like these
5 houses, Collette Bell's house and Martyn Dick's house,
6 were seized prior to his involvement, and he wasn't
7 aware of any searches being done.

8 Now, having gone through that with me, does any of
9 this cause you concern?

10 A. Not particularly, no.

11 Q. Right. Tell me why?

12 A. So Stuart Houston became involved round about half past
13 11, 12 o'clock that first morning on 3 May. I'd
14 contacted him about 10 o'clock, back at 10 o'clock to
15 come through to deal with the crime scenes, and he quite
16 rightly points out by that time he came through, about
17 midday or thereabouts, both of those locations had
18 already been secured. And again, I'm more than content
19 with that. That is -- as an SIO, one of my priorities
20 was to secure the scenes around that.

21 Again, the aspect of the searches of both those
22 properties not having been concluded while he was still
23 involved in the investigation is accurate. Stuart stood
24 down on 4 May round about midday on the Monday or
25 thereabouts, so he was over for one of the morning

Transcript of the Sheku Bayoh Inquiry

1 meetings with myself at Kirkcaldy and thereafter he
2 reverted back to his post within -- within Edinburgh at
3 that point. But by that stage we had a clear framework
4 for deployment at each of the locations, we had crime
5 scene managers, we had specialist resources to basically
6 be deployed around that.

7 So regarding the strategy, although Stuart wasn't
8 aware of the initial seizure of the properties, he was
9 very much aware, as the day progressed, how significant
10 they were, and developed the forensic strategy around
11 that as such.

12 So I don't have any real concern around that. The
13 discussion at the forensic strategy meeting was round
14 about the aspect of -- we discussed consent and about
15 the aspect of search, and at that point the decision was
16 made that there was no requirement for warrants unless
17 there had been any conflict at each of the locations.
18 But there wasn't, as far as I was aware.

19 Q. Does it cause you any concern that he doesn't give us
20 a clear description of consent being obtained from
21 Martyn Dick, for example?

22 A. I don't know if he's actually been asked that.

23 Q. Right. And you can see that he's been asked
24 questions --

25 A. Yeah.

Transcript of the Sheku Bayoh Inquiry

1 Q. -- about the authority, he says there was no warrants.
2 If he was asked that and wasn't able to give a clear
3 explanation that consent was obtained from Martyn Dick,
4 would that cause you concern?

5 A. I'm actually just assuming what you're asking. I mean,
6 its' -- I don't know, I need to -- you'd need to really
7 ask Stuart Houston exactly round about the aspect of --

8 Q. Of course.

9 A. -- what he knows about concern.

10 Q. But if we interpret this statement as meaning that he
11 does not know whether consent was obtained from the
12 homeowner, does that cause you concern, as SIO?

13 A. No, because at that meeting there was a general
14 discussion around the fact that there was no issues with
15 any of the locations that we had secured and that the
16 aspect of search was going to be done with consent. We
17 didn't require any warrantry at that particular stage.
18 At that point if there was any issue with Martyn Dick's
19 house, for example, we would have simply have reverted
20 to the Procurator Fiscal for a warrant. There wouldn't
21 have been any complications with that. As I say, that's
22 a normal course of events. I don't have any issue with
23 it.

24 Q. We've heard evidence from Martyn Dick and I asked him if
25 he was asked for permission to allow the police to

Transcript of the Sheku Bayoh Inquiry

1 search the house and he said no, that that wasn't done.

2 Does that cause you concern?

3 A. It -- I mean, it does, and again with the balance of
4 that with what the officers who were involved with
5 Martyn Dick has fed back through to Colin Robson and
6 Stuart Houston, that it was quite clear that they were
7 aware that we were going to search the property and the
8 relevance of it. So again, I do appreciate that
9 position of Martyn, that he doesn't believe that consent
10 was given around that, but I can only base this on 2015
11 and the information I had.

12 Q. The other thing I'd like to ask for your help with is
13 why, when officers arrived at Martyn Dick's house, four
14 crews were sent. You've heard evidence about this.

15 A. Yeah, yeah.

16 Q. Can you explain to us why there were four crews of
17 officers?

18 A. I was unaware, to be honest with you, and that -- that's
19 not surprising that I was unaware because this was
20 an issue that was getting managed by Stuart and
21 Colin Robson and the investigative team around that. So
22 the rationale behind that, I can only think that they
23 potentially thought that there were other persons within
24 that property and they would have to potentially remove
25 other persons other than the two householders from it.

Transcript of the Sheku Bayoh Inquiry

1 Q. Why would they think that?

2 A. I've absolutely no idea, but again, with the limited
3 resources we had at that particular stage I was quite
4 surprised when I heard of the numbers that attended
5 there, but I can only think that there was some aspect,
6 that there may have been other -- that there may have
7 been more than the two individuals within the property
8 at that point. But I don't really know because I wasn't
9 involved in it.

10 Q. And you think that would have been from Robson or
11 Houston?

12 A. Yeah, yeah.

13 LORD BRACADALE: Detective Chief Superintendent, could
14 I just pick up on something that you said a moment ago
15 in the context of consent in relation to Martyn Dick's
16 house.

17 You said that:

18 "Answer: ... the officers who were involved with
19 Martyn Dick has fed back through to Colin Robson and
20 Stuart Houston, that it was quite clear that they were
21 aware that we were going to search the property and the
22 relevance of it."

23 Now, that doesn't sound to me like a statement of
24 consent. That sounds like they were made aware that the
25 house was going to be searched.

Transcript of the Sheku Bayoh Inquiry

1 A. I don't know if it's the language I have used there
2 around that. What my understanding, not actually being
3 and engaging with Martyn Dick at the time, was that the
4 officers had explained the rationale and the reason for
5 the necessary -- the necessity to basically search the
6 property.

7 So, as I say, there was no issues that I was aware
8 of coming back, that that was refused, that the
9 explanation given round about the reason why we had to
10 search the property or were going to search the
11 property, there was nothing at all coming back from the
12 officers that Martyn Dick or his partner had refused or
13 had questioned the reason for it.

14 LORD BRACADALE: Thank you.

15 MS GRAHAME: We've heard evidence from a DC Bellingham, who
16 was one of the officers that was there. Are you aware
17 of his evidence?

18 A. I know that -- I know the officer, yeah.

19 Q. He said he wasn't searching the house, he was only there
20 to secure the house and it would have been a decision
21 for the SIO --

22 A. Yeah.

23 Q. -- whether to search the house, but he wasn't there for
24 searching the house at all.

25 A. That's correct.

Transcript of the Sheku Bayoh Inquiry

1 Q. Is that correct?

2 A. That's correct.

3 Q. He didn't give the impression he was aware of the fact
4 the house was to be searched or who was doing that?

5 A. Mm-hm.

6 Q. He wasn't able to help us with any of that.

7 A. Right.

8 Q. So it appears that at least one of the officers there
9 wasn't aware that the house was to be searched or the
10 relevance of it.

11 A. Yeah, I'm unsure who actually led the attendance at
12 Martyn Dick's house, to be honest with you. As I say,
13 as SIO I wouldn't know the details of that, but whoever
14 attended there with, as you say, the four crews, someone
15 would have been leading on that aspect of it, who would
16 have explained to the householders why they were there
17 and the requirement to thereafter search the house at
18 some time and also remove them from it at that stage.

19 Q. We heard from Martyn Dick that there were about nine or
20 ten officers there --

21 A. Yes.

22 Q. -- that day, and I think we have a statement from
23 Kirsty MacLeod that thought there was about nine
24 officers. I think from memory, and I may be incorrect
25 on this, he said two of them at least were not uniformed

Transcript of the Sheku Bayoh Inquiry

1 officers.

2 A. Right.

3 Q. Would that give you any assistance in working out who
4 was leading that?

5 A. No, I really can't recall. I mean, it's -- as I say,
6 it's -- I was dealing more strategically with the
7 overarching investigation rather than going into the
8 details of individual searches.

9 Q. We've also heard evidence from Martyn Dick that at
10 a later stage he became aware that the police had found
11 what they described as "herbal matter", you may have
12 heard evidence about that, and they said they were going
13 to take it, and he was concerned because he'd never been
14 shown a search warrant for the property. And his
15 evidence was:

16 "They must have looked for the herbal matter because
17 they found it in a drawer under my bed that wasn't
18 laying out."

19 Were you aware of that evidence?

20 A. I was aware after --

21 Q. After?

22 A. -- yeah, that it had been recovered, yeah. But not at
23 the time.

24 Q. So if Martyn Dick is correct in his evidence that
25 a search was conducted in his house, and herbal matter

Transcript of the Sheku Bayoh Inquiry

1 was found in a drawer under his bed, which had been
2 opened, it wasn't lying out in plain sight, so it
3 appears that a search was carried out on the property.
4 If he didn't give consent, which is what his evidence
5 is, and you've accepted there was no warrant, can you
6 explain: would there be another basis on which that
7 search would be carried out on Martyn Dick's house?

8 A. Not at that time. It was carried out, as far as I'm
9 aware, with consent. I'm aware of the herbal material
10 being recovered and at that time I believe the search
11 was stopped and the Procurator Fiscal was contacted, as
12 we would normally do if we do find something which maybe
13 constitutes an additional offence.

14 So again, the discussion with the officers at the
15 location with the Procurator Fiscal on-call was around
16 the necessity at that particular stage for a warrant
17 under the Misuse of Drugs Act, for example, so again
18 that discussion did take place and that is proper
19 protocol and procedure what we would do.

20 Q. Right. If a search is done without consent, without
21 a warrant, who -- in terms of the investigation -- is
22 ultimately responsible for that?

23 A. That ultimately is me.

24 Q. So you would be ultimately responsible?

25 A. As SIO, yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. In your role as SIO?

2 A. Yes.

3 Q. The other evidence that we heard from Martyn Dick was
4 that an officer was sent upstairs with him, when he got
5 changed, and he was asked to leave his clothes that he'd
6 been wearing the night before and to leave them out,
7 I think he said he had left them on his bed, and the
8 same happened with Kirsty MacLeod. And then they were
9 separated, taken into separate police cars and taken
10 back to Kirkcaldy Police Office. And he said that:

11 "The officer stood outside my room, not inside the
12 room, but it still strikes me as strange, especially in
13 hindsight now."

14 And Kirsty MacLeod has given a statement saying
15 that:

16 "They explained about the clothing, that they might
17 have to rule out my DNA from Shek, as I had earlier told
18 them that I had cuddled Shek when he arrived at the
19 house that morning."

20 And then:

21 "Martyn went upstairs to our bedroom to get
22 changed~..."

23 As did she and an officer stood outside the bathroom
24 door on the upstairs landing while she was getting
25 changed.

Transcript of the Sheku Bayoh Inquiry

1 Now, can you comment on that? You've said this is
2 all with consent.

3 A. Yeah.

4 Q. They are witnesses.

5 A. Yeah.

6 Q. They're not suspects. They're in their own home, it's
7 a Sunday. Why would officers be following them and
8 standing outside a bedroom door or a bathroom door while
9 they were getting changed?

10 A. I know it may appear strange, as Martyn has indicated
11 there, but it's not. It generally is normal protocol
12 that we would take on for any unexplained death or any
13 investigation whereby we would -- it's about the
14 integrity of the scene, about the integrity of clothing
15 that they're wearing at the material time. So in
16 respect of, did we follow major investigation protocols,
17 forensic protocols, around aspects such as this? Yes,
18 we did. Was -- does it appear to be potentially over
19 the top? It probably does to someone who is not
20 familiar with the processes involved in major crime
21 investigation. However, it was done with the best of
22 intentions in respect of the process and the protocols
23 we did follow.

24 What you're telling me is very familiar to me, that
25 happens, and it still happens today. So again, even

Transcript of the Sheku Bayoh Inquiry

1 though they were witnesses we were unsure exactly how
2 relevant they were to the investigation, so it's really
3 crucial that you do maintain the integrity, forensic
4 opportunities around areas such as clothing, and they
5 were right within -- and I totally endorse what they did
6 do, to be honest with you.

7 Q. Does it cause you any concern that none of the officers
8 were wearing forensic suits?

9 A. No. No. Not at that stage, no.

10 Q. Why did it matter to your investigation that
11 Kirsty MacLeod had cuddled Sheku Bayoh when he arrived
12 the night before?

13 A. That wasn't the aspect of it, it was just we were
14 unsure, we didn't know, at that point of the day in the
15 investigation, exactly how relevant Kirsty or Martyn
16 were to it. And although it does, as I say, it appears
17 that we have almost managed them like suspects, it
18 wasn't meant to basically look like that, it was more to
19 do with the fact -- to maintain the integrity of what we
20 were actually doing, to carry out the protocols and
21 processes that the officers are trained in, in respect
22 of ensuring integrity, like seizure of clothing which
23 they would have taken and put into production bags and
24 so on and so forth at the location.

25 So what, as I say, you have described is normal

Transcript of the Sheku Bayoh Inquiry

1 protocols for what we encounter on a day-to-day basis.

2 Q. Have you any comment on this explanation that
3 Kirsty MacLeod says she was given, that the explanation
4 was:

5 "... that they might have to rule out my DNA from
6 Shek, as I had earlier told them that I had cuddled Shek
7 when he arrived at the house that morning."

8 What about this explanation that they'd have to rule
9 out her DNA; what would her DNA have to do with the
10 events at Hayfield Road?

11 A. I can't really see any relevance, to be honest with you,
12 with it. But, as I said before, it's difficult
13 retrospectively to go back and attempt to ensure the
14 integrity of a scene or clothing or an individual two or
15 three hours later when you've maybe not done what you
16 had the opportunity to do at that time. So what was
17 done was done with the best of intentions. I think
18 maybe the description of the officers why we had to do
19 it was maybe a bit flawed around the fact that they had
20 to eliminate DNA because she cuddled him earlier on that
21 evening. But as I say, that -- what was described there
22 is normal protocol in respect of anyone through the
23 course of an unexplained/suspicious death investigation
24 that we would basically take on and deal with as such.
25 And once it's eliminated, or once there is absolutely no

Transcript of the Sheku Bayoh Inquiry

1 involvement, we would return as soon as possible either
2 the location, the clothing or mobile phones or whatever
3 else to them.

4 So again, it does appear strange to people who are
5 not familiar with investigation of incidents such as
6 this, but that is normal process and normal protocol.

7 Q. Was that the normal protocol or process in 2015?

8 A. It was, yes.

9 Q. Now has the position changed?

10 A. No, no, I think we -- I mean, from my understanding we
11 would still do that with individuals involved, about
12 taking the clothing, seizing their clothing, seizing
13 their mobile phones and whatever around that, that would
14 still take place.

15 Q. Just for witnesses like Kirsty MacLeod and Martyn Dick?

16 A. Yeah, as I say, at that time we are keeping an open mind
17 round about the relevance of them at that stage. They
18 are clearly witnesses, however what you do not know is
19 at some time later on that day or on subsequent days
20 that you get information or something comes in that
21 there has been a fight in a bedroom between
22 an individual and the deceased that we were unaware of
23 on day one but thereafter we can say: we seized their
24 clothing so let's sit down with a biologist, a forensic
25 team and work out how do we look at transference of DNA

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1 and so on and so forth. So again, as I say, it was done
2 with the best of intentions.

3 Q. And if, in the days to come, it had proved to be the
4 case that there had been a fight in a bedroom and the
5 clothing was relevant --

6 A. Yeah.

7 Q. -- what impact would it have on that evidence that they
8 had not been recovered using forensic -- forensically --

9 A. It's down to integrity. It's down to integrity, it's
10 down to best evidence. So, as I say, that's the
11 whole --

12 Q. What would the impact on the integrity of the evidence
13 be --

14 A. Well --

15 Q. -- if the clothes had been recovered without any
16 forensic clothing?

17 A. So it's about maintaining integrity to ensure the
18 optimum forensic capture during examination, so the
19 decanting of the clothing into brown bags, the
20 production bags that we have, thereafter they're sealed
21 and thereafter we can submit them to the lab or wherever
22 we are, submit them for examination at that time.

23 Q. Was that done with Martyn Dick and Kirsty MacLeod's
24 clothes?

25 A. I wasn't there, but I would imagine with the process

Transcript of the Sheku Bayoh Inquiry

1 you're saying that that's what would have been done
2 around that, that is normal process.

3 Q. We heard evidence -- you've mentioned mobile phones, we
4 heard evidence from Martyn Dick that his phone was
5 seized. Again, can you explain why that was done?

6 A. I don't know. I was unaware of that. But again, that
7 would probably have been normal, if he had indicated in
8 his statement that he had had any conversations with the
9 deceased in the lead-up to his death or on him coming
10 round to the property. And I think from Martyn Dick's
11 statement I think he's also contacted by Mr Saeed some
12 time later that morning around the conduct of the
13 deceased. So again the phone becomes relevant to paint
14 that wider picture of contact and the discussions and
15 perhaps text messages indicating what they believe has
16 occurred.

17 So again, it's part of that evidential chain, it's
18 about seizing while we can seize, while it's there, with
19 the intention that we can return it as soon as possible.
20 I think what I would say in 2015 the aspect of seizing
21 mobile phones was, once we seized it, very little times
22 they actually got it back in some sort of working
23 condition.

24 Q. We did hear from Martyn Dick that he had never had his
25 phone back.

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1 A. Yeah. That's changed today. It's such an integral part
2 of your lifestyle, your mobile phone, so we do try to
3 return them as soon as possible. We have kiosks that we
4 can download the relevant information very, very quickly
5 and we return it as soon as practical. However, I take
6 your point, in 2015 that wasn't the case.

7 Q. We've also heard from Martyn Dick that he wasn't
8 permitted to get dog food from the house, and the
9 officers wouldn't provide him with the dog food for his
10 dog, and we've also heard that he wasn't permitted to
11 get his van keys, he needed his van, I think, for work
12 that night, but they wouldn't permit him to do that.

13 Can you help us understand what the normal process
14 is, when people are removed from a house --

15 A. Yeah.

16 Q. -- with consent, if they've left something in the house
17 or they've forgotten to take something, we've heard
18 evidence about various situations where sometimes the
19 officers will go back and get something for people, but
20 sometimes they won't. Now, with Martyn Dick they
21 wouldn't get dog food and they wouldn't get the van
22 keys, and I'm wondering if you can explain the normal
23 procedure in 2015?

24 A. Yeah, it's hard to describe any kind of normal
25 procedure, it's almost on a case-by-case basis. I mean,

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1 in 2015 we also did our best to accommodate people to
2 get particular witnesses to get property from their
3 house, I'm quite surprised round about the dog food or
4 the car keys at that property because that would have
5 been easy enough to do.

6 There are, however, more significant scenes when you
7 look at -- and again, I keep going back to homicide
8 where you have perhaps a deceased within a house, where
9 there are perhaps bloodstained footprints and whatever
10 else in that property, there will be occasions whereby
11 because of the forensic opportunities that exist and to
12 maintain the complete integrity of that scene, that we
13 wouldn't permit anyone access to. So I think it's
14 difficult to put in words that there's one rule for
15 everything around that, it really has to be dealt with
16 on a case-by-case basis. But Martyn Dick's house, from
17 what you're telling me, I don't see any great issue with
18 us attending, even if we're in forensic suits, to go in
19 and remove keys and dog food.

20 Q. We've heard about one process which someone could adopt
21 where if a request is made to get something from the
22 house they can phone a more senior officer to --
23 effectively the officer can get authority to remove
24 an item from the house. Was that something that was
25 possible?

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1 A. Yes.

2 Q. Was any of this information made known to you?

3 A. What, the dog food and the keys?

4 Q. Well, any of the information we've been discussing about

5 the clothing and the --

6 A. No.

7 Q. -- keys and the dog food and --

8 A. No.

9 Q. -- the issues regarding consent and -- none of that?

10 A. And at that early stages of day one, I wouldn't have

11 expected it to be, I would probably get that at the

12 debrief at the end of day one, round about what had

13 taken place at each of the locations. So they usually

14 briefed me about what had actually taken place as such.

15 Q. So did you find out at the end of day one?

16 A. So there was a Gold Group at 19.50, I think at

17 20.00 hours at the end of day one and I had a better

18 understanding -- there wasn't an actual briefing because

19 people were still out and about dealing with various

20 actions at that stage, but I had got a more thorough

21 update from Stuart at that time round about how each of

22 the scenes were being progressed.

23 Q. So did Stuart Houston, at the end of 3 May, give you

24 a briefing that included information about what had

25 transpired at Martyn Dick's house?

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1 A. Not in as much detail as seizing clothing and dog food
2 and keys, no, it was more high level, just round about
3 what had been done.

4 Q. What briefing did he give you at the end of the day?

5 A. Just a synopsis of each of the five locations and where
6 we were with each of them at that particular stage.

7 Q. Now, you said yesterday about people staying
8 overnight -- staying away overnight, we heard evidence
9 from Martyn Dick that him and his then partner Kirsty
10 did require to stay overnight from their property as
11 well, and although he'd phoned the police four or five
12 times he wasn't allowed back into the house that
13 evening. He missed work that evening as a result.

14 Can you explain why the house was retained
15 overnight? You've said it a moment ago actually, you
16 try and return houses as soon as possible.

17 A. Yeah, and I think I've already said as well when you
18 look at the kind of prioritisation of the various loci,
19 Martyn Dick's house was quite far down, so there are
20 limited resources particularly round about
21 SPA Forensic Services and round about examination that
22 we can put in over a period of time. So, as I say, the
23 16.45 hours forensic strategy meeting, other than
24 Hayfield Road we weren't actually progressing anything
25 until kind of early evening. So again I think, as

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1 Stuart quite rightly points out in his Inquiry
2 statement, there was no way we were going to complete
3 all the loci on the first day.

4 Q. Right. You mentioned going to the Procurator Fiscal for
5 a warrant earlier. We've heard evidence from
6 Dev Kapadia, who was the senior Fiscal on-call on 3 May.

7 A. Yeah.

8 Q. And this again is in connection with the herbal matter
9 that was found in Martyn Dick's house.

10 A. Yes.

11 Q. Are you aware of that evidence?

12 A. Yes.

13 Q. Now, Dev Kapadia did not put -- there was a warrant
14 made -- sorry, an application or a phone call with the
15 Fiscal, with one of the officers, the officer was
16 seeking an application to be made to a sheriff --

17 A. Yes.

18 Q. -- for a warrant to recover the herbal material.

19 Mr Kapadia explained that it was his view -- he refused
20 that request, and it was his view that there was a, what
21 he described as a tenuous connection between the death
22 of Mr Bayoh and the property of Martyn Dick. And he was
23 not prepared to put an application for a warrant before
24 the sheriff. He described the offence relating to the
25 herbal matter as being de minimis. We heard from

Transcript of the Sheku Bayoh Inquiry

1 DC Finch that the quantity of the herbal matter was less
2 than one gram. It was never tested. And Mr Kapadia
3 said:

4 "It was so small, it would not be marked for
5 prosecution."

6 I'm interested in your comments on this situation
7 where this is apparently a search having been conducted
8 with consent, in your understanding.

9 A. Yeah.

10 Q. An application is made to get a warrant or a request was
11 made over the phone to get a warrant from a sheriff.
12 That's refused by the Fiscal as de minimis and wouldn't
13 likely be prosecuted.

14 A. Yeah.

15 Q. Were you made aware of that situation where a request
16 had been made to the Fiscal and had been refused?

17 A. No, not until a number of days after that. I wasn't
18 aware at the time.

19 Q. When did you find out about this?

20 A. I can't remember, I think it was the 5th I was aware
21 that there had been a phone call to the on-call Fiscal
22 at that particular stage. However, what I would say,
23 that's not unusual for us to do that. That's again
24 proper protocol, whilst we're carrying out a search
25 under consent, that we come across what we suspect to be

Transcript of the Sheku Bayoh Inquiry

1 controlled drugs, a firearm, or, I mean, anything else
2 which would appear illegal.

3 So again, we would normally stop the search at that
4 stage and contact the on-call Procurator Fiscal and give
5 them the place around, are they happy for us to continue
6 at that stage because -- and going back a number of
7 years now, I mean, over the period, I distinctly recall
8 contacting various Fiscals from various locations where
9 we found what -- again, similar to this, what is
10 described as personal amounts of controlled drugs, and
11 at that stage the process was if there was no other
12 evidence and nothing else that had been recovered that
13 would indicate that there was any further controlled
14 substances within the property or anything indicating --
15 concerning supply, for example, they'd basically just
16 ask you to seize it and report it as such but not to --
17 no warrant was required. So I'm not surprised that that
18 was the direction given.

19 Q. So you're not surprised at the Fiscal's refusal?

20 A. Yes.

21 Q. And given the amount that was being discussed, I don't
22 have the exact wording of Mr Kapadia's evidence in front
23 of me, but -- and it will be a matter for the Chair --
24 but if he gave the impression during his evidence that
25 he'd really not come across situations where a request

Transcript of the Sheku Bayoh Inquiry

1 was made for such small amounts, and he was a very
2 experienced -- he was a senior Fiscal with many --
3 A. Yeah.
4 Q. -- years of experience. Does that, although you're
5 saying it's a normal part of the process, does it cause
6 you any concern that it was for such a small amount?
7 A. No, because we are searching under consent, and
8 thereafter if you do come across such as no matter what
9 quantity of controlled drugs or suspected controlled
10 drugs, the normal process would be to stop the search at
11 that particular time and contact the Fiscal. That's, as
12 far as I've been involved in drug searches for 25 years,
13 that's been the normal course of events.
14 Q. Can you help us understand why, if a search is being
15 carried out with consent --
16 A. Yeah.
17 Q. -- why you need to get a warrant?
18 A. Because although it has initially been with consent what
19 you come across is either a related or a non-related
20 aspect of criminality or suspected criminality, so you
21 would normally stop the search at that time and make
22 that call to the on-call Procurator Fiscal.
23 Q. Again, looking at the -- in terms of what's going on or
24 what went on in Martyn Dick's house, would you again be
25 ultimately responsible --

Transcript of the Sheku Bayoh Inquiry

1 A. Yeah.

2 Q. -- for any steps taken by the officers?

3 A. Absolutely.

4 Q. We've also heard, I think ...

5 (Pause).

6 So given your last answer, there was no -- was there

7 any connection that you could see between the small

8 amount of herbal matter and the ultimate death of

9 Mr Bayoh?

10 A. No.

11 Q. No, there was no connection --

12 A. No.

13 Q. -- at all?

14 So there was no part of the investigation at that

15 stage that was looking for herbal matter --

16 A. No.

17 Q. -- in Martyn Dick's house?

18 Can I move on to another property, the property of

19 Zahid Saeed?

20 A. Yes.

21 Q. If we go to the forensic strategy document, I think you

22 have this, this property mentioned on page 4 of 7, so

23 this is PS01298 and we'll get this up on screen. Page 4

24 of 7, and this is locus 5.

25 A. Yeah.

Transcript of the Sheku Bayoh Inquiry

1 Q. I think there's more detail given in this strategy
2 document on this.

3 A. Yes.

4 Q. So we see it's:

5 "Saeed home address and ... motor car~..."

6 It says:

7 "From witness statements it was established that
8 Zahid Saeed had during the course of the evening [on the
9 2nd] and the early hours of [the 3rd], conveyed the
10 deceased within his Seat Toledo motor car ... It was
11 also provided by Zahid Saeed that following
12 an altercation with the deceased he had driven himself
13 home and had placed his clothes within a laundry basket
14 in the house."

15 Three bullet points:

16 "To examine and forensically recover the clothing
17 and any other items within the scene as described by
18 Zahid Saeed.

19 "To record and forensically recovery the Seat Toledo
20 motor car~..."

21 "To identify and maximise all forensic opportunities
22 at the crime scene."

23 Now, we've heard others say the crime scene is
24 effectively the house.

25 A. Yeah.

Transcript of the Sheku Bayoh Inquiry

1 Q. Can I look at bullet point 1:

2 "To examine and forensically recover the clothing
3 and any other items within the scene as described by
4 Zahid Saeed."

5 So was this in connection with the statement that
6 you had obtained from Zahid Saeed by this time?

7 A. Yes, that's correct.

8 Q. I'll come back to that in a moment, but you were -- you
9 were aware obviously by this stage, at the point that
10 this document was prepared, that he had placed clothes
11 from that evening in a laundry basket --

12 A. Yes.

13 Q. -- in the house, and you were aware, I think, from your
14 earlier evidence, that he'd been in an altercation --

15 A. Yeah.

16 Q. -- with Mr Bayoh. So was that really the main relevance
17 of this property to your investigation?

18 A. So it goes back to the hypothesis that I described
19 yesterday was: had he been involved in some sort of
20 physical altercation with an unknown male or Zahid, as
21 we are now aware that there was the altercation in the
22 rear garden of the address at Arran Crescent.

23 So again, we are aware of that from the admissions
24 Zahid from his statement, and also with some
25 contributions from Collette Bell's statement as well.

Transcript of the Sheku Bayoh Inquiry

1 So again what was that altercation? How -- to what
2 extent could that have contributed to Mr Bayoh's death?
3 So again it's about keeping that open mind, keeping that
4 hypothesis running at that stage and looking at what
5 relevance Mr Saeed is to the investigation.

6 Q. And in terms of the -- looking at securing that house,
7 to what extent would you need to secure the house or
8 control the house in order to facilitate recovery of
9 those items for your investigation?

10 A. Yeah, again it was significant, it was crucial we did do
11 that, yes.

12 Q. Would that require you seizing the whole house or part
13 of the house only?

14 A. The whole house, yeah.

15 Q. And why would it be the whole house that you would need?

16 A. I don't think I've ever seized part of a house.

17 Q. Oh, is that not commonly done?

18 A. No. I mean, if you seize a house, you seize a full
19 house.

20 Q. So even though the focus seems to be clothes within
21 a laundry basket --

22 A. Yeah.

23 Q. -- you wouldn't simply seize part of the house?

24 A. No, as I said before, you know, I mean, it's -- Mr Saeed
25 was interesting initially around not just what -- the

Transcript of the Sheku Bayoh Inquiry

1 admissions he makes to ourselves with the statement, but
2 also with the phone call to Collette Bell and he's
3 almost in a state of distress round about, "Don't go
4 back to your house", and so on and so forth.

5 So again, how relevant was Mr Saeed to the
6 investigation, had there been something more significant
7 that we were unaware of at that time? So again, at that
8 stage we were unaware, so again it was really relevant
9 round about the: was there anything else in that house
10 that we had to recover that was relevant to the
11 investigation as such?

12 Q. When the strategy document was prepared, were you aware
13 that this was Mr Saeed's family home?

14 A. I wasn't, no.

15 Q. Were you aware that members of his family lived there?

16 A. No, I wasn't.

17 Q. And this is quite a different description of the
18 strategy in relation to this property --

19 A. Yeah.

20 Q. -- compared to the Martyn Dick one.

21 A. Yeah.

22 Q. In terms of the plan that you had in your mind about the
23 authority for searching this house, or first of all the
24 authority for seizing the house, what was your view on
25 how that would -- what basis would there be?

Transcript of the Sheku Bayoh Inquiry

1 A. So the initial seizure was part of an investigation into
2 an unexplained death, so it was common law to seize the
3 property.

4 Q. Right.

5 A. And again, the power of search, as with all other
6 properties, my understanding was through consent.

7 Q. Right, so the actual seizing was common law?

8 A. Yeah.

9 Q. And I'll ask you in a moment to explain that further.

10 A. Yeah.

11 Q. But the searching was consent?

12 A. Yeah.

13 Q. Can you explain from whom you would have sought consent?

14 A. So it would be naturally the householder, but, as I say,
15 I wasn't involved in the intricacies of the engagement
16 with the family at that address.

17 Q. You mentioned a common law power, we've heard your
18 explanation of consent and warrants, can you explain to
19 us what you mean when you talk about a common law power
20 to seize a property?

21 A. Yeah, I mean, just the general understanding that police
22 investigating any serious crime or any crime in general,
23 there are common law powers for to seize -- not to
24 search -- anything that you deem to be relevant to that
25 investigation.

Transcript of the Sheku Bayoh Inquiry

1 Now, that common law power has been developed
2 through stated cases and through other legislative
3 processes. So again, any investigation that we're
4 involved in, it's very difficult to seize a property
5 under a warrant when you know and you appreciate the
6 relevance to it, so again we would simply -- I think as
7 Stuart has indicated in his statement as well, any
8 investigation of a serious crime or an incident or
9 an unexplained death, we would simply secure it at that
10 time and thereafter go for consent or warrants to
11 actually search the property.

12 Q. So the first stage in your plan in relation to this
13 property would be using common law powers --

14 A. Yeah.

15 Q. -- in 2015? And then when did you make the decision
16 that this property should be searched? Because
17 obviously you said in this strategy document that you're
18 looking for clothing in a laundry basket, so can you
19 explain when you made the decision in relation to this
20 property that there was to be a search?

21 A. So that was at the forensic strategy meeting.

22 Q. Why was it not done at the point that you've prepared
23 the document, because you do seem in this document to be
24 identifying things you're looking for?

25 A. Yeah. So the document was produced by Stuart Houston

Transcript of the Sheku Bayoh Inquiry

1 and endorsed and signed off by myself. However, we
2 hadn't actually ran it by PIRC at that stage. So the
3 point of the forensic strategy briefing was to have
4 Keith Harrower and the PIRC representatives round the
5 table, and I chaired the meeting explaining the various
6 locations and to ultimately get the sign-off of
7 Keith Harrower as SIO ultimately of that strategy moving
8 forward.

9 Q. Do we see that Keith Harrower is named as present or at
10 that forensic strategy meeting?

11 A. Yeah, I believe he is, yes.

12 Q. And that is in the agenda on page 6 of 7. Then is there
13 any -- when you see the overview on page 6 --

14 A. Yeah.

15 Q. -- do we see paragraph 3 of that overview --

16 A. Yeah.

17 Q. -- it says:

18 "It was agreed with the PIRC investigation team that
19 the priority scenes would be locus 1 and 2. It was also
20 agreed~..."

21 That's not the home of the family of Zahid Saeed:

22 "... that in relation to locus 5 [which was the
23 family home] once the clothing of Zahid and the vehicle
24 had been secured this would be returned to the Saeed
25 family~..."

Transcript of the Sheku Bayoh Inquiry

1 A. Yeah.

2 Q. Can you give us a little more information about the
3 discussion about Zahid Saeed?

4 A. Yeah, I think it was really just to, it was ultimately
5 to try to do this as quickly as we possibly could do.
6 I mean, I appreciate with any -- the removal of any
7 family from a family home is traumatic, it's difficult,
8 it's challenging. I'm now aware of the more extended
9 family, with the Saeed family and some of the issues
10 with the members of the family in respect to health.

11 So I wasn't aware of that at the time, to be honest
12 with you. So I am aware now, but I can see round about
13 the fact that it is obviously extremely traumatic, that
14 they believe they're under suspicion, I would imagine,
15 but that there was, as I'd indicated, a requirement to
16 do that, to carry out the search for it. So it was
17 something we had to do and we wanted to do quickly and
18 return the property as soon as possible to the Saeed
19 family and we did do that I think on the first day on
20 3 May.

21 Q. Now, it seems to be agreed in that paragraph that loci 1
22 and 2 are the priority scenes?

23 A. Yeah.

24 Q. We know from your earlier evidence that the Saeed family
25 home, locus 5, is lower down in terms of priority.

Transcript of the Sheku Bayoh Inquiry

1 A. Yeah.

2 Q. So was there any part of the discussion about the
3 timescale when this home could be returned to the
4 family?

5 A. No, there was no discussion round about timescales, it
6 was just as soon as possible to get all the scenes back
7 to the relevant families. But again, I think there was
8 an appreciation by ourselves and PIRC that it was going
9 to be extremely difficult to do that during 3 May.

10 Q. So that was something that you were conscious of --

11 A. Yes.

12 Q. -- at the forensic strategy meeting?

13 A. Yeah.

14 Q. And where it says:

15 "It was ... agreed~..."

16 So this is agreed with the PIRC team:

17 "... that in relation to locus 5 once the clothing
18 of Zahid and the vehicle had been secured this would be
19 returned to the Saeed family~..."

20 It would suggest that, first of all, you seemed to
21 know about the Saeed family by the time of this meeting?

22 A. Yeah.

23 Q. And that they would be -- would have to be removed from
24 that property. And it also seems to very much focus on
25 getting the clothing. We've seen in the previous

Transcript of the Sheku Bayoh Inquiry

1 page --

2 A. Yeah.

3 Q. -- he'd put clothing in a laundry basket.

4 A. Yeah.

5 Q. There doesn't seem to be anything there suggesting that
6 it was a wider consideration of the property, it seems
7 to be focusing on the clothing.

8 A. Yeah, no, I mean, the focus would be on the clothing,
9 that's obviously why we were going into the property,
10 but, as I say, we don't generally seize kitchens and
11 bathrooms or living room areas, we'll seize the full
12 property and thereafter carry out -- I mean, I would
13 imagine -- I wasn't there but the seizure of the
14 clothing for the laundry basket would be done and
15 thereafter I would imagine a custody search would have
16 been carried out elsewhere in the property, but other
17 than that we were looking to return it as soon as
18 possible to the family.

19 Q. Can you explain why you didn't seek a warrant in advance
20 to search the property?

21 A. Because it was through consent.

22 Q. When you were at this meeting, were you under the
23 impression that consent had been obtained --

24 A. Yes.

25 Q. -- for a search?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. Who told you that?

3 A. It was a general discussion between myself and Stuart
4 and other members of the forum that were there and there
5 was no issues identified to me on any of the locations
6 round about the need for any warrantry and consent had
7 been granted in respect of all the properties.

8 Q. If consent had not been obtained --

9 A. Yeah.

10 Q. -- what would you expect to have been done?

11 A. So again we would have referred to the Procurator Fiscal
12 and considered a warrant at that particular time.

13 Q. And would you have expected Houston to draw that to your
14 attention?

15 A. Yeah.

16 Q. And the grounds for the warrant, can you explain what
17 they would have been?

18 A. Yeah, I mean, the circumstances, the investigation of
19 an unexplained death, the circumstances of that, the
20 relevance of Mr Saeed to almost the last contact with
21 the deceased prior to the event on Hayfield Road, and
22 his actions in the aftermath through the phone call to
23 Collette Bell. And again, just by his own admissions
24 around the fact he'd been involved in
25 an altercation/fight with the deceased a short time

Transcript of the Sheku Bayoh Inquiry

1 prior to his death.

2 So again, just with the circumstances around that,
3 we would have explained -- needed to explain to the
4 Procurator Fiscal round about: he is a witness at this
5 particular stage, but we are looking at -- we don't know
6 very much more just now, but he's changed his clothing
7 when he's went into the house. Again, why has he
8 changed his clothing when he went into the house? So
9 again, that whole hypothesis around exactly what has
10 occurred in the lead-up to the coming together at
11 Hayfield Road.

12 Q. And in terms of if you had been making an application
13 for a warrant and giving that explanation to the Fiscal,
14 what would you have expected or anticipated the warrant
15 would permit you to do?

16 A. Search for relevant property or items linked to the
17 investigation. I mean, I don't ... I'm not trying to
18 second-guess what the application would cover, sometimes
19 the warrants we get are pretty wide-ranging in respect
20 of incidents such as this, so they give a bit of scope
21 in respect of what we can search and seize as such. So
22 again, not having to do that, it's difficult to actually
23 put in words exactly what would be on it. But we would
24 be looking obviously -- the primary aspect would be the
25 clothing from the laundry basket.

Transcript of the Sheku Bayoh Inquiry

1 Q. Would you have anticipated the warrant being limited to
2 the laundry basket in the bathroom of that property or
3 would you have expected it to be for the whole house?

4 A. I would expect for the whole house. As I say, I'm not
5 aware of ever coming across a warrant for a particular
6 part of a house.

7 Q. You've mentioned earlier -- we see that you've mentioned
8 the family there, and you've mentioned earlier that you
9 weren't aware --

10 A. No.

11 Q. -- about particular circumstances. I'd like to ask you
12 for your comments on that. In relation to evidence that
13 we've heard from Mrs Rashid, we've heard that she was
14 staying at that address at the time on 3 May, that she'd
15 recently had a caesarean section and had had a baby,
16 I think she said it was eight weeks old, the baby had
17 also had surgery at the time, she was breastfeeding.
18 Was any of that information --

19 A. No.

20 Q. -- brought to your attention?

21 A. None at all, nothing like that, no.

22 Q. Who would you have expected to bring that to your
23 attention?

24 A. Either through the kind of line management of the
25 officers that were at the location dealing with it, so

Transcript of the Sheku Bayoh Inquiry

1 the crime scene manager who was there, and probably
2 through to Colin Robson and thereafter to Stuart, or
3 directly from Colin to myself, I would have expected to
4 have had that sort of information. But again, I didn't.

5 Q. Had you known about that, would you have done anything
6 differently?

7 A. I mean, I would generally have tried to facilitate as
8 best we can, moving the family to a further location,
9 even if it's a hotel just short term, and the priority
10 obviously being -- and just from what's on the strategy
11 document it looks as if there has been -- I can't recall
12 everything that was discussed but it looks as if there
13 has been some sort of discussion round about almost
14 re-prioritising locus 5 to facilitate that.

15 Q. I think it's --

16 A. I don't know if it's redacted out there.

17 Q. I was going to say, it may assist actually if we can
18 have a look at the unredacted version of that, I have
19 seen it, it won't be on the screen but it may be if
20 I can get a copy I can come back to you in a moment on
21 this --

22 A. I think it's maybe something --

23 Q. -- before I ask you questions about this.

24 That might~...

25 LORD BRACADALE: We will take a 20-minute break.

Transcript of the Sheku Bayoh Inquiry

1 (11.30 am)

2 (A short break)

3 (11.56 am)

4 LORD BRACADALE: Ms Grahame.

5 MS GRAHAME: Thank you.

6 Now, we were talking about the minutes of the
7 forensic strategy meeting and we've now provided you
8 with a hard copy. Just to explain --

9 A. Yeah.

10 Q. -- this document was redacted some time ago, and the
11 information in the last two lines of the paragraph we
12 were looking at was redacted for data protection issues
13 at the time.

14 A. Yes.

15 Q. Since that was done, we have heard evidence from
16 Mrs Rashid and Mr Ahmed about the house. You're
17 probably aware of that?

18 A. Yes.

19 Q. We don't today have a copy of the unredacted version to
20 put on display?

21 A. Yes.

22 Q. But I'll read out the full text of this, so we can go
23 through and discuss.

24 A. Okay.

25 Q. We've already seen the first sentence and it says:

Transcript of the Sheku Bayoh Inquiry

1 "It was also agreed that in relation to locus 5 once
2 the clothing of Zahid and the vehicle had been secured
3 this would be returned to the Saeed family due to the
4 requirement of a relative with a disability requiring to
5 returned to the address."

6 So there's mention there of a relative who had
7 a disability, and you've mentioned before the break that
8 that was something you --

9 A. Yeah.

10 Q. -- subsequently became aware of. Can you remind me,
11 when did you say you became aware of the issue?
12 Obviously prior to this meeting.

13 A. Yeah.

14 Q. Do you remember?

15 A. I can't generally remember discussing that in very much
16 detail, but it does -- it's coming back to me around the
17 fact that we did look at prioritising that scene as well
18 because of the very nature of it. And it was
19 redacted -- I thought that's why it was redacted because
20 there was reference to a disabled family member.

21 Q. So locus 5 initially was low down on the --

22 A. Yeah.

23 Q. -- order of priorities in terms of the actual strategy
24 document?

25 A. Yeah, yeah.

Transcript of the Sheku Bayoh Inquiry

1 Q. We looked at that a moment ago before the break.

2 A. Yeah.

3 Q. But at this meeting it then became -- you had become
4 aware of the disabled family member, and the need to
5 have it returned, the house returned to the family?

6 A. Yeah.

7 Q. So although you don't remember today the extent of the
8 discussion --

9 A. Yeah.

10 Q. -- that was information that you had become aware of?

11 A. It was, and it's been important enough that we've noted
12 it down in the minutes as well.

13 Q. So just going through some of -- some other evidence
14 that we've heard, can I ask you: were you aware -- and
15 this isn't noted in the minutes -- that -- we were
16 talking about Mrs Rashid's evidence, who is -- she is,
17 we heard, Zahid Saeed's sister. Sorry, Zahid Saeed is
18 her brother, she is the sister of Zahid. We've heard
19 that she was breastfeeding. She's also talked about her
20 brother, who was disabled. She gave evidence that he
21 had suffered a brain injury when he was in the armed
22 forces, that he was paraplegic, in a wheelchair, she
23 talked about him having a special bed that had been
24 supplied, and that he needed effectively special aids
25 and equipment. He has carers three times a day coming

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1 into the property, and his father helps to care for him.
2 And he didn't really leave the home, his father,
3 Mr Ahmed, had given evidence that he had left the home
4 previously maybe sometimes to go in the garden and
5 sometimes to go to medical appointments. And there was
6 evidence from both of those witnesses about his
7 difficulty coping generally.

8 You've mentioned the note in the minutes of the
9 disability. Do you remember hearing about the -- the
10 evidence that we've heard about the special needs of the
11 brother?

12 A. No. No, it was very succinct, there was no detail at
13 all that I can recall around what you're telling me just
14 now.

15 Q. Would you have expected that type of detail to be
16 provided to you?

17 A. Yes, if they had it at the time. I don't know if they
18 had it at that time or through the subsequent statements
19 from the family members.

20 Q. You mean the officers maybe didn't have all that detail?

21 A. Yeah, yeah.

22 Q. Would you have expected the officers, on being advised
23 that the brother was disabled, to have sought more
24 detail?

25 A. Yeah, but I don't actually know what they did actually

Transcript of the Sheku Bayoh Inquiry

1 obtain. They've obviously obtained enough that it's
2 come through to the strategy meeting for the forensic
3 side, so it's -- obviously they've been aware of the
4 requirement for a bit of urgency around this, to ensure
5 that they can return to some sort of normality as soon
6 as possible. So I don't know exactly what information
7 the officers had at the time but I think what they have
8 done is they've managed to progress it through the line
9 management to this group meeting to highlight the
10 urgency around it as such.

11 Q. You're using the word "urgency"?

12 A. Yeah.

13 Q. What would you have expected in terms of the timeframe
14 for steps to be taken?

15 A. As I say, the five different loci, certainly -- I mean,
16 we still had Hayfield Road, we had the deceased and
17 thereafter it would have been the house of Mr Saeed.

18 Q. Would that then become the third --

19 A. Yeah, yeah, yeah.

20 Q. -- most important priority?

21 And in terms of timescale, what would you have
22 wanted for returning that property to the family?

23 A. It's really difficult, I mean, we would try to get them
24 back within that kind of 24-hour window, I mean, if not
25 before that, to be honest. But it is really around the

Transcript of the Sheku Bayoh Inquiry

1 resources to carry out any examination, to photograph
2 the locus, to seize whatever we're going to seize, and
3 to ensure that we've done it as thorough and
4 professional as possible.

5 So there is a whole process that needs to kick in,
6 in respect of the search of any property which
7 unfortunately does take a bit of time. It's not
8 quite -- I think Stuart Houston mentioned in his
9 statement sometimes we seize house for months on end for
10 some investigations. But again, to return it within
11 that 24-hour window I would say would be reasonable, but
12 it may not look reasonable to the family, I appreciate
13 that.

14 Q. And knowing that the brother was disabled and needed to
15 return to the address, if you'd known more about that,
16 would you have been able to move things more quickly in
17 relation to the house?

18 A. Yeah, I think if I had the information that you're now
19 detailing, I think it's just common sense that we would
20 have moved to a fast-track process for this and tried to
21 move resources around to facilitate it. But, as I say,
22 I wasn't aware of that information at the time.

23 Q. You mentioned in your evidence earlier that you had
24 perhaps considered alternative accommodation for the
25 family.

Transcript of the Sheku Bayoh Inquiry

1 A. Yeah.

2 Q. Can you tell us about that?

3 A. It was, again it was discussed around all the properties

4 that we were more than happy to put people into hotel

5 accommodation, as we generally do for any investigation

6 where we take people out for a period of time, so it was

7 round about the options locally, what hotels were

8 available, and if we had to put people in, so again it

9 was part of that general discussion round about taking

10 people from their home addresses.

11 Q. When was that discussion?

12 A. It was at the forensic strategy meeting.

13 Q. At the 4.45 meeting that we see here?

14 A. Yeah, yeah.

15 Q. Is there something in the minutes that --

16 A. No, I don't think it is, but generally the way we would

17 work is if we were taking people out of their property

18 for a particular period of time at the request of

19 Police Scotland we would first of all ensure that they

20 had somewhere to go. So this is officers actually

21 taking them from the property: one, they had somewhere

22 to go. If they didn't have somewhere to go we would

23 thereafter say to them, "Look, we can put you up in

24 hotel accommodation, how does that suit you just now to

25 basically take that? Of course you can take your

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1 property with you and whatever you need".

2 So again, that would be first of all done with the
3 discussion with the officers who are at the loci and
4 thereafter it was discussed more generally at the
5 forensic strategy meeting round about the use of
6 potential hotel accommodation if we were going to
7 basically take the property for a period of time --
8 a significant period of time.

9 Q. We've heard evidence from Mr Ahmed that his son had
10 never stayed in a hotel, he actually needed -- we heard
11 about his special bed and we heard about the equipment.
12 What arrangements would you have expected to be made by
13 the police in relation to handling the situation with
14 the brother?

15 A. Yeah, I mean, it's ... I'm looking at it with hindsight
16 now, because I wasn't aware of that information you're
17 giving me at the time. And again, we would have looked
18 at various options, speaking to even medical
19 practitioners round about what was the best way to
20 facilitate the movement of this individual from the
21 house over a short period of time, is it -- is there
22 a bed elsewhere in that particular area that we can
23 utilise within such as a hotel ward -- a hospital ward
24 or whatever else, or is there a potential we can move
25 the bed from the property short term to a hotel room as

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1 such. So again, the options would be open for that.

2 But, as I say, it's based on what information we have at
3 that material time around it.

4 Q. Would you have expected those arrangements to have been
5 made for the brother prior to him being removed from the
6 property?

7 A. It would really be dependent on what information we had
8 at the time. As I say, I'm speaking to you with
9 hindsight just now round about with that information and
10 with the fact that we were taking the property, I would
11 have expected that we would facilitate as best we could
12 his home living conditions with elsewhere in, whether
13 it's a hotel or wherever, that we would try to mirror
14 exactly what he had at home.

15 But, as I say, I'm saying that with best practice,
16 with hindsight, I'm not sure if they had that abundance
17 of information that you have at this particular time
18 through the detailed statements of the family members.

19 Q. What bearing would it have on your decision-making
20 process, the fact that really you were looking for
21 clothing in a laundry basket in a bathroom? Would that
22 have any impact on the arrangements you could have made
23 for the brother?

24 A. Not particularly, no. I mean, we -- there is a process
25 we go through, I know it appears very sterile and very

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1 cold, perhaps, to people that are not familiar with it,
2 but it is about maintaining the integrity of any scene
3 that we would basically bring people from it and, as
4 I say, I know it maybe does look unfamiliar and cold to
5 people that are not familiar with the processes that are
6 involved.

7 Q. Can I ask you about -- you spoke before the break about
8 you understood that consent had been sought from the
9 householder.

10 A. Yeah.

11 Q. And that would be the normal approach in a situation
12 like this. We've heard that Zahid Saeed's mother, she's
13 an older lady, and that she lived at the address, she
14 was in the house at the time the police arrived but she
15 didn't speak English, and my understanding of
16 Mrs Rashid's evidence, the sister, was that she was
17 doing the speaking --

18 A. Okay.

19 Q. -- initially.

20 Can you tell us what the normal procedure would be
21 if officers come to a house, the intention is to seek
22 consent to seize and search or to search the property,
23 if the homeowner does not actually speak English, how do
24 they go about ensuring that they can get that consent to
25 search?

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1 A. Yeah, so, I mean, there's probably two ways for that.

2 It can be facilitated through a family member, that we
3 would explain what we were trying to do, and thereafter
4 relay via the family member to the householder exactly
5 what we were intending to do at that particular stage.

6 The second option is we have a cadre of on-call
7 interpreters across the country, so through the
8 interpreting services we would ask for an interpreter to
9 attend at the location with the police, and thereafter
10 be involved in the dialogue with the individual
11 concerned.

12 Q. So you would, first of all, facilitate it through
13 a family member?

14 A. As I say, there are options.

15 Q. That's an option?

16 A. One or the other.

17 Q. How would officers satisfy themselves that it could be
18 facilitated effectively through the family member?

19 A. Yeah, that would simply be through dialogue with the
20 family member, saying, "Look, this is why we're here and
21 this is the reason why we have to remove you from the
22 property. We're going to carry out a search, we'll get
23 the property back to you as soon as possible, but this
24 is the reason why".

25 Q. So there'd be an explanation of why they were being

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1 removed from the property?

2 A. Yes.

3 Q. And an explanation, I think the words you used, to

4 explain exactly what you intend to do, would that be

5 an explanation of what the police intended to do?

6 A. Yes.

7 Q. So in a situation such as this, can you briefly explain

8 to the Chair what you would have expected officers, what

9 information you would have expected officers to be

10 sharing with the family?

11 A. Yeah, I think really just the rationale, the background

12 to the investigation, the relevance of their family

13 member, Mr Saeed, to the investigation, and the aspect

14 of recent contact with Mr Saeed and the fact that we

15 were looking at various options in the investigation at

16 that particular time. But also to emphasise that

17 Mr Saeed was a witness and that we were basically

18 looking for their consent to search the property and

19 recover in particular the clothing he had on at the

20 material time. So it would be something along the lines

21 of that.

22 Q. We talked yesterday about evidence we've heard about

23 notes being taken in notebooks about consent and

24 signatures?

25 A. Yeah.

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1 Q. Would you have expected a record to have been kept
2 somewhere of the involvement of the family member, in
3 this case Mrs Rashid, in obtaining the consent from the
4 homeowner, her mother?

5 A. Yeah, I mean, in general that would be incorporated into
6 the officers' statements at the --

7 Q. Right.

8 A. -- that aspect of the dialogue and the consent being
9 given. In 2015, and I think we've touched on this, this
10 aspect of best practice about notebook notations, about
11 the right to refuse, and by all means that is best
12 practice and that is what takes place nowadays around
13 anything we do around search of properties under
14 consent.

15 It wasn't as familiar with that process back in
16 2015. It was -- a number of officers did do it,
17 a number of officers didn't do it as such. But it is
18 more common practice now that that would simply
19 incorporate part of either the statement taking or
20 also -- and/or something in a notebook which would
21 thereafter be signed as such. So that's the normal
22 process nowadays around it. Eight years ago it probably
23 wasn't as -- a lot of the officers weren't as familiar
24 with that process as they are now.

25 Q. So the procedure itself you would have expected to be

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1 followed but not necessarily a note of that within the
2 statements or the notebook; is that what you're saying?

3 A. Sorry, could you repeat that?

4 Q. So you would have expected officers to go through the
5 process of seeking consent --

6 A. Yes.

7 Q. -- and providing the information you've given us, but
8 maybe not necessarily noting that in a notebook --

9 A. Yeah.

10 Q. -- and getting the signature --

11 A. Yes.

12 Q. -- of the homeowner or the family member or both?

13 A. Yeah, yeah.

14 Q. Then you've talked about the possibility of getting
15 an interpreter to attend. Presumably if this is part of
16 the process of seeking consent, would that be done
17 before the family are invited to leave or would it be
18 done after but before the search?

19 A. Ideally with -- whilst the family are still together
20 within the house, we would look to get an interpreter to
21 attend and explain exactly what we were planning to do.
22 So again the issue or potential issue with that would be
23 round about timescales, how quickly we could get
24 an interpreter to the house and ... or was it better to
25 be facilitated such as at one of the local police

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1 offices or at a hotel or a separate area that we could
2 explain exactly what the intention was.

3 So my experience of interpreting services are
4 sometimes we get them very, very quickly, sometimes
5 there is a bit of a delay, they're coming from various
6 parts of the country, so I think it would be due to
7 timescale what we would do.

8 Q. We heard evidence from one officer that they can use
9 their radios to have access very quickly to interpreter
10 services, so that they have someone effectively on the
11 radio --

12 A. Yes.

13 Q. -- who can assist?

14 A. That's now.

15 Q. Was that available in 2015?

16 A. Not that I'm aware of at all.

17 Q. No?

18 A. No.

19 Q. So again, in terms of your awareness, I think you said
20 before the break as far as you were concerned there was
21 consent from the homeowner to carry out a search?

22 A. Yes.

23 Q. I wonder if I can ask you about some other evidence we
24 heard about a suggestion that was made by Mrs Rashid --
25 she has given evidence about this -- that she suggested

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1 that the family could stay in one room while they
2 searched, while the officers searched the house, carried
3 out the search of the remainder of the house, because
4 she was worried about the safety of her brother and
5 where he would go.

6 Then we also heard from Mr Ahmed, who arrived at
7 a slightly later stage. He suggested that they could,
8 the family could stay in the sitting room and have
9 access to the kitchen and a toilet next to the sitting
10 room, and offered that the police could do anything they
11 want to the rest of the house, and he was told, "No, we
12 have to seal it and you have to go".

13 I wondered if you had any views about that
14 suggestion?

15 A. Yeah.

16 Q. Bearing in mind the situation with the brother?

17 A. Yeah. It's a completely reasonable suggestion. There's
18 absolutely no doubt around that. However, I go back to
19 my SIO role and about scene integrity and about best
20 evidence and about accountability, exactly what you're
21 recovering from that property.

22 So again, the actions of the officers I deem to be
23 appropriate. We were unaware at that stage the
24 relevance of Mr Saeed because of the altercation. As
25 I say, the hypothesis: was the deceased assaulted prior

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1 to coming to Hayfield Road and that was a consequence
2 which led to his death? So again, was Mr Saeed involved
3 in that altercation? We knew by his own admission he
4 was, but how significant was that coming together with
5 both of those that may have led to an injury which was
6 thereafter deemed to be fatal.

7 So the actions of the officers at the scene, I think
8 they're appropriate, the matter raised by the
9 householders are -- is extremely competent as well,
10 you know what I mean, but I think that -- well, I know
11 from one perspective that it's -- as I say, it does
12 appear very sterile and cold and that we're not taking
13 into consideration the wishes of householders and other
14 individuals, particularly when there is a disability or
15 whether reasonable adjustments have to be made in
16 respect to that, but it is ... it's a difficult decision
17 you have to make, but at the end of the day it comes
18 down to the integrity of the scene, the transparency,
19 the accountability, how you can justify your actions
20 around that.

21 If we put them all into the one room and we go to
22 the basket, for example, and the clothing is not there
23 anymore but they've moved it to the room that they're
24 all in. So again, I know that never happened and they
25 were extremely compliant with us around things but it's

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1 a judgement call, it's a difficult one sometimes to make
2 around that, but it's done with the best of intentions
3 for the integrity of the investigation that you have
4 that accountability and the integrity that you can stand
5 up and say, "Look, we've done everything that was asked
6 of us to do around this".

7 Q. We certainly have -- we have looked at this earlier, we
8 have a statement from Stuart Houston that says you
9 wouldn't need the whole house to be secured, that you
10 can focus on what is relevant.

11 A. Yeah.

12 Q. And at that time, in relation to the house, can you tell
13 us what was relevant at that time?

14 A. Well, from my perspective the whole house was relevant
15 and that's why we'd asked the family to get out, we were
16 unsure exactly how relevant it was, as I've described,
17 round about the coming together of the deceased and
18 Mr Saeed, so with hindsight it's easy enough to say, "We
19 should have done it this way", but at that time, on the
20 basis of the information we had, I believe the correct
21 decision was made. I know it sounds cold and hard and
22 that the police are making this decision without any
23 consideration, but that's not the case. There is
24 a wider aspect to the investigation. Obviously the
25 welfare and the wellbeing of the householders is

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1 significant, but so is the integrity of the
2 investigation in finding out exactly what had occurred
3 on that morning and why Mr Bayoh is -- was deceased.

4 Q. Can I ask you, if you had known on 3 May what I've
5 shared with you from evidence we've heard, if you'd
6 known that, would you have taken a different view on
7 3 May as to whether you needed the whole house or part
8 of the house?

9 A. I think with the extensive information you have given me
10 now, I think we probably could have controlled it a bit
11 better with putting the family into one part of the
12 house, maybe under some sort of controlled measure with
13 a police officer maybe present with them, for example,
14 and carried out the search of the remaining part of the
15 house, that may have been an option at that time.

16 But, as I say, there's a significant amount of
17 information you've gave me round about that family unit
18 which I don't think -- I certainly wasn't party to on
19 3 May, and I daresay I don't think my officers involved
20 in it may have been fully aware of the circumstances
21 that the family were facing.

22 Q. Are you satisfied, from what you knew, that the officers
23 who were there on the day were obtaining -- asking
24 enough questions effectively, about the nature of the
25 brother's disability?

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1 A. As any senior investigating officer would tell you, you
2 have to trust your officers, you delegate
3 responsibility, they're trained in respect of what
4 they've been asked to do. It's not my role to basically
5 almost chase them up and ask them if they've done it.
6 You know, there is that whole trust aspect that you're
7 dealing with a fast-moving investigation, so my
8 expectation is that they are professionally trained
9 police officers, detective officers, and I would have
10 expected them to look at that as any trained detective
11 would.

12 Q. Can I ask you about some other evidence we heard from
13 Mrs Rashid. She describes a significant number of
14 officers arriving at the house, and again was that part
15 of your responsibility dictating how many officers went
16 to --

17 A. No.

18 Q. -- the ...

19 You're obviously aware of the evidence that we've
20 heard now. Given you were keeping an open mind but in
21 relation to this house there was an issue about the
22 clothing --

23 A. Yeah.

24 Q. -- what would you have expected in terms of the number
25 of officers to be sent to that property?

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1 A. So the number of officers -- I'm unaware how many went
2 to that property and I was unaware at the time. The
3 number of officers we'd put to a property is really
4 based on how many officers were required to control the
5 property. That's the kind of basic measures that we
6 would put in place around it, the rationale behind it.
7 I'm unaware what considerations were made by the
8 officers attending, through liaison either with Stuart
9 or Colin Robson and why -- sorry, did you say six
10 officers were deployed?

11 Q. We haven't heard evidence yet from the actual officers.

12 A. Right.

13 Q. We intend to seek further evidence --

14 A. Okay.

15 Q. -- from the officers who were present. So I wouldn't
16 like to say a particular number.

17 A. Yeah, so I don't know how many attended that day, and
18 that's, as I say, it's based on information that the
19 officers may have prior to attending round about how
20 many persons are within the house, how many officers it
21 will take to control the property. So again, that's
22 a normal consideration by officers attending a property.

23 Q. When you were approving the forensic strategy document,
24 did you have any thoughts in your mind about the number
25 of officers that would need to go to the house?

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1 A. No.

2 Q. Did you have any concerns at that time about securing
3 the house, or gaining control of the house?

4 A. At that time we had control of the house.

5 Q. When you were preparing the forensic strategy document?

6 A. Yeah, we had control of the house.

7 Q. Did you have any part in the decision about sending the
8 officers to the house?

9 A. No.

10 Q. We've heard evidence from Mrs Rashid about the way the
11 officers came into the house, and she talked about being
12 intimidated, that they were -- presented as quite
13 forceful, and she asked for a warrant and they did not
14 have one, and her evidence was that she did not receive
15 an explanation.

16 Now, I appreciate we've not heard from the
17 individual officers, but is that the sort of approach
18 you would expect in the circumstances of this locus?

19 A. No, but again it's down to personal perception of the
20 individuals. Six police officers coming into your
21 house, there is that subliminal perception of en masse
22 almost, I could see why she's saying aggression almost
23 around that, but -- and I think it would be the same for
24 the majority of people, if six police officers came into
25 your house, you would be a bit worried.

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1 But, and again it's down to communication skills of
2 the officers involved to ensure that they put forward
3 the fact that there is no -- there's no suspicion on the
4 family at all around this but this is why we have to do
5 it, and it really comes down to interpersonal skills of
6 the officers dealing with the householders. And again,
7 they're trained, officers are trained in interpersonal
8 skills, how to engage, body language and so on, so as
9 I say it is really up to the individual officers about
10 their interpersonal skills to ensure they put the
11 householder at ease, they explain anything, any
12 questions that's been asked, and that's very, very
13 clear, I mean, to them.

14 As I say, but I can understand the initial
15 perception if a number of police officers come to the
16 house.

17 Q. I think you had answered this question in a sense when
18 we spoke about Martyn Dick's house, but we also heard
19 from Mrs Rashid that she's a Muslim and she was
20 particularly concerned that a male officer stood outside
21 her room while she was changing, and that she had had to
22 make a special request that he stand outside. Does that
23 cause you any concern?

24 A. Yeah, I mean, obviously, I mean, with hindsight, I mean,
25 there could've been further research done on to the

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1 family unit itself round about the fact that they were
2 Muslims, could we have taken some advice from our
3 diversity colleagues or a lay adviser as such, could we
4 have ...

5 Again it's really, it's difficult, I can see that
6 point, as I've detailed there. However, we are
7 responding to a live-time real incident which is really
8 moving very, very quickly at pace and the aspect of, as
9 I say, the hypothesis round about the relevance of
10 Mr Saeed, it wasn't clear at that time round about what
11 had actually occurred between him and the deceased. So
12 again, as the SIO I was keeping an open mind, but there
13 was an urgency to secure that property because of what
14 I've already described.

15 So, as I say, if we're playing a tabletop exercise
16 or we're looking at how we would deal with this in the
17 best practice, as such, yeah, by all means, but put
18 yourself there on a Sunday morning at the coalface when
19 you're basically dealing with such a significant
20 incident, it's really, really challenging to do
21 everything that you would want to do as per standard
22 operating procedure and as per guidance. I mean, you
23 are actually dealing with so many different challenging
24 pillars of the investigation, that's only one of them
25 that you're actually taking into account.

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1 Q. You're talking about the officers being trained. As far
2 as you were aware at that time, had they all been
3 trained in issues of equality and diversity?

4 A. Yeah. I mean, there's a number of -- a significant
5 number of courses, as you will see in my training
6 record, you go through over a period of time round about
7 diversity and considerations and inclusion. So again,
8 from probationer training all the way through to,
9 I mean, detective training, it will have encompassed
10 some aspect of that.

11 Q. Would your officers be aware, as part of the training
12 they receive, that Muslim women would wish to be
13 separated from male officers in that scenario?

14 A. Yeah, I think they would have a general understanding
15 and appreciation of that.

16 Q. That would be something you would expect officers at the
17 house to know on the Sunday morning?

18 A. Yeah.

19 Q. And not need any special contact with --

20 A. No, and if there was any no doubt, I mean, there was --
21 we had a diversity representative on our Gold Group at
22 that time, so again that was that link into, I think it
23 was Jill Bolton who was the inspector who was involved
24 in all considerations round about equality and
25 diversity, so there was someone there that they could

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1 have contacted if there was any issue round about that
2 or any wider concern that they had.

3 Q. So individual officers in a house in the heat of the
4 moment would be able to contact someone that could
5 provide further guidance; is that what you're
6 suggesting?

7 A. Well, there is an aspect they can do that, or prior to
8 going out to the house they can obviously liaise with
9 Jill, who was obviously at Kirkcaldy on that morning as
10 well. But again, I think the general acceptance and
11 understanding that -- I would expect the officers would
12 be fully aware of that, to be honest with you.

13 Q. Right. And we've heard evidence from Mrs Rashid that
14 during the time the police were in the house she was
15 trying to make a phone call on her mobile and she was
16 speaking to another brother who wasn't in the house at
17 that particular moment, and that an officer removed the
18 phone from her hand when she was making that call and
19 didn't wish her to make any phone calls.

20 Now, we've heard that this is being done with, as
21 I understand your position, consent of the householder.
22 You're seizing under common law but you're getting
23 consent of the householder. Would you have expected
24 an officer to be taking a mobile phone from somebody's
25 hand?

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1 A. Not particularly, no. I probably would have expected
2 an officer to say. "Could be maybe just come off the
3 phone just now", just to explain further what's going to
4 happen. Different -- where there is aspects of
5 suspicion, for example, whereby we've had the occasions
6 through investigations whereby we would take that
7 activity where there was suspicion, such as disposing of
8 evidential material, whether it's a phone call being
9 made or the potential to delete calls, text messages,
10 and so on and so forth. So there would be aspects where
11 we would take that sort of activity if there was
12 suspicion.

13 But in this case there was not, so probably a more
14 general approach about advice to the individual, about,
15 "Could you come off the phone just now, you'll have time
16 to make a call once we go through this process with
17 you", so we'd probably -- and that's back to the
18 individual officers' interpersonal skills around how
19 they would manage that.

20 Q. So if Mrs Rashid had been under suspicion or had been
21 a suspect, that might be something that would be done,
22 but as a witness --

23 A. No.

24 Q. -- you would not expect that?

25 A. No.

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1 Q. Now, we've heard from Mrs Rashid that after the family
2 were moved from the house that she had forgotten to take
3 her breast pump and expressed milk for her baby, and
4 they had forgotten to take medication, and her mum had
5 forgotten to take medication.

6 A. Yeah. Yeah.

7 Q. Again, you've talked about this in relation to
8 Martyn Dick --

9 A. Yeah.

10 Q. -- but can you see any reason why, in this particular
11 house, that they would not be allowed to have those
12 items removed from the house?

13 A. No. And the way it's normally done is that we would
14 normally ask the householder where the property is that
15 they're looking for and we would send police officers
16 into the house to remove it, rather than the householder
17 going back in, to ensure the integrity of it. So that's
18 the way it's normally done.

19 Q. As far as you're aware, was there any contact from the
20 scene with officers saying, "Is it okay if we go and get
21 these items for the family?"

22 A. Not to myself, no.

23 Q. You weren't aware later of any issues over that?

24 A. No, no.

25 Q. We talked before the break about a briefing at the end

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1 of the day, and I think you said there wasn't one?
2 A. No, there -- so, normally for any major incident or
3 investigation that I'm running you would normally have
4 a briefing in the morning and then a briefing at close
5 of play in the evening, whenever that was, and you would
6 just get an update from the detectives that were
7 involved in the investigation round about where we are,
8 the number of actions. So again, all this in general,
9 we would go through the various scenes that we'd seized
10 and some other further enquiry we had done round about
11 witness statements.

12 Now, we didn't have a chance to do that on the 3rd,
13 because, as I say, it was so fast-moving and also we had
14 the Gold Group structures coming in, 11.30, 14.40 and
15 20.00 hours, and we also had PIRC taking on the
16 investigation at that stage, so the pressing need to
17 have that briefing at that time, it wasn't there. What
18 we did do, we had the briefing the following morning at
19 10 o'clock at Kirkcaldy which I chaired, a briefing
20 between Police Scotland and PIRC around the activity
21 that we'd actually done previously.

22 Q. Was that the equivalent of the --

23 A. Yes.

24 Q. -- briefing you would have expected the night before?

25 A. It was, it was probably two-fold, so it was an update

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1 round about the activity on 3 May but it was also to
2 provide an overview for the new officers who were coming
3 on to the investigation, both from the Major
4 Investigation Teams of Police Scotland as well as PIRC
5 officers that were coming on that day as well.

6 Q. Well, let's have a look at those briefing notes, just
7 since you've mentioned them, I'll turn to this now.
8 We'll probably come back to them later as well. I think
9 it's 784, the document. PIRC 784. We looked at these
10 with a previous witness, a DS Dursley. Do we see these
11 are typed up notes, briefing notes, and they relate to
12 a briefing at 10 o'clock in the morning on 4 May in
13 Kirkcaldy, chaired by you? Is this the meeting?

14 A. Yes, this is the meeting, but I was just going to
15 highlight through the disclosure of this document that
16 was the first time I've actually seen it. I had never
17 seen it before, which is really unusual because
18 I chaired the meeting, the minutes would usually come to
19 myself for sign-off.

20 Q. Yes.

21 A. But I had never seen this document at all.

22 Q. You've had a chance to read it since then --

23 A. I have had a chance to look at it, yes.

24 Q. -- as a result of disclosure --

25 A. Yes.

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1 Q. -- from the Inquiry, and were you satisfied that these
2 notes accurately --

3 A. No.

4 Q. -- reflected the meeting? No?

5 A. No.

6 Q. Right. Well, tell us, please, where you have concerns.

7 A. Erm~...

8 Q. Will we go through them briefly, let's have a look --

9 A. Probably as well going through it, I think there was
10 only one or two issues where I had some concern round
11 about the accuracy of it, to be honest with you.

12 Q. So there's no -- often with minutes, and we've seen that
13 with the forensic strategy document, there's a list of
14 who's present first of all?

15 A. Yeah, yeah.

16 Q. We don't see that here, but it would appear that PIRC
17 have asked for all original manuscript statements to be
18 given to them?

19 A. Yeah.

20 Q. And what were those statements?

21 A. So this is your original operational statement and
22 it's -- I think the whole word "operational statement"
23 appears to cause some confusion. So basically
24 an operational statement is for a particular incident
25 that you came on duty at a particular time, you

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1 attended, you managed, you dealt with a particular
2 incident and thereafter you went off duty. Now,
3 an operational statement is usually pretty brief. So
4 I'll give an example, that -- sorry, an example of this
5 is that my operational statement for this incident,
6 which I think is within the pack --

7 Q. We looked at that yesterday.

8 A. So that's three pages long. Now, that is my original
9 handwritten manuscript statement which details high
10 level, that I attended, I dealt with, I was SIO,
11 I completed a policy file, I handed over to PIRC and
12 handed over to the Major Investigation Team and two or
13 three days later I had no involvement with the incident.

14 The more detailed account as such, when you look at
15 the PIRC statement, which is 254 pages --

16 Q. Is this the six separate statements that we looked at
17 yesterday?

18 A. Yes. So that whole manuscript statement is really
19 a short -- a shortened version of what actually
20 occurred, and usually does require further re-interview
21 by either PIRC or by the Major Investigation Teams, if
22 that makes sense. It really is completed usually before
23 they go off duty and handed to the incident room and
24 thereafter that is assessed, looked at by the incident
25 room and usually there's further actions round about

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1 clarity, round about certain points come from that
2 original manuscript statement.

3 Q. So when we see the minutes or these briefing notes, PIRC
4 have asked for all original manuscript statements, is
5 that original manuscript statements, ie operational
6 statements from officers?

7 A. Yeah, that's your handwritten statement, yeah.

8 Q. Together with typed copies and then it says this should
9 be done with a five-day turnaround; what does that mean?

10 A. So that looks as if it's a direction that's come from
11 PIRC around that, and again, I know you'll probably come
12 on to that, it probably links into the post-incident
13 procedures around timescales.

14 Q. We will come on to that.

15 A. Yeah.

16 Q. So PIRC are at this meeting, you're at this meeting, and
17 then it says:

18 "The deceased's family have intimated that they do
19 not want contact with any officer from Police Scotland
20 and any contact should be done through the PIRC."

21 A. Yes.

22 Q. Was that your understanding at that time?

23 A. That was my understanding the previous evening.

24 Q. Right.

25 A. Yeah.

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1 Q. We'll come on to that as well. Then:

2 "The PIRC lead is Billy Little."

3 Was he the person at the meeting representing PIRC?

4 A. Yeah, so I'm not sure why but I think there was
5 a handover on the 3rd, the evening, very late in the
6 evening on 3 May between Keith Harrower and I think
7 maybe Keith was going on annual leave so there was
8 a handover and I knew that Billy Little was coming in to
9 basically take on Keith's role in respect of that, so as
10 I say Billy came on the following morning and he was at
11 this meeting.

12 Q. Then it says:

13 "As a result there is a problem with the
14 identification of the deceased prior to the
15 post-mortem."

16 A. Yeah.

17 Q. "PIRC are going to make contact with Collette Bell to
18 see if she will attend and identify.

19 "The post-mortem is taking place at 1400 hours today
20 and will go ahead regardless. Identification will be
21 ascertained through fingerprints~..."

22 Can you give me a little bit of information about
23 this? When did you become aware there was -- it's
24 described there as, "A problem with the ID of the
25 deceased prior to the post-mortem"?

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1 A. So that was on 3 May, that was the -- as we discussed
2 yesterday, the particular issues we had with the FLO
3 deployment and some of the complications we had around
4 that and the engagement with, with the next of kin, the
5 information we got that they were unwilling to attend to
6 identify Mr Bayoh, and obviously we had Garry McEwan
7 being deployed to the family unit at that time as well.
8 So kind of late into the evening there was a decision
9 after the evening Gold Group round about the aspect that
10 any contact with the family would now revert to PIRC and
11 would not be Police Scotland officers.

12 And that basically thereafter highlights the issue
13 round about identification. So the normal process for
14 identification of a deceased prior to an unexplained
15 death or a two-doctor post-mortem examination which is
16 carried out for unexplained/suspicious homicides, would
17 be for two family members to attend at the City Mortuary
18 and identify prior to the post-mortem --

19 Q. That's the normal procedure?

20 A. That's the normal procedure. I think actually I noted
21 in my daybook, I have noted down about identification
22 at --

23 Q. Let's look at your daybook.

24 A. Yeah.

25 Q. We'll come back to the briefing notes. So the daybook

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1 is, I think you've got -- we've looked at pages 5 and 6.

2 A. Yeah. So it's just -- I think it's all -- it's when

3 it's all redacted out, I think it's further down. That

4 one, yeah. If you could go up to the top of that.

5 Q. Let me just -- the one with 1300 at the top?

6 A. Yes, identification 1300 --

7 Q. So that's page 6 --

8 A. -- and then 2pm for PM. So that resulted in a phone

9 call from myself to Dave Green --

10 Q. The Fiscal?

11 A. Yeah, the Fiscal, around what I was aware was the issues

12 that we had round about identification by -- or the

13 normal or traditional method of identification by next

14 of kin or family members of a deceased. So again,

15 myself and Dave had discussed any other options around

16 that. David explained that there was no flexibility

17 with moving the timing of the post-mortem examination

18 due to the availability of pathologists.

19 Q. Was that the explanation that was --

20 A. Yeah, yeah.

21 Q. -- given to you?

22 A. Due to the availability of pathologists and that it

23 would have to take place at that time, so we looked at

24 and discussed other methods of identification which we

25 had used previously, so there are aspects such as

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1 fingerprints, there's a method such as what we call "two
2 in life and two in death", so police officers who knew
3 or were aware of the identity of Mr Bayoh prior to his
4 death and thereafter officers that potentially have
5 conveyed the deceased to the mortuary and done the
6 necessary paperwork around that.

7 So again, there was discussion around a suitable
8 method of identification which would allow the
9 post-mortem examination to take place, and again that
10 was directed by Mr Green in his -- in his role as the
11 fatalities --

12 Q. We expect to hear more evidence from Mr Green.

13 A. Yeah. So, as I say, that aspect of the briefing note
14 which you referred to coincides with my call to
15 Dave Green and the aspect at the top there round about
16 the identification at 1300 hours.

17 Q. I'm interested in the entry that says:

18 "PIRC are going to make contact with Collette Bell
19 to see if she will attend and identify."

20 A. Is that back on the briefing note?

21 Q. Sorry that is back on the briefing note, yes. If we can
22 go back to 784, page 1. We heard evidence from
23 Collette Bell that she was expecting to be asked to
24 identify.

25 A. Okay.

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1 Q. She wanted to see Mr Bayoh before the post-mortem. Can
2 you tell me if you recollect at that briefing any
3 discussions with PIRC about what they were going to do
4 in relation to Collette Bell or how they were --

5 A. No.

6 Q. -- going to make contact?

7 A. So that whole aspect of family liaison and the
8 post-mortem examination moved completely over to PIRC at
9 that time.

10 Q. Right. We'll maybe hear --

11 A. Yeah.

12 Q. -- more evidence about that.

13 Then moving on, there's a part of the briefing note
14 that says:

15 "Mr Campbell provided a brief summary of the known
16 circumstances."

17 A. Yeah.

18 Q. Is it this area where you feel --

19 A. That bit's a bit inaccurate.

20 Q. Can you point to the areas --

21 A. I think it's -- so:

22 "The deceased had a family party with Zahid, they
23 have had some form of verbal argument~..."

24 Which isn't the case, that's inaccurate.

25 I don't know if it's just been picked up wrong.

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1 As I say, sometimes because of the briefing and someone
2 unfamiliar with the incident notes down as best they can
3 the details of the briefing but sometimes there are
4 natural inaccuracies with it, but that's usually
5 resolved with the briefing note or the minutes being
6 sent to the chair for checking, and, as I said, this
7 wasn't sent to me and that's why I've identified one or
8 two inaccuracies around it.

9 Q. Do you remember who prepared the notes?

10 A. I don't and there's no name on it at all.

11 Q. No.

12 A. No.

13 Q. Then were there any other concerns that you had about
14 the accuracy of this description?

15 A. (Pause). I think it was just -- it's further down,
16 I think there was one further one. (Pause). No,
17 I think it's just over the page. Yeah, I think it was
18 that top line, there is that --

19 Q. The UKBA --

20 A. Yeah, it's completely inaccurate. I wouldn't have
21 actually -- I don't know why I would have said that when
22 we were quite clear we knew who he was as such, who the
23 deceased was. So there was, I recall, a general
24 discussion round about notification to the consulate in
25 respect of Sierra Leone nationals, and a discussion even

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1 around potential repatriation if that was going to be
2 required by the family, because we were unaware at that
3 time regarding what their intentions were. So that was
4 mainly the discussion around that, but contacting UKBA
5 and the Passport Office is completely inaccurate, there
6 is no relevance to that at all.

7 Q. So you think the minutes of this briefing where they
8 mention the UK Border Agency and the Passport Office,
9 you think that's completely inaccurate?

10 A. Yeah. There was a discussion for -- as we've done on
11 a number of occasions, I think it's actually in one of
12 the SOPs, that any foreign national who passes away on
13 Scottish soil, there is a general expectation we will
14 contact the consulate or the Foreign and Commonwealth
15 Office in respect of notification into that foreign
16 state. So again that's just a normal process for it.
17 We've got an international unit based at Gartcosh that
18 we would normally go through to facilitate that, and
19 again we have links into Europol and Interpol that would
20 facilitate that as well, it is pretty normal, that
21 course of events. But I wouldn't direct -- why would we
22 contact the Passport Office? It's totally foreign to
23 anything we would do.

24 Q. I think you do mention the repatriation issue --

25 A. Yeah, yeah.

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1 Q. -- in your own Inquiry statement. Maybe we could have
2 a look at that briefly, paragraph 403. So this is
3 SBPI 256 and if we're looking at paragraph 403 you say
4 here:

5 "The whole aspect of repatriation and the religious
6 aspects were discussed at the forensic strategy
7 meeting."

8 A. Yeah.

9 Q. "We also discussed consultation with the Foreign and
10 Commonwealth Office and the embassy or consulate
11 representing the interests of Sierra Leone nationals.
12 At this initial stage we were unsure if the body would
13 need to be repatriated. It was general conversation
14 around that, and the religious aspect as well - that
15 wider awareness of the diversity side of things. We
16 knew from speaking to Collette that Mr Bayoh was
17 a Muslim so we also had to consider the requirements in
18 consideration of his religion. Further consideration
19 was given about the family unit as such, and how to
20 engage with them."

21 I'm interested in -- you've mentioned this was part
22 of a discussion at the forensic strategy meeting.

23 A. Yes.

24 Q. If we -- you have the minutes of that meeting. Is there
25 anything in the minutes that would help remind you what

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1 the extent of that discussion was? I mean, you've
2 obviously got some detail in relation to the recovery of
3 Mr Bayoh's body.

4 A. Yeah, I think it was actually in the ...

5 Q. There's mention on page 7 of 7 that:

6 "Due to the religion of the deceased being
7 established as Muslim this was to be considered in the
8 recovery phase and highlighted to [the Crown]."

9 That would be the removal of his body from
10 Victoria Hospital to the mortuary, for the post-mortem.
11 Was there anything in the minutes that helps you
12 remember this?

13 A. No, but it was discussed at that forum, obviously we've
14 highlighted it there.

15 Q. Highlighted it where, sorry?

16 A. Just on the page you have up there, so is that the --
17 I am just trying to get my bearings on that.

18 Q. This is the minutes of the forensic strategy meeting.

19 A. Strategy meeting.

20 Q. And those minutes, which are page 7 of 7, note that he
21 was a Muslim.

22 A. Sorry, are you referring to consultation with the FCO or
23 the consulate.

24 Q. Yes, I think the paragraph of your Inquiry statement
25 that was read out talked about repatriation, discussing

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1 consultation with the Foreign and Commonwealth Office?

2 A. Yeah.

3 Q. And the embassy or consulate representing the interests
4 of Sierra Leone nationals, and you say:

5 "At this initial stage we were unsure if the body
6 would need to be repatriated."

7 A. Yes.

8 Q. Tell us about that discussion you had?

9 A. So, yeah, the discussion around that was, as I say, it's
10 pretty normal for any death of any foreign national
11 within Scotland that we would, as per -- I can't --
12 I think it's an investigation of death SOP, but I might
13 be wrong with that, but there is a reference to the fact
14 that the consulate or FCO, Foreign and Commonwealth
15 Office, should be informed of the death of one of their
16 nationals, and again that would -- that was one of the
17 actions that came from that meeting on the 4th around
18 that. As I say, that's a pretty normal activity in
19 respect of the death of a foreign national within
20 Scotland.

21 Q. I'm interested in what prompted this discussion
22 initially, because --

23 A. Yeah.

24 Q. -- you had information from Collette Bell that they had
25 been living together for a number of years in

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1 Kirkcaldy --

2 A. Yes.

3 Q. -- that he worked in Kirkcaldy, well, he worked in

4 Scotland, and that they had a child together in

5 Kirkcaldy. What prompted you as an officer to consider

6 whether he was a national of another country? What was

7 the starting point of even thinking about this?

8 A. I was aware he was a national of another country.

9 Q. You were aware of that?

10 A. Yes.

11 Q. Where had that information --

12 A. That came from Collette.

13 Q. That was --

14 A. Yeah.

15 Q. -- from Collette Bell, so it was Collette Bell that

16 shared that information?

17 A. Yeah.

18 Q. Was that with Mitchell and Parker, the officers who --

19 A. Mm-hm. And we also had other information held on police

20 systems in respect of his nationality.

21 Q. All right. So that is what prompted the contact with

22 the Foreign and Commonwealth Office?

23 A. Yeah, so basically the aspect of repatriation, it was

24 only a consideration because of the significant issues

25 that were -- that emerged through our engagement with

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1 the family, that we could not have any dialogue with
2 them around that, and that is basically why there was
3 a wider consideration about anything that may emerge
4 eventually that the family may want to consider or ask
5 us to take on as such. So again, it was simply
6 a consideration, it was nothing more than that.

7 Q. Was there any consideration given to discussing this
8 with the family?

9 A. Yes. So again, that aspect of family liaison moved
10 completely over to PIRC on the evening of 3 May, as well
11 as the post-mortem. So that aspect completely went to
12 the FLOs that the PIRC had identified that were --
13 I think the FLOs were actually at that briefing that
14 morning, I recall.

15 Q. They were also --

16 A. I think they were at that briefing, yeah.

17 Q. So you say on the evening of the 3rd --

18 A. Yes.

19 Q. -- PIRC took over issues --

20 A. Yes.

21 Q. -- regarding the issue regarding repatriation and the
22 body and matters with the family?

23 A. Yeah, all liaison with the family was done, as you will
24 hear from Keith Harrower, he contacted the family on the
25 evening of 3 May by telephone and thereafter visited

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1 them. And it was clear, even prior to his contact with
2 them, that the PIRC were going to be the link into the
3 family and to provide us with any additional information
4 we may require round about, such as repatriation or
5 notification into consulates.

6 Q. So you had discussed the issue at the forensic strategy
7 meeting --

8 A. Yeah.

9 Q. -- on the evening of 3 May?

10 A. Yeah.

11 Q. All of those issues were effectively handed over to
12 PIRC?

13 A. So they were discussed also at the Gold Group meeting at
14 8 o'clock --

15 Q. Right.

16 A. -- chaired by Mr Nicholson, the ACC, and, as I say, as
17 we began to move through to the kind of late hours of
18 the 3rd, it was a competent decision that we would move
19 everything family related to PIRC. And also for the
20 management of the deceased and the post-mortem
21 arrangements we'd simply move away from ourselves to
22 PIRC.

23 Q. We'll come on to the Gold Group meetings later today.

24 A. Okay.

25 Q. So those issues, was this because of the issues the

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1 family had with police officers from Police Scotland?

2 A. It was a lack of communication and lack of engagement
3 that we were trying to cover every angle as such to
4 ensure that we were in a good place if we had to
5 basically take any action around the activity.

6 Q. I'd like to ask you about Zahid Saeed, we've mentioned
7 him quite a bit today, and we were talking about the
8 search of his family home. But, as I understand the
9 position on 3 May, we've heard evidence from DS Dursley
10 that he'd made contact with Zahid Saeed by telephone and
11 he'd sent officers out to pick up Zahid Saeed. And they
12 were DC Telford and DC McGregor. They had taken him via
13 the Victoria Hospital, to be checked over.

14 A. Yeah.

15 Q. And then they'd brought him back to Kirkcaldy. What
16 involvement did you have in bringing Zahid Saeed back to
17 Kirkcaldy?

18 A. None whatsoever. However, if you can recall back when
19 I mentioned yesterday the engagement and statement from
20 Collette Bell was significant, providing us with mobile
21 phones for both Martyn Dick and Mr Saeed as well, so
22 again I knew and actioned -- obviously these two people
23 were, two males were a priority to trace and note
24 a statement from in respect of that, so that's how that
25 action came about.

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1 Q. We noticed in your daybook yesterday that you had
2 mentioned Zahid Saeed as part of --
3 A. Yeah.
4 Q. -- the events on 3 May?
5 A. Absolutely.
6 Q. Then we have some evidence before the Chair that he was
7 brought back to Kirkcaldy Police Office at roughly
8 around 2 o'clock in the afternoon, having gone via the
9 hospital?
10 A. That's right.
11 Q. Were you aware that he was in Kirkcaldy Police Office?
12 A. I was, after he had been there for a period of time, and
13 I was made aware by Stuart Houston.
14 Q. Did you know how long he was kept there?
15 A. No.
16 Q. Do you know on what basis he was brought back to
17 Kirkcaldy Police Office?
18 A. Significant witness.
19 Q. And did he do that voluntarily, was that with his
20 consent?
21 A. Yeah.
22 Q. Or was it on some other basis?
23 A. No grounds, he was a witness and he was brought back
24 with his consent.
25 Q. Would it have been open to Mr Saeed at any point to then

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1 walk away or to leave or to say, "I don't want to
2 continue"?

3 A. Yeah.

4 Q. As far as you knew, was that an option open to him but
5 he was electing not to walk away?

6 A. It's an option open to any witness, we don't have the
7 power to compel people to remain to note a statement or
8 for interview if they're simply a witness, you know what
9 I mean, they're free to go about their business if they
10 deem it appropriate.

11 Q. So there's no power or authority that the police have to
12 compel witnesses to remain in a police station --

13 A. No.

14 Q. -- and give a statement?

15 We have some evidence available to the Chair by way
16 of a written statement, we don't have -- we haven't
17 heard the evidence of Mr Saeed.

18 A. Yeah.

19 Q. But we may have information that suggests he wasn't
20 aware when he was in the police station that Mr Bayoh
21 had passed away, he wasn't initially aware.

22 A. Okay.

23 Q. Were you part of any discussion or decision not to share
24 that with Mr Saeed at an earlier stage?

25 A. No, nothing to do with me at all, no.

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1 Q. Had you indicated that you didn't want people to know
2 that Mr Bayoh was --

3 A. No, absolutely no way, and particularly at that time of
4 the day, I mean, the information was within the
5 community.

6 Q. Can you explain, and it may be you have already answered
7 this in relation to Martyn Dick and Kirsty MacLeod, why
8 his DNA was taken?

9 A. Mainly for elimination purposes, we knew that he had
10 that close contact with the deceased, we knew there was
11 the physical altercation between both of them, so again
12 it would -- again just to look for elimination purposes
13 more than anything at all.

14 Q. We may have some evidence available to the Chair to
15 suggest that when the information about Mr Bayoh passing
16 away had been shared with Zahid, that he was very upset
17 about that.

18 A. Yeah.

19 Q. We've heard they were good friends, and that
20 Stuart Houston had actually spoken to him --

21 A. Yeah.

22 Q. -- and persuaded him to remain --

23 A. Yes.

24 Q. -- were you aware of that?

25 A. I'm aware of that because Stuart spoke to me about that

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1 after it.

2 Q. When did he speak to you?

3 A. It was some time -- I think it was round about

4 6 o'clock, 7 o'clock in the evening, he made me aware of

5 erm ... his engagement with Mr Saeed.

6 Q. Do you have any concerns about Stuart Houston persuading

7 Mr Saeed to remain and to continue assisting the

8 officers with his statement?

9 A. Yeah, I don't, to be honest, no. I mean, he did, he did

10 speak to him about remaining and about how essential it

11 was we got his version of events and exactly what had

12 occurred because it was an integral part of it.

13 MS GRAHAME: I'm being reminded it's 1 o'clock. I'm sorry.

14 LORD BRACADALE: We'll stop for lunch there, then it's

15 2 o'clock.

16 (1.02 pm)

17 (The short adjournment)

18 (2.04 pm)

19 LORD BRACADALE: Ms Grahame.

20 MS GRAHAME: Thank you.

21 I was about to move on to the events at

22 Victoria Hospital.

23 A. Yes.

24 Q. And I was going to ask you about your strategy in

25 relation to the recovery of the body.

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1 A. Yeah.

2 Q. Will we begin by looking at the forensic strategy
3 document?

4 A. Yeah.

5 Q. I think there's some detail --

6 A. Yeah.

7 Q. -- within that. So it's page 6, I think, of 7. Maybe
8 we should look at page 3 first of all, actually, because
9 this was the -- page 3 is the body of the actual
10 strategy document itself.

11 A. Yes.

12 Q. We will see that the priority listed as locus 1 relates
13 to the deceased, and the intention to forensically
14 recover the body from the hospital, to recover clothing,
15 to maximise forensic opportunities, prioritise
16 submissions to the forensic lab and SEB. Could you
17 explain what that means?

18 A. Scene Examination Branch.

19 Q. When you say submissions, is that samples and the like?

20 A. Yeah, so the forensic lab would be the samples coming
21 from the mortuary or from the hospital itself, and the
22 Scene Examination Branch would be anything we need to do
23 such as fingerprints, photographs, video around the
24 deceased at that time.

25 Q. Then:

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1 "To work in conjunction and direction of the
2 appointed PIRC investigating officer allocated to the
3 scene."

4 I'm interested at the time that you are preparing
5 this -- well, Houston prepared the strategy document,
6 but at the time you're discussing it and approving it,
7 what was the nature of the connection with PIRC at that
8 stage?

9 A. During the preparation?

10 Q. Yes, when you were discussing the -- by the time you've
11 discussed the forensic strategy document with Houston
12 and you've approved it, it says here you're working in
13 conjunction and direction of PIRC?

14 A. Yeah.

15 Q. I'm just interested in how things were evolving between
16 you and PIRC at that time?

17 A. Yeah, and probably what's not documented is there was --
18 after the 14.40 Gold Group there was a scene
19 prioritisation meeting between ourselves and PIRC which
20 was a pretty -- it's quite an informal meeting but it
21 was just round about as we moved towards the forensic
22 strategy meeting we were looking at the priorities,
23 basically were we on the same page round about the
24 priority scenes and where they sat.

25 So I had a meeting with Keith and some of his team

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1 prior to going into the forensic strategy meeting. That
2 group was mainly Stuart Houston-led with a number of
3 reps from Police Scotland as well as the PIRC, and what
4 I mean by the members, it was crime scene managers from
5 both agencies as well as production officers and as well
6 as Scene Examination Branch. And it was really a prep
7 meeting prior to going into the main forensic strategy
8 meeting, so we could basically identify where the
9 priorities were and very quickly at the strategy group
10 meeting.

11 Q. So at this stage you and -- you mentioned Keith, is that
12 Keith Harrower from PIRC?

13 A. Yes.

14 Q. You would be working in conjunction with each other --

15 A. Yeah.

16 Q. -- in relation to the body of Mr Bayoh?

17 A. Yeah, in relation to all the scenes.

18 Q. And then if we turn to the actual minutes, page 6 of 7,
19 so this is the minutes from the forensic strategy
20 meeting at 4.45, and do we see beneath the redacted
21 passage you have there:

22 "With agreement of PIRC investigation team the
23 following strategy was established for the recovery of
24 the deceased."

25 And there's a number of bullet points, I don't need

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1 to take you through --

2 A. Yeah.

3 Q. -- each of those, but are those matters that you had
4 discussed with PIRC at that meeting?

5 A. Yeah.

6 Q. And the final bullet point is:

7 "Body to be removed from locus to Edinburgh City
8 Mortuary."

9 A. Yeah.

10 Q. So it would appear from these bullet points that there
11 was some detailed discussion about the deceased and
12 recovery of his body to the mortuary?

13 A. Correct, yeah.

14 Q. And then it says beneath that:

15 "Any item that the body is recovered within is to be
16 secured and forensically recovered."

17 Could you explain what that sentence means?

18 A. Yeah, so when the body would be removed to the City
19 Mortuary it's usually placed within some sort of, call
20 it a body bag as such whereby the remains of the
21 individual is placed within it, and it's just to ensure
22 when the remains are placed within this, within this
23 bag, this article, that nothing falls from the body that
24 may be of forensic value. So it's just once we arrive
25 at the City Mortuary the body's removed from that and

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1 thereafter placed within a freezer. So it's just
2 indicating that need, to ensure that we do seize the
3 article that the body's been removed in to ensure
4 forensic integrity at all times.

5 Q. So forensic integrity was recognised as an important
6 element of the body being removed to the mortuary?

7 A. Correct.

8 Q. And that was with the agreement of PIRC?

9 A. Yes.

10 Q. And then on the next page you say:

11 "It was agreed that PIRC investigator John Ferguson
12 would be present during the recovery of the deceased at
13 locus 1."

14 A. Yes.

15 Q. Then there's a note -- an asterisk and the word "note",
16 and then an entry there:

17 "At 1940 hours a discussion was held due to the
18 blood~..."

19 And a discussion about that.

20 Can I ask: when did that note become part of the
21 minutes of the meeting?

22 A. It's obviously been added after the meeting itself by
23 Stuart, I think he's probably better placed to detail
24 when it was noted but obviously just with the timing
25 there, it's quite normal for us to seize any medical

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1 interventions such as an intubation tube and anything at
2 all that medical staff have attempted to intervene prior
3 to death. So anything at all attached to the remains of
4 the deceased at that time would normally be seized or
5 left in situ on the remains and removed at the PM by the
6 pathologist, so again it's pretty normal procedure.

7 Q. Then in terms of the procedure in Victoria Hospital,
8 what was your understanding of how forensic integrity
9 was being maintained at the hospital?

10 A. Yeah, so after he was -- Mr Bayoh was pronounced life
11 extinct or was deceased, we had detectives outside the
12 resuscitation room at that time, and this was through
13 early discussion with Colin when I became aware of the
14 incident, so again we were -- I was aware that
15 detectives had been within the ambulance with him as
16 well en route to the hospital.

17 Q. We've heard evidence that PC Alan Smith drove the
18 ambulance?

19 A. Yeah, that's correct.

20 Q. And that DC Connell was in the ambulance with Mr Bayoh?

21 A. Yeah, and again, that's probably normal practice around
22 that, so --

23 Q. Can I stop you there for a moment? We'd discussed -- we
24 heard evidence from DI Robson about DC Connell
25 recovering a knife from the scene, I think you're aware

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1 of that --

2 A. Yeah.

3 Q. -- and we may have mentioned that earlier. And I asked
4 him about whether he had concerns that DC Connell was
5 then asked to go in the ambulance with Mr Bayoh, having
6 recovered that. Do you have any concerns about the
7 forensic integrity there?

8 A. No, I mean, the knife was recovered with gloves, I mean,
9 at that time, after being photographed by, I think,
10 a mobile phone if I recall. So, not in particular, you
11 know what I mean, it was really for continuity of the
12 evidential chain that we had an officer, a detective
13 within it, within the rear of the ambulance. There are
14 various reasons for that. I mean, sometimes it's due to
15 a remark made by an injured party within the ambulance
16 or something that's said which may again prove to be of
17 evidential value, so again that's best practice to have
18 someone there and it's not unusual for a police officer
19 to drive an ambulance either.

20 Q. Sorry, I interrupted, we were talking about the events
21 in the hospital.

22 A. Yeah.

23 Q. And you are under -- when did you become aware -- you
24 obviously became aware, you said previously DI Robson
25 contacted you to say that Mr Bayoh -- that life had been

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1 pronounced extinct at 09.04 and he contacted you
2 thereafter to tell you?

3 A. Yeah, so there was an earlier call round about, I think
4 it was about 8.45 or thereabouts by Colin and it was
5 just really a quick call round about the update that
6 Mr Bayoh was poorly and at that time I'd just indicated
7 did we have sufficient resources at the hospital and
8 Colin would have known that would have meant did we have
9 detectives with -- outside the resuscitation room in the
10 event that he did succumb at that stage. So I knew that
11 the detectives were at the Victoria, and on Mr Bayoh
12 passing away we simply moved his remains to a side room
13 which was secured and we had a uniform officer outside
14 it at all times to prevent any access.

15 Q. So your understanding is they were initially outside the
16 resuscitation room?

17 A. Yeah.

18 Q. And then outside the side room?

19 A. Yes.

20 Q. What was the purpose of that?

21 A. It's really just to ensure integrity of the remains of
22 the deceased.

23 Q. To make sure no one interfered with --

24 A. Yeah, absolutely.

25 Q. When you became aware at 8.45, with your conversation

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1 with DI Robson and then subsequently became aware that
2 Mr Bayoh had died, before you became aware that he had
3 died were you concerned about forensic integrity; did
4 you have a discussion with Robson about ensuring that?

5 A. To be honest with you, not at that time, at 8.45, it was
6 really just a quick call that Mr Bayoh's poorly and
7 unlikely to improve at that time so it was about: do we
8 have sufficient resources at Hayfield Road and at
9 hospital to manage the deceased, if this does occur. So
10 again, I mean, Colin -- the expectation from myself to
11 Colin is that he's fully aware of integrity of any
12 scene, so, I mean, I wouldn't at that time basically try
13 to speak to him about scene integrity, I've worked with
14 Colin before and I know how competent he is around such
15 matters.

16 Q. When you're trying to maintain forensic integrity, apart
17 from having officers standing outside a room, are there
18 any normal procedures with regard to how they're dressed
19 or forensic clothing or anything along those lines?

20 A. Not particularly at the hospital, no, they would
21 probably just be probably in suits as they did turn up
22 for duty that particular day, but it was more about
23 making sure that once life is pronounced extinct there's
24 no further interference, for want of a better word, with
25 the remains by medical practitioners, once they've PLE'd

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1 or pronounced life extinct, that thereafter they
2 basically -- we would seize the remains at that
3 particular time. And, as I say, there would be aspects
4 of medical intervention, drips, intubation tubes and so
5 on and so forth probably still with the body at that
6 time, but we would seize it as it is at that time rather
7 than the medical practitioners attempting to remove
8 them. So again it's just with -- and again, just with
9 the training and the detectives, they're aware of these
10 aspects of it, and through experience as well. So no,
11 they would just be in suits, I think the answer to your
12 question is.

13 Q. And you wouldn't expect the officers to interfere in any
14 way with the body?

15 A. No, absolutely not.

16 Q. Or to be involved in removing clothing or anything?

17 A. No.

18 Q. What about if there's samples to be collected from the
19 medical practitioners?

20 A. That's quite common. So usually with incidents, usually
21 homicides in particular, there is usually an aspect of
22 pre-transfusion blood -- there is usually
23 a pre-transfusion blood sample to be obtained, so again
24 part of the responsibilities of the detectives deployed
25 to the hospital would to be obtain that pre-transfusion

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1 blood sample, to ensure that all the clothing has been
2 seized, a lot of the time it is cut off and maybe left
3 on the floor or under the bed or whatever else, it's to
4 ensure that they don't lose anything at all at that
5 time. But again the samples, the main sample is usually
6 a pre-transfusion blood sample.

7 Q. And is the recovery of, say the clothing that's been cut
8 off, would that be the responsibility of the officers?

9 A. Yeah.

10 Q. Would they be expected to wear gloves while they did
11 that?

12 A. Yeah, so what usually happens is the clothing which is
13 removed is usually placed within a bag by the medical
14 staff or whoever is assisting with the work within the
15 resuscitation room, so it's usually within a bag as such
16 and it's usually we would seize the bag and thereafter
17 take it to a police office as such and bag it
18 appropriately through gloves, masks on, and put it in
19 production bags as such. That's the way it normally
20 does happen. It's not a case, we would get in there and
21 the trousers would be lying on the floor or the shirt
22 would be lying there, you know what I mean; they would
23 normally all be bagged within one hospital-type
24 polythene bag and we would thereafter take that and
25 thereafter, with the relevant precautions in place round

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1 about integrity, ensure that all the clothing was
2 thereafter put into the relevant bags.

3 Q. And the person putting items of clothing or suchlike
4 into the bags, would that be the officers or the medical
5 staff normally?

6 A. That would be the officers, yeah.

7 Q. So they would be within the room at some point to maybe
8 collect items of clothing?

9 A. Yeah, so, as I say, a lot of the time the bag is usually
10 handed to the detectives by the medical staff, the body
11 is thereafter removed on to a bed or trolley and removed
12 into a side room. We would secure the side room,
13 usually a uniformed officer stands outside that the
14 detective would thereafter deal with the pre-transfusion
15 blood sample, noting very brief statements from medical
16 practitioners at that time, who are they, when is the
17 best time to get a full statement from them, and there
18 would be a bag usually of clothing that has been either
19 taken from the deceased or cut from the deceased and
20 that would be thereafter, usually within one single bag
21 and we would just seize that. But that would not be
22 interfered with at the hospital we would take that to
23 a sterile to location to basically divide and bag up as
24 such.

25 Q. There's some evidence available to the Chair that

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1 a DC Brown and Balsillie attended at Victoria Hospital
2 prior to the death of Mr Bayoh, and they essentially
3 relieved DC Connell from his attendance at the hospital.
4 Have you heard of them?

5 A. Vaguely. I've not met -- I don't think I've met them
6 but I recognise the names.

7 Q. Could you explain what the sort of thinking behind the
8 attendance of Balsillie and Brown was at the hospital?
9 This is before Mr Bayoh passed away.

10 A. I genuinely don't know but I can only imagine that there
11 was further actions for DC Connell to take on at that
12 time and to put two detectives for that corroboration of
13 the seizure of any clothing and noting those statements
14 would -- again, that's probably -- they would need
15 obviously the corroboration aspect of it so rather than
16 just DC Connell there himself the two officers were
17 obviously going up there to take that role from him, to
18 enable him to come back for further actions I would
19 imagine. I wasn't involved in that aspect of the
20 decision-making but I can just imagine why it was done.

21 Q. And we have an Inquiry statement from DC Balsillie
22 indicating that when he attended the hospital he was
23 there hopefully to ultimately speak with Mr Bayoh, it
24 was before he was pronounced life extinct, and he
25 considered that his role changed after life was

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1 pronounced extinct, and he was there then to protect the
2 deceased's body.

3 When Balsillie and Brown were sent to the hospital,
4 clearly DC Balsillie was under the impression they were
5 to go in and talk to Mr Bayoh, was there any view taken
6 by you at that stage about maintaining forensic
7 integrity; if Mr Bayoh had survived were you still going
8 to try and maintain forensic integrity at that time?

9 A. Yeah, you do your best at all occasions to ensure that
10 integrity, the timing and the sequence of that is that
11 I'm obviously notified at 8 -- round about 7.45 by Colin
12 about the deterioration, 8.15 I'm informed by
13 Leslie Boal about -- she further updates that this
14 incident is ongoing, which obviously I say I'm aware of
15 and I should phone Colin back at about 8.30, saying I'm
16 heading through.

17 So, yeah, it would be quite normal to deploy two
18 officers either to deal with Mr Bayoh at the hospital,
19 obviously, if he did survive, and if not, to deal with
20 the remains of the body at that particular time. So ...
21 I wasn't aware, this was obviously all going under the
22 direction of Colin at that time.

23 Q. Colin Robson?

24 A. Colin Robson, although I obviously had spoke to Colin
25 round about quarter to 8 just about ensuring we had

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1 sufficient resources to ensure the integrity remained
2 there with it. But, as I say, I don't think -- I think
3 the DC Connell aspect, I think Colin's obviously --
4 I don't know if he did say in his evidence round about
5 why he removed DC Connell but I would imagine there
6 would be some justification around that.

7 Q. So at that time in the morning when Balsillie and Brown
8 are sent to the hospital, it was essentially Robson who
9 was --

10 A. Yes.

11 Q. -- dealing with that matter?

12 A. Yeah.

13 Q. The evidence you've just given, was that the extent of
14 your involvement in relation to the attendance of
15 officers at Victoria Hospital?

16 A. Yes.

17 Q. And at that time had you had any contact with PIRC by
18 then?

19 A. No, the first contact with PIRC was through --

20 Q. 10.20 --

21 A. -- Craig Blackhall at 9.35, it was Dave Green who
22 contacted PIRC, DSI Keith Harrower thereafter contacts
23 me at 10.22 and that's the first contact I have with
24 PIRC.

25 Q. And that was something we looked at yesterday in your

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1 daybook?

2 A. It was, yeah.

3 Q. That you had a call with Keith Harrower?

4 A. Yeah.

5 Q. So in terms of maintaining forensic integrity at least

6 up to this first call with Keith Harrower, PIRC had no

7 involvement whatsoever?

8 A. Absolutely no involvement.

9 Q. And it wasn't until we see the strategy document and the

10 subsequent minutes that we see that you were conjoining

11 with PIRC --

12 A. Yes.

13 Q. -- in relation to the arrangements for Mr Bayoh?

14 A. Yeah. To be honest it was a lot earlier than that, they

15 came on, they came to the location at 1.30, sorry, came

16 to the office at 1.30, so this -- it was really

17 fast-moving after that because there was a number of

18 meetings, either -- as well as the Gold meetings there

19 were a number of meetings in side channels with myself

20 and Keith and some of the teams, just around about some

21 of the priority actions we've done which are not

22 detailed in minutes as such, but there was that

23 continuing engagement all the way through from the

24 arrival of PIRC between myself and Keith in particular.

25 Q. So from around 1.30 PIRC arrive at Kirkcaldy Police

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1 Office?

2 A. Yeah.

3 Q. And from that moment in time there's a lot more liaison
4 and communication with PIRC in relation to the body of
5 Mr Bayoh?

6 A. Yeah, yeah. So obviously I had made Keith aware that he
7 was deceased, obviously at 10.22 the first call, and
8 I gave him the circumstances of the background to that,
9 so -- and Keith obviously highlighted and indicated was
10 the body secure, was the remains secure and everything,
11 as naturally he would do, and I just obviously reassured
12 him that that was all in hand around that.

13 So, as I say, once they arrived at 1.30 they begin
14 to really drill down into some of the actions around
15 Mr Bayoh and about how we would thereafter remove the
16 remains to Edinburgh City Mortuary for the pending
17 post-mortem.

18 Q. I understand your evidence today is it was your
19 understanding the officers were standing outside the
20 door to protect the body. We have other information
21 available, again from DC Balsillie, that the officers
22 were actually remaining within the side room with the
23 body, and they remained with the body until they were
24 relieved by PIRC investigators Ferguson and Taylor, and
25 that was not done until 19.30 hours. So by my

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1 calculations, I think, they were within the room with
2 the body for around ten hours, from relieving
3 DC Connell. Does that give you any cause for concern?

4 A. I mean, I wasn't at the hospital and I don't know the
5 size of the side room but, I mean, they're trained
6 detectives, I'm sure that they would have maintained
7 integrity, there wouldn't be any interference at all
8 with the remains. My understanding was from speaking to
9 Colin, as I recall there was a uniformed officer outside
10 that room, so I can remember -- I can recall Colin
11 informing me around that.

12 But again, the aspect around integrity is paramount,
13 now whether the officers or the detectives are outside
14 the room or within a room, the main aspect is that
15 there's no interference at all with the remains of
16 Mr Bayoh.

17 Q. And information available to the Chair would suggest
18 that they weren't wearing any forensic clothing at that
19 time. Does that cause you any concern at all?

20 A. That would -- nine times out of ten that's the way it
21 usually happens, is that you're not attending at the
22 Accident & Emergency with your white forensic suit. On
23 a number of occasions you're basically there when the
24 individual unfortunately passes away and you have to
25 thereafter take the action and the activity around that.

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1 The main aspect is that there is no interference at all
2 with the remains of the deceased and, as I say, the
3 detectives are trained around that, about that integrity
4 aspect of it.

5 Q. We have, as I said, an Inquiry statement from
6 DC Balsillie, I can put it on screen, it's SBPI 262, and
7 it's paragraphs 24 and 25. This is an Inquiry
8 statement, the same sort of procedure as you've through
9 yourself. He says:

10 "I am asked if there are standard forensic protocols
11 in place that need to be followed when you're conducting
12 this kind of locus protection and seizing these kinds of
13 productions. I wasn't aware at the time that all deaths
14 and/or deaths that are regarded as in police custody
15 have to be treated in such a manner that you had to be
16 forensically aware. I wasn't aware of that, and at no
17 time was I instructed to wear any of that equipment
18 whilst in the room adjacent to where the deceased was."

19 Can I just ask you: does this give you any cause for
20 concern as SIO, that officers didn't appear to be aware
21 about any need to observe forensic integrity?

22 A. I mean, I see from what they have, I mean, they're
23 simply wearing gloves, there is no --

24 Q. Just, that's in paragraph 25.

25 A. So is it 24?

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1 Q. Just so people can see it. We also see in paragraph 25
2 that he says there was a very limited police supply at
3 the hospital?

4 A. Yeah.

5 Q. "... so, other than wearing a pair of rubber gloves,
6 which is what we did, other than wearing those gloves,
7 we had no facility to wear a white suit or the boots,
8 hairnet et cetera and that, other than wearing the
9 gloves, which we did."

10 So he definitely was wearing gloves?

11 A. Yes, yeah.

12 Q. From his statement.

13 A. I mean ultimately if they can have a white forensic suit
14 there, I mean, that's obviously best practice, but the
15 main aspect is that there is no interference with the
16 body, they're there mainly for security and integrity
17 more than to basically forensically interfere with the
18 bodies. So we're not asking them to take samples, we're
19 simply asking them almost just to secure the remains at
20 that particular time and not obviously to go near the
21 body or interfere with the remains in any way. So ...

22 Q. Can I ask you about 25 -- and I appreciate you weren't
23 at the hospital --

24 A. Yeah.

25 Q. -- that day, I'm interested to see this reference to,

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1 "Very limited police supplies at the hospital". Is it
2 normal practice for there to be police supplies at
3 a hospital?

4 A. Yeah, I can only speak from my own experience, and
5 working within the kind of Glasgow area, we regularly
6 would dispatch police supplies to the main hospitals
7 within Glasgow, so there were that ready supply of
8 gloves, boots, suits, masks, hairnets and so on and so
9 forth, we would take them down to the hospital and give
10 them a supply as such.

11 Q. Why is that done?

12 A. It's mainly just, it's ... it's to ensure that -- it's
13 mainly for a policing purpose, the fact is that if we do
14 spontaneously turn up at an incident which thereafter
15 involves the requirement for integrity of the deceased
16 or the -- it ends up a homicide or there's a -- if
17 there's a sexual offence that's been occurred, that they
18 can basically, rather than having tae go to the car or
19 try to dig out or call for someone to come from a nearby
20 office, that there is a supply of potential kit that's
21 available there that we don't -- we can put hands on
22 almost right away.

23 Q. Who in the police is responsible for making sure there
24 are police supplies at a hospital?

25 A. So it was mainly the CID within the offices that

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1 I worked at, would basically be that liaison into the
2 A&Es mainly of the hospitals.

3 Q. I won't ask you about the resources in the hospital,
4 I know you weren't there.

5 A. Yeah.

6 Q. Can I ask you who then had overall responsibility for
7 Mr Bayoh's body at the point the remains were taken from
8 the hospital to the mortuary? At that point, had
9 responsibility handed over to PIRC?

10 A. Yeah. Well, yes, it did, because it was at 10.22 that
11 PIRC -- well, 9.35 hours that PIRC basically get
12 directed by Crown, as they are the lead agency for it,
13 so by the time the body was removed to the City Mortuary
14 they had -- obviously there was a number of hours that
15 had passed since they had been given the direction to
16 lead on it, so ultimately it would be PIRC. However,
17 the remains and the ownership sits with Crown, with PIRC
18 just being the agents obviously around that.

19 Q. Can I just be clear about one thing you say in your
20 statement, and I don't need to put this on the screen,
21 you say:

22 "The seizure and transfer of the deceased to the
23 City Mortuary is under my remit."

24 I would just like to be clear, when you say "remit"
25 but it's the responsibility of PIRC, can you explain --

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1 A. Yeah, I think I was just trying to say it's the
2 responsibility of an SIO ultimately for the safe
3 transfer ensuring integrity of the remains moving
4 between the hospital and the City Mortuary. So,
5 for example, to ensure integrity and continuity we would
6 put two detectives in a car behind the vehicle with the
7 remains of the deceased in it. So they would be at all
8 times present with the deceased en route to the City
9 Mortuary so we would not lose sight of that.

10 And again, once we're at the mortuary detectives
11 would be there whilst the body's removed and thereafter
12 the forms and the various -- the correspondence is
13 basically completed for the entry of the body into the
14 mortuary, so again that's all taken care of by the same
15 detectives who would be within the hospital, conveying
16 the remains and thereafter entry into the City Mortuary
17 as such.

18 Q. So all of that remains the responsibility of the SIO?

19 A. Yes.

20 Q. Even where PIRC have effectively taken over the lead
21 investigation?

22 A. Yeah, sorry, I maybe confused things there. I think
23 I was trying to say that either the SIO from PIRC or
24 myself, so on this occasion it would be the SIO from
25 PIRC who would have the responsibility because it had

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1 passed to Keith at 9.35.

2 Q. So when you've said in your statement:

3 "The seizure and transfer of the deceased to the

4 mortuary is under my remit."

5 Do you wish to sort of clarify that slightly?

6 A. Yeah, I think it's the remit of the SIO for the

7 investigation. So, although I was the Police Scotland

8 SIO at the time, ultimately the lead SIO who had the

9 strategic oversight for the whole investigation was

10 Keith Harrower, as actioned by Crown.

11 Q. Can we look at the terms of the minutes of the first

12 Gold Group meeting. We've mentioned this a few times

13 today.

14 A. Yeah.

15 Q. I'd like to look at PS06491. I'm not sure if you have

16 a hard copy of this in your folder but it's certainly on

17 the screen. So this is the minutes from the 11.30, this

18 is the first meeting of the Gold Group?

19 A. Yes.

20 Q. And we see there:

21 "Present - ACC Nicholson~..."

22 He was chairing it, we've heard from you yesterday

23 he was the gold commander?

24 A. Correct.

25 Q. Chief Superintendent McEwan is present, he is the silver

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1 command?

2 A. Yeah.

3 Q. Then we also have present yourself and Leslie Boal,
4 Chief Inspector Shepherd and DI Robson, and then if we
5 look at the terms of reference, I'd just like briefly to
6 ask you about these. So this is listed as:

7 "Gold Strategy (CS Garry McEwan)."

8 And the final paragraph in black ink says:

9 "Ensure the integrity, interest and reputation of
10 the Police Service of Scotland and its staff is
11 maintained and safeguarded."

12 Then underneath that it says in red:

13 "Agreed that wording of terms of reference would be
14 considered and amended for future meetings to provide
15 terminology specific to circumstances of incident."

16 Are you able to explain to us a little bit about
17 this?

18 A. Yeah. So basically the terms of reference for the
19 majority of Gold Groups are almost a standard pro forma
20 as such, and it's mainly a lift from a previous
21 Gold Group that you would simply superimpose on to the
22 agenda for the incident you're dealing with, because
23 they mainly all impact on the integrity of the
24 investigation, support and reassurance to the family,
25 community impact, media, and ultimately to bring the

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1 community back to some sort of normality at that time.

2 So again, I was slightly late into this meeting and
3 the discussion was ongoing, I can recall, when I came
4 in, round about the fact it was not specific to it and
5 I recall there was some discussion round about that last
6 point about the integrity, interest and reputation of
7 Police Scotland is maintained and whether or not that
8 had to be basically -- that there had to be some -- it
9 had to be elaborated slightly.

10 Q. Why were you late?

11 A. So I was -- I had a discussion at that time, just before
12 going into the Gold Group, with Amanda Givan.

13 Q. We've heard she was the Federation representative?

14 A. Yeah, and that was round about the status of the
15 officers and the request for operational statements.

16 Q. We'll come on to that later.

17 So can I ask, the paragraph about ensuring the
18 integrity, interests and reputation of the police, did
19 that paragraph have any impact on the way you conducted
20 the investigation that day?

21 A. Absolutely not.

22 Q. It was part of the discussion on the day that that
23 would -- at that meeting, that the wording would be
24 considered --

25 A. Yes.

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1 Q. -- further?

2 A. Yeah.

3 Q. Then can we look at 2, you will see that says:

4 "Factual update - (Detective Inspector Robson)."

5 We've heard evidence from Robson that -- I think
6 I spoke to you yesterday about this -- he saw this
7 meeting as a handover to you and he gave the update --

8 A. Yes.

9 Q. -- based on his awareness to that point, and if we can
10 come down slightly, it says:

11 "The events relating to the deceased being conveyed
12 to the hospital, his treatment and subsequent PLE were
13 outlined and thereafter the process in an effort to
14 identify him."

15 And then:

16 "The circumstances of the subsequent call from
17 Collette Bell ... also summarised to provide details of
18 an incident that occurred prior to police and
19 involvement and which led to identification of male."

20 At this meeting were you clear about the
21 identification of the male at Hayfield Road as Mr Bayoh?

22 A. Yes.

23 Q. And as I understand it by that stage the death message
24 had been given to Collette Bell?

25 A. Yeah.

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1 Q. Then it comes on to item 3, "Investigative process", and
2 your name and DCS Boal's name are next to this, can you
3 tell us about this item on the agenda?

4 A. Yeah, it's basically the SIO will provide that
5 investigative update, it's quite normal, particularly at
6 the first Gold Group or even subsequent Gold Groups,
7 that the initial aspect of how the incident developed is
8 usually by the on-call detective inspector, such as
9 Colin who gives the kind of preamble into it, but
10 thereafter when it comes to the investigative strategy
11 it's usually handed over to the SIO at that particular
12 time.

13 So again, I provided the full update, as you can
14 see, around that. I think Leslie interjected with one
15 or two different points but in the main that was the --
16 the bullet points there are all the aspects that I'd
17 provided updates on in that respect.

18 Q. We've heard some evidence about one of the bullet points
19 which says:

20 "CT considerations raised by ACC and to be reviewed
21 by NIB."

22 Can you tell us about the discussion surrounding
23 that?

24 A. Yeah, I think I raised that yesterday as one of the
25 hypotheses around it which was quickly eliminated, but

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1 with Mr Nicholson's background, he was a -- I think he
2 was a CT commander, he kind of raised the issue again,
3 were we quite happy that there was no inference into --
4 inference to any CT-related motivation or
5 counterterrorism-related motivation, which at that time
6 I was pretty happy there wasn't but he just asked for
7 a further review by NIB, which is the National
8 Intelligence Bureau and that links thereafter into some
9 of the more sensitive intelligence areas that we can
10 basically have access to around that CT arena.

11 Q. So although you gave evidence yesterday about your own
12 thoughts about CT, and I don't need to go back to that,
13 was it again raised by ACC Nicholson at this meeting?

14 A. Yes.

15 Q. Rather than raised by you --

16 A. Yes.

17 Q. -- as part of a discussion?

18 A. Yeah.

19 Q. By this stage had you in your own mind eliminated the
20 hypothesis?

21 A. Yeah.

22 Q. And did you have a discussion about why you'd
23 eliminated --

24 A. Yeah.

25 Q. -- with Nicholson?

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1 A. Yes, at that forum.

2 Q. At the meeting?

3 A. Yeah.

4 Q. Then I would like to ask you about, first of all:

5 "FLO - Establish a working strategy."

6 A. Yeah.

7 Q. What was the discussion about in connection with that?

8 A. So again it was just such a high priority for the

9 investigation and obviously just the issues we

10 discovered yesterday around that, but it was just about

11 how we were going to take that on with liaison with PIRC

12 and about some sort of kind of deployment model and the

13 timescales for that, so it was about taking it off table

14 and looking at the development of that working strategy

15 for the deployment into the family.

16 Q. And by this time the death message has been delivered to

17 Collette Bell?

18 A. Yes.

19 Q. And she had advised you about the next of kin as

20 Kadi Johnson?

21 A. Yes.

22 Q. And we discussed this yesterday but since we're talking

23 about it now can I ask you to look at PS10991 which is

24 a family liaison SOP, and just do you see that on the

25 screen, it's the family liaison, and it's just to avoid

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1 any confusion arising about the evidence yesterday about
2 this.

3 A. Okay.

4 Q. Could we look at section 6.2, please, and this relates
5 to delivery of death messages. So this is an SOP,
6 I appreciate you said yesterday you're not a trained
7 FLO, but do we see here 6.2.1:

8 "Families of bereaved persons should be informed of
9 the fact of death as soon as is practical by
10 an appropriately briefed police officer."

11 A. Yeah.

12 Q. And then 6.2.2:

13 "As a general rule, a FLO should not be deployed to
14 deliver a death message as this may delay the process of
15 informing the family."

16 Then 6.2.3 talks about a risk assessment being
17 carried out.

18 A. Yes.

19 Q. And 6.2.4 says:

20 "The deployment of a FLO to pass a death message
21 would conflict with this requirement ... compromising
22 the risk assessment process."

23 And it goes on to make a number of points but:

24 "Where a decision is taken to deploy a FLO to carry
25 out this task, careful consideration as to the

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1 circumstances and reason for doing so must be made by
2 the SIO and such decisions should be recorded in the SIO
3 policy file and FLO logbook."

4 So I think yesterday I asked you questions about why
5 there wasn't a wait for an FLO to deliver a death
6 message. According to this SOP that wouldn't be the
7 appropriate procedure.

8 A. Yes, unless the circumstances dictate otherwise.

9 Q. And did you have consideration whether circumstances
10 dictated otherwise?

11 A. Yes, and that came from the discussion with
12 Keith Harrower, where Keith suggested it would be
13 beneficial to deploy two FLOs from Police Scotland at
14 this early stage.

15 Q. Right?

16 A. So again, as lead for the investigation I agreed with
17 that.

18 Q. So can you simply explain how the process panned out
19 with your discussions with Keith Harrower? Because on
20 the face of this SOP the recommendation seems to be, or
21 the guidance seems be the families "should be informed
22 as soon as is practical by an appropriately briefed
23 police officer", rather than a FLO?

24 A. Yes.

25 Q. And in fact the general rule is the FLO should not be

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1 deployed?

2 A. Yeah.

3 Q. So that's the general rule, but obviously there's
4 a process envisaged where that could be changed. Can
5 you explain to us the discussion with Keith?

6 A. The discussion was around the fact that we -- I think
7 because of the circumstances of the incident and the
8 fact that Police Scotland officers were involved in it,
9 to send two untrained officers to the family, as we did
10 do, we anticipated and Keith anticipated may cause, may
11 cause some sort of conflict, who would not be trained in
12 a manner to or have the experience to handle difficult
13 questions or difficult scenarios being asked of them as
14 such.

15 So again, through the discussion with Keith, Keith
16 made the decision at that time that we would look at
17 deploying initially Police Scotland FLOs and thereafter
18 there would be a handover later on either that day, or
19 I think it was the following day on the 4th, to PIRC
20 FLOs once they actually came on board with the
21 investigation.

22 So I think it was the circumstances of the
23 challenging incident that we were dealing with that was
24 the trigger for deploying Police Scotland FLOs.

25 Now, if we had the Police Scotland FLOs and we

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1 deployed them within the hour, I don't anticipate --
2 I anticipate there would still have been significant
3 issues around that, to be honest, as I said, yesterday.
4 So I take what the SOP states there, it's always
5 extremely beneficial to get the message to the family,
6 as I indicated yesterday, out as soon as possible.

7 The decision with Keith, through consultation with
8 myself round about the Police Scotland FLOs being
9 deployed, I could see the benefit of that, because it
10 wasn't a normal situation, so I could see why we were
11 basically going down that route in respect of it, but
12 I do take the point that that's what's stated in the
13 SOP.

14 But again, standard operating procedure's there as
15 the way it should be done, but again there are some
16 circumstances, as section 6.2.4 indicates, that not all
17 circumstances fit as they should on every occasion, so
18 sometimes you have to have that flexibility around it.

19 Q. We've heard that it was PIRC FLOs who ultimately made
20 contact with the family --

21 A. Yes.

22 Q. -- late on 3 May.

23 A. Yes.

24 Q. But yesterday you did talk about Police Scotland FLOs
25 being recalled to duty --

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1 A. Yes.

2 Q. -- and arriving at Kirkcaldy Police Office?

3 A. Correct.

4 Q. Were they ultimately briefed by police -- Mitchell and
5 Parker, we have heard, may have been involved with
6 briefing --

7 A. Yeah, so they were briefed -- what I did say yesterday,
8 in respect of that matter is that the discussion after
9 the second visit to the family and the conflict that
10 that was causing with the family refusing to engage and
11 not wanting to speak to Police Scotland officers at that
12 time, or any local officers, I think it was as well, was
13 the fact that the discussion with Ruairaidh Nicholson and
14 myself, Leslie Boal, Garry McEwan, was around -- and
15 Keith Harrower obviously involved in that as well, was
16 that -- are we going to gain anything further here or is
17 it just simply going to aggravate an already really
18 sensitive matter by deploying now Police Scotland FLOs
19 to the family.

20 So we were all in agreement with that. The fact is
21 we didn't think there was any benefit at that stage of
22 deploying Police Scotland FLOs because of the situation
23 we found ourselves in at that stage and to move towards,
24 at that stage it was Garry McEwan being deployed to the
25 family to try to basically explain a bit more about the

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1 incident, and that thereafter progressed through the
2 evening, after the Gold Group, to Keith Harrower and the
3 direction at the time from the ACC around the fact that
4 the PIRC would deploy FLOs and Keith Harrower would make
5 contact with the family and, as I say, Keith made
6 contact with the family I think about 10 o'clock that
7 evening. I think that's a kind of timeline in the
8 sequence of events, I don't know if that answers your
9 question.

10 Q. Thank you.

11 So the Police Scotland FLOs were never deployed to
12 the family because of the tensions which you were aware
13 of?

14 A. Yes.

15 Q. Is there any note that we can look at in your daybook or
16 your policy file that would help us identify your
17 reasoning in relation to the FLOs, or ...?

18 A. I don't think there is, but that was the -- that was the
19 feeling at the time, that because, as you've put quite
20 rightly, the tension between Police Scotland and the
21 family unit at that time was so significant, the
22 decision was made not to deploy the Police Scotland
23 FLOs, although they were present at that time and they
24 were deployable, they had been briefed, however that was
25 not going to basically enhance the relationship with the

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1 family and at that time it was obviously the decision
2 for Garry McEwan at that time to deploy due to his
3 relationship with a member of the family.

4 Q. And the decision not to deploy the Police Scotland FLOs,
5 was that done in liaison with PIRC?

6 A. Yes.

7 Q. And then we were going through the minutes of the
8 11.30 --

9 A. Yeah.

10 Q. -- Gold Group meeting, if we could maybe return to those
11 briefly, PS06491, and we were looking at item 3, and it
12 says there -- I've lost it:

13 "Police officer statements - Federation reps
14 providing advice to officers concerned regarding this
15 matter."

16 Clearly this was part of item 3, and I'd be really
17 interested in your recollection of that discussion at
18 this meeting?

19 A. Yeah. So prior to coming to this meeting -- and, as
20 I said, I was slightly late into it -- I had
21 a discussion with Amanda Givan, and Conrad Trickett was
22 there as well at the time, my intention was to address
23 the officers within the canteen area, and I explained
24 to --

25 Q. You were aware in the morning the officers had returned

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1 to the canteen?

2 A. Yeah, yeah they --

3 Q. That had been allocated the PIM suite?

4 A. They were there when I had arrived, they were already
5 present when I arrived. So because of the nature of the
6 incident as SIO, and I know it's not detailed in any
7 strategy, I wanted to inform them regarding the
8 investigation where we were, the information that came
9 to me at that time was they weren't even aware that
10 Mr Bayoh had actually passed away and was deceased at
11 around about 11.25, so I thought it would be beneficial
12 for myself to brief them in respect of a number of areas
13 but the main one obviously the fact that Mr Bayoh was
14 now deceased and that the PIRC were now leading the
15 investigation as such, that was the main areas.

16 So I'd spoke to Amanda Givan and said to her, "Look,
17 this is where we are with the enquiry just now, PIRC are
18 coming on board, they're en route to the office just
19 now, they will lead on the investigation", and that from
20 speaking to Keith Harrower the status of the individual
21 officers just now is that of witnesses, and that I will
22 be requesting operational statements from them in that
23 respect.

24 So Amanda basically stated that her advice to them
25 at that time was not to provide any operational

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1 statements prior to seeking legal advice, and I said to
2 Amanda, "I appreciate your position around that but I am
3 still going to request operational statements", because
4 they were witnesses.

5 Q. Where did this discussion with Amanda Givan take place?

6 A. Just inside the canteen or just outside the door of the
7 canteen, I think it was just inside the door of the
8 canteen.

9 Q. Was that the first time you had been down to the
10 canteen?

11 A. It was, yeah.

12 Q. Did you speak to the officers at that time?

13 A. I did, yes.

14 Q. And can we see any reference in your daybook?

15 A. I don't think there is, because it was a very, very
16 brief update that I gave them because I was running into
17 the Gold Group at that particular time, and, as I say,
18 that's why I was late into the Gold Group. But the
19 circumstances of it were such that I -- the notation
20 within the minutes for the 11.30 Gold Group about the
21 Federation rep providing advice was given to me
22 five minutes before I actually went into the Gold Group
23 by Amanda, that that was the position at that particular
24 time.

25 Q. Right.

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1 A. I do however -- with the disclosure it is detailed
2 within Nicky Shepherd's daybook that I've provided that
3 update around the fact that the status of them was that
4 they were witnesses and that statements were going to be
5 provided but the Federation had advised until legal
6 advice is sought not to provide statements.

7 Q. Right. It's five to 3, we will be shortly inviting the
8 Chair to have a short break for the benefit of the
9 transcriber. I will see if we can get a copy of that
10 daybook, but I do not have it at the moment.

11 A. Yeah.

12 Q. But in the next five minutes I would like to look at
13 your daybook --

14 A. Yes.

15 Q. -- and maybe see if there is anything that we can gather
16 from this.

17 Now, we've looked at page 5 previously. Your
18 daybook is at 18269, and page 5. At the top of page 5
19 on the right-hand side we can see the reference to the
20 Gold Group is that 11.40? The minutes say 11.30 but
21 roughly that's the time, is it?

22 A. I think that's the time I came into it.

23 Q. Right.

24 A. I think that's why I was late into the Gold Group.

25 Q. And it says next to that, "Chair ACC", and we know the

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1 chair was ACC Nicholson?

2 A. Yeah.

3 Q. So just immediately above the reference to the
4 Gold Group meeting, you've got things written there; is
5 there anything written there that helps you or refers to
6 this discussion with Amanda Givan at all?

7 A. No. Because it was simply a very quick five-minute
8 discussion. I didn't actually expect to meet Amanda in
9 there at that time. However, I had met -- Amanda had
10 come into a room I was sharing with Colin Robson round
11 about 10.05 that morning to introduce herself to me,
12 that she was there obviously to provide support to the
13 officers and she gave me her business card as such and
14 at that time I said I'd catch up with her through the
15 course of the morning and such.

16 Q. So you were sharing a room with Colin Robson?

17 A. So, on arrival at 9.15 I initially went to speak to
18 Garry McEwan and then, after speaking to Garry McEwan,
19 Colin took me to a room within the CID area where
20 basically at that time, as I said yesterday, within the
21 details on my daybook round about the call cards, we sat
22 and went through the call cards and the priority actions
23 at that time. And, whilst doing that, Amanda Givan came
24 into the room at that time and introduced herself and
25 left a calling card as such around -- left a business

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1 card saying that she was there, and I said I'd catch up
2 with her later on through the course of the morning.

3 Q. We've heard evidence that DS Dursley shared a room with
4 Colin Robson, and Colin Robson gave evidence to that
5 effect, that he'd moved in and out. So were you sharing
6 a room with Robson or --

7 A. No, I don't know whose room it was, I've been in
8 Kirkcaldy three times, and it was just a room I was
9 using with --

10 Q. Was DS Dursley there?

11 A. No. No, I think I only spoke to DS Dursley once during
12 the course of the day and that was the death message.
13 But it was a room I was utilising as an SIO,
14 Colin Robson came in, Stuart Houston was in and out as
15 well, but I don't know whose room it was to be honest.

16 Q. So the room you were using, was Robson coming in and out
17 of that --

18 A. Yes.

19 Q. -- rather than sitting with you?

20 A. Yes, he wasn't working out of it.

21 Q. Right, thank you.

22 Just going back briefly to the -- well, actually,
23 it's --

24 LORD BRACADALE: Stop there then. 15 minutes.

25 (3.00 pm)

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1 (A short break)

2 (3.24 pm)

3 LORD BRACADALE: Ms Grahame.

4 MS GRAHAME: Thank you very much.

5 So just prior to the break we were talking about
6 this meeting with Amanda Givan just prior to the first
7 Gold Group meeting.

8 A. Yes.

9 Q. Which caused you to be slightly late and arrive at
10 11.30. How long did that discussion with
11 Amanda Givan --

12 A. Minutes.

13 Q. Minutes?

14 And you've said that Conrad Trickett was present?

15 A. Yes.

16 Q. And it was, you said inside and outside the canteen; it
17 was somewhere near the canteen?

18 A. I'm sure it was -- I think it was just inside or just
19 outside I'm unsure. But I know I spoke to both of them,
20 both of them were present when I was speaking.

21 Q. Anyone else present?

22 A. No.

23 Q. You also mentioned before the break that you had at some
24 point talked to the police officers, was that during
25 that --

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1 A. Yeah.

2 Q. -- short period or was that later?

3 A. No, that was directly after speaking to Amanda Givan.

4 Q. And how long did you spend with the police officers?

5 A. No more than five minutes.

6 Q. Could you be mistaken about the time that this took
7 place?

8 A. I have thought about this thing really for a number of
9 years now and genuinely I'm pretty confident that it was
10 in the morning. There's a couple of reasons behind
11 that, it is that on taking the investigation on as SIO,
12 I would not have waited four or five hours before
13 I spoke to the officers concerned around this, and also
14 I wanted to be in a position at the Gold Group to
15 provide an update around status of officers or if there
16 was any issues that had been identified at that
17 particular stage. And there was an issue that had been
18 identified, the fact that the guidance or the direction
19 from the Federation rep, Amanda Givan, was that officers
20 should not submit operational statements until they have
21 legal advice.

22 So from my recollection of events, Conrad was there
23 at that time as well, and Conrad introduced me to the
24 officers and I gave a very, very quick briefing to them
25 around the fact that Mr Bayoh had sadly passed away and

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1 it was now -- on the instruction of Crown Office, it was
2 a PIRC-led investigation supported by Police Scotland,
3 and thereafter very, very points round about their
4 welfare, round about the fact they shouldn't discuss the
5 incident together, and the fact that we would be
6 requesting operational statements prior to the
7 conclusion of their duty, and it was as simple as that.

8 There was no questions from any of the officers
9 involved in it. Amanda was present, Conrad was present,
10 and I thereafter left at that stage and went to the
11 Gold Group and updated the Gold Group round about the
12 fact that there was likely to be an issue round about
13 the submission of statements from the officers involved
14 in the incident.

15 Q. We'll come on to this in a moment, but you'll be aware
16 that Conrad Trickett does talk about having a discussion
17 with you and you speaking to the officers --

18 A. Yeah.

19 Q. -- but he doesn't say that was at 11.30 but at a later
20 time, at 13.40, 13.41. So in relation to that, despite
21 knowing that, do you still feel confident about your
22 assessment of the time?

23 A. Yeah, so again just to provide my position on that, it
24 is that at 13.35 we have the PIRC arriving at Kirkcaldy
25 office, the priority for me at that time was to brief

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1 Keith Harrower and the team immediately on their
2 arrival. I met Keith round about that time and we went
3 into a discussion in the conference room upstairs, and
4 at that time we were waiting the arrival of various
5 other PIRC resources as well as some of my team to
6 attend within the conference room.

7 Now, this was between 13.45 hours and 14.00 hours
8 whilst we were waiting the arrival of the other members
9 of both Police Scotland and PIRC, and the intention was
10 to provide an overview to PIRC prior to the second
11 Gold Group.

12 Now, I think when I've looked at some of the Inquiry
13 statements, Colin Robson details this as 14.05 hours, he
14 thinks it's a Gold Group but it's not a Gold Group, it's
15 an investigative briefing to PIRC on their arrival, at
16 that particular time. And, as I say, that is my
17 recollection of it.

18 The fact is that it actually runs into the
19 Gold Group because Ruairaidh Nicholson, the ACC, actually
20 comes in whilst we're actually speaking, because the
21 room we were utilising was the room that the Gold Group
22 was actually held in. So the ACC came into the briefing
23 with PIRC and sat down and we began just explaining one
24 or two things to him at that time prior to the
25 Gold Group, which I believe is minuted as starting at

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1 14.40 hours.

2 Q. Yes, we've heard evidence that the second Gold Group
3 meeting started at 14.40.

4 A. Yeah. So my understanding at 13.35 hours and the
5 arrival of PIRC, my priority at that time wasn't
6 speaking to Conrad Trickett and wasn't speaking to the
7 officers, it was about speaking to Keith Harrower as the
8 lead for the investigation and doing a more thorough
9 investigative briefing to him round about where we were,
10 where the priorities were, before we went into the
11 Gold Group.

12 And the only other thing, I think when you look at
13 Amanda Givan's evidence as well, she believes that the
14 briefing to the officers was in the morning as well, and
15 even -- I've thought about this continually around the
16 fact that even for an introduction to the PIM, I mean,
17 for an SIO or an IIO to basically wait for the best part
18 of five hours before there's any introduction just
19 doesn't seem to be ... and again, I've looked at, as --
20 are those -- am I getting my timings wrong or~...?

21 And I appreciate Conrad's policy log and his PIM log
22 details it as 13.40 and 13.41 but I don't think it was
23 at that particular stage because I was with the PIRC at
24 that particular time because of their arrival which we
25 were waiting on for a considerable period of time, there

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1 was an urgency around their arrival there and basically
2 briefing them as soon as possible round about the
3 deployment, the joint deployment, and some of the
4 locations we had identified which we'd spoke about, so
5 again that was my priority at that particular time.

6 Q. Well, I think before the break I asked you if there was
7 anything in your daybook saying you'd had that
8 discussion with Amanda Givan, or the post-incident
9 manager, and you couldn't find anything at all.

10 A. No.

11 Q. You've obviously given this a lot of thought in advance.

12 A. Yeah.

13 Q. Is there anything in your policy file that you think
14 would assist us with this?

15 A. No, I don't think there is.

16 Q. No. So it's not noted in any of your --

17 A. No.

18 Q. -- documents we've looked at?

19 A. Yeah.

20 Q. Before the break you mentioned you thought it was in
21 Nicola Shepherd's daybook or there was something in her
22 daybook.

23 A. Yeah, and I think that's in relation to the request for
24 operational statements runs from the initial Gold Group
25 at 11.30 to the one at 19.50 where there is still that

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1 significant direction around the status of officers as
2 witnesses and the submission of operational statements.

3 Q. Right. Well, we've obtained a copy of --

4 A. Yeah.

5 Q. -- Nicola Shepherd's daybook, and we would like you to
6 look at that and tell us what assistance the Chair may
7 be able to glean from this. So this is PS09164, and we
8 understand this is Nicola Shepherd's daybook, and
9 I don't know if you have been given a hard copy --

10 A. No, I've not.

11 Q. -- we can certainly ... it may be easier for you
12 actually to have a hard copy, because you'll know what
13 you're looking for.

14 A. Yeah.

15 Q. Now, on the first page there is reference at the bottom
16 for the 11.40 Gold Group meeting. So it says:

17 "1140 -- Gold meeting -- death of unidentified
18 male."

19 Do you see that?

20 A. Yeah.

21 Q. And immediately above that, it doesn't appear to have
22 any entries regarding a discussion.

23 A. No, I think -- I don't know if I can maybe direct you to
24 it. I think what I'm trying to say is that I only had
25 one meeting with Amanda around operational statements,

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1 and that came prior to me briefing the officers within
2 the canteen. I thereafter went directly from the
3 briefing of the officers and the engagement with
4 Amanda Givan into the first Gold Group.

5 So the notation on Nicola Shepherd's daybook whereby
6 it states, "Police officers, co-ordinator, Federation
7 have advised there is no obligation to provide
8 statements", that's the 11.30 Gold Group.

9 Q. Right, and can you -- is that on the second page --

10 A. Yeah.

11 Q. -- that you're looking at?

12 A. I think it's the third page actually -- ah, stop, stop,
13 just there, "Police officers".

14 Q. All right. Top of the third page, and it starts:

15 "Police officers -- co-ordinator. Federation have
16 advised them there is no obligation to provide
17 statements."

18 A. Yeah.

19 Q. Is this part of her -- we've not heard evidence from
20 Nicola Shepherd yet --

21 A. Yeah, so --

22 Q. -- but does this appear to be part of the notes --

23 A. For the 11.30 Gold Group.

24 Q. -- for the Gold Group meeting?

25 A. Yeah. Well, she's put it down as 11.40 Gold Group on

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1 page 1.

2 Q. Sorry, could you repeat that?

3 A. She's put it down as 11.40 Gold Group on page 1.

4 Q. Yes, on page 1, yes, we've said that.

5 A. I think -- sorry, I think what I'm trying to say is that

6 the choreography and the sequence of events leads me to

7 the Gold Group to explain only due to the fact that

8 Amanda Givan has given me that advice and that direction

9 and I was only in the canteen on one occasion and that

10 was when I spoke to Amanda Givan and also the officers

11 at that time in the morning.

12 Q. So you talked before the break about having a -- did you

13 have a meeting with Amanda Givan --

14 A. No.

15 Q. -- or was that the only meeting with Amanda Givan?

16 A. I think I met her in the corridor later in the afternoon

17 or something like that, but certainly that was the only

18 time that -- that was the first time she explained to me

19 that -- basically the advice that she was giving

20 officers was that there was no -- that she advised them

21 to obtain legal advice prior to providing statements.

22 Q. So you met her once and had this discussion?

23 A. Yes.

24 Q. It was in the morning, and it -- as I understand your

25 evidence, it must have been before the 11.40 Gold Group

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1 meeting?

2 A. Yes.

3 Q. Or the entry on page 3 of Nicola Shepherd's daybook,
4 which notes things that were discussed --

5 A. Yeah.

6 Q. -- at that first Gold Group meeting could not have
7 contained the information:

8 "The Federation have advised them there is no
9 obligation to provide statements."

10 A. And also in the minutes of the 11.40 Gold Group
11 I provide an update very, very similar to that.

12 Q. Let's just briefly go back to those minutes, then, and
13 also see ... and I think we were looking at this as one
14 of the bullet points in item 3.

15 A. Yeah, yeah.

16 Q. So if we could go back to PS04691, page 2, item 3, and
17 we had looked before the break at the bullet point,
18 "Police officer statements"?

19 A. Yes.

20 Q. Towards the end:

21 "Federation reps providing advice to officers
22 concerned regarding this matter."

23 Although we've not heard from Nicola Shepherd, your
24 view is that the comment that she's handwritten in her
25 daybook tallies with --

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1 A. Corroborates what I've said.

2 Q. -- the minutes that we see here, that the Federation
3 reps are providing advice. And that was in that first
4 Gold Group meeting and discussed at that meeting --

5 A. Yes.

6 Q. -- because you'd had this discussion with Amanda Givan?

7 A. Correct.

8 Q. Now, in the break we checked Amanda Givan's Inquiry
9 statement, and this is SBPI 00072. Now, it may not be
10 on the -- we might not be able to put that on the
11 screen.

12 A. Yeah.

13 Q. But my understanding is that she makes no mention of
14 a discussion just shortly prior to --

15 A. Yeah.

16 Q. -- 11.30, prior to the Gold Group meeting in or outside
17 the canteen. But she does talk about coming up to
18 a room where --

19 A. Yeah.

20 Q. -- she met with you, so nowhere near the -- I don't know
21 geographically but not in the canteen or outside the
22 canteen, but in a room, to come up and speak to you, and
23 I think it was DI Robson?

24 A. Yeah, and that's what I explained before the break, that
25 myself and Colin had been through the call cards within

Transcript of the Sheku Bayoh Inquiry

1 that room, and we had the discussion whose room was it
2 and I said at that time Amanda Givan comes in,
3 introduces herself and gives me her business card, and
4 that was round about 10.15/10.30.

5 Q. So was that the first time you had met Amanda Givan that
6 day?

7 A. Yes.

8 Q. And the second time was --

9 A. Was down in the canteen round about 11.30.

10 Q. And then you mentioned a moment ago that you maybe saw
11 her somewhere in the afternoon, in the corridor?

12 A. Yes, yes.

13 Q. So three occasions where your paths crossed. Do you
14 remember that first meeting with Amanda Givan?

15 A. Yeah.

16 Q. Tell us about that?

17 A. The one in the room?

18 Q. In the room.

19 A. So that -- Amanda came in, we were in the room -- myself
20 and Colin were sitting going through the call cards,
21 I was identifying the priorities, so as we've already
22 seen in the daybook round about what's the priorities,
23 the call cards which we discussed yesterday, the three
24 locations, Arran Crescent and so on and so forth.

25 So Amanda comes in at that particular time and

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1 introduces herself and she basically says that she's
2 there to support the officers, that she's been called
3 out and she's a Federation rep, she gives me her
4 business card and at that time I basically -- well, it's
5 really, really busy at that particular stage and I said
6 to her I'd catch up with her later in the morning around
7 it.

8 So again, with that it was my intention to speak to
9 the officers prior to going into the Gold Group, the
10 first initial Gold Group, around that, and that's the
11 occasion I spoke to Amanda within -- within the canteen
12 area. And again, there is -- when you look at Conrad's,
13 I think Conrad details also in one of his statements the
14 fact is he was there when Amanda had mentioned to me
15 about the operational statements not being -- her advice
16 was not to provide -- the officers not to provide
17 operational statements at that time. But Conrad
18 indicates at about 13.40 that occurred, rather than my
19 suggestion it's at 11.35 or thereabouts. But, as I say,
20 I wouldn't have had that information prior to going into
21 the first Gold Group unless I had that engagement with
22 Amanda Givan.

23 Q. And you've said a couple of times that her advice to the
24 officers was not to provide operational statements prior
25 to getting legal advice?

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1 A. Yes.

2 Q. Now, we've heard evidence from Amanda Givan and when we
3 discussed this with her, she indicated that it was the
4 officers should check what their status was, that if
5 they were suspects they shouldn't be getting --

6 A. Yeah.

7 Q. -- giving statements subject to obtaining legal advice,
8 and that effectively she hadn't got to the stage of, "If
9 you're only witnesses", but her focus was very much on
10 the situation where they may be suspects, and she talked
11 about being aware of a couple of memos that had been
12 released relatively recently to May 2015, where officers
13 whose status was a suspect shouldn't be asked for
14 statements.

15 A. Yeah.

16 Q. So bearing that in mind, I think Amanda Givan's position
17 in evidence, as I understand it, was not that she was
18 advising officers not to give statements or operational
19 statements prior to legal advice but she was actually
20 talking to them about checking their status.

21 A. Yeah, I mean, I spoke to them around the status and
22 I mentioned to Amanda round about the status, it was
23 very clear from what we had at that particular time they
24 were witnesses, they would not have been involved in the
25 PIP process if they were anything other than witnesses.

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1 There was no reasonable cause to suspect that they were
2 involved in anything criminal or anything misconduct at
3 that time, so at that time in the morning when I'm
4 briefing them, their status is very clear and Conrad's
5 very clear round about their status as well, invoking
6 them within the PIP process.

7 And Amanda was aware of that as well, the fact that
8 there wasn't -- their status didn't change across the
9 whole period of 3 May, they were always witnesses, it
10 was all documented within the Gold Group at 11.30, at
11 14.40, at 19.50, it's still that drive and demand round
12 about confirmation of status, operational statements
13 still required, so at 8 o'clock at night -- and again,
14 it's detailed in Nicky Shepherd's daybook that we're
15 still discussing the fact that we require operational
16 statements.

17 So, as I say, that continued through the course of
18 the day, their status was that of witnesses, and I was
19 still looking for operational statements in that
20 respect.

21 Q. Did you have concerns, when you spoke to Amanda Givan at
22 the canteen, about the advice that she said she was
23 giving to the officers?

24 A. So, I don't think Amanda gave legal advice, I think
25 Amanda's advice was simply to seek legal advice before

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1 you provide any statements. So I don't think she gave
2 legal advice. I think she gave that direction to the
3 officers concerned. I don't think she gave -- actually
4 gave legal advice as in the whole aspect of~...

5 Q. But did you have concerns that she was advising officers
6 not to provide operational statements prior to seeking
7 legal advice? That's what I have you noted as saying.

8 A. Sorry, when did I say that?

9 Q. Before the break, I wrote it down. I can check the
10 transcript if you want to see exactly what you said.

11 A. Yeah, so they've every right to seek legal advice before
12 giving a statement under PIP. So no, I don't think
13 I would have said that. My concern was the fact that
14 this seemed to be a hold on their -- the direction
15 the Federation were giving at that time was to await
16 legal advice prior to submitting -- or submitting
17 an operational statement. The aspect of status was very
18 clear from myself, from Keith Harrower and the
19 discussions we had through the course of that morning
20 and through the Gold Groups, from the chair through all
21 membership, that at that stage there was nothing other
22 than they were -- their status was that of witnesses.

23 Q. If we've heard from Amanda Givan that there was
24 uncertainty, confusion, about status, you would disagree
25 with that then?

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1 A. So I think there was confusion with the officers in
2 general. They were confused. I think -- I mean, even
3 the discussion I had with them very, very briefly,
4 I don't think very many of them can actually recall it,
5 as far as I recall. They were traumatised. There was
6 so much information getting put to them at that
7 particular time, they were getting involved in a whole
8 new process under post-incident procedure, which they
9 had no training in and no awareness in, and in the back
10 of their minds they had obviously just come through such
11 a traumatic incident that resulted in the death of
12 an individual.

13 So again, there was general confusion with the
14 officers concerned, and that was clear when I was
15 speaking to them, you know what I mean, there was no
16 acknowledgement, there was no questions, it was just
17 basically, I was just giving them information and
18 whether or not they were taking that in, again it's
19 debatable.

20 Q. We've talked about Conrad Trickett, you've clearly
21 listened to his evidence?

22 A. Yes, I have.

23 Q. But just for completeness can I ask you to look at the
24 PIM log --

25 A. Yes.

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1 Q. -- which is PS00387. If we could look at page 13,
2 please. And if we look towards the bottom of that page,
3 there's an entry 13.40 and I spoke to Conrad Trickett
4 about this in evidence, and then on the next page, at
5 page 14, you will see an entry 13.41, and we'll go over
6 the detail of this in a moment, but as I understand his
7 evidence he was saying this was his PIM log that he
8 noted at the table as you were sitting talking to the
9 officers. So it was a contemporaneous account.

10 A. Yeah.

11 Q. I think with the 13.40 entry on the previous page, he
12 explained it hadn't lasted a minute but it had been
13 about five minutes and it had been prior to you actually
14 talking to the officers in the canteen, and that had
15 been prepared, if you like, retrospectively.

16 A. Yeah.

17 Q. So at 13.40 his notes in the PIM log are:

18 "Initial discussion with SIO -
19 Superintendent Pat Campbell~..."

20 As I understand his evidence he said that was the
21 first time you'd spoken to him.

22 "... PIRC enquiry.

23 "Take external clothing."

24 Then the entry on the last line:

25 "No need to take statements~..."

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1 You see that?

2 A. Yeah.

3 Q. Then on the next page, which follows on, so:

4 "No need to take statements at this time."

5 His evidence was that:

6 "It was clear to me that he didn't want any accounts
7 to be provided by the officers at that time and that is
8 obviously what I've noted within the log".

9 And I asked him about that again, and he reinforced
10 that "no operational statements at this time".

11 So we then also heard evidence from him about the
12 post-incident procedure SOP, and the four stages.

13 A. Yeah.

14 Q. That 2 is basic facts.

15 A. Facts.

16 Q. Stage 3 is initial personal accounts.

17 A. Yeah.

18 Q. And stage 4 is more detailed accounts. And he explained
19 that, in terms of PIP procedure, that the word
20 "statements" isn't actually referred to, that it's
21 "initial personal accounts"; they would be up to or less
22 than a page of A4; they're reasonably brief, briefer
23 than the normal operational statements; and that is
24 a stage 3 that can be done before officers leave their
25 duty that day.

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1 He explained that stage 4 was a more detailed
2 account.

3 A. Yeah.

4 Q. And that that would not be required that day under PIP,
5 it would be required 48 hours --

6 A. Yeah.

7 Q. -- or two sleep -- two periods of rest --

8 A. Yeah.

9 Q. -- up to seven days, and that was the language he was
10 speaking, and then he talked about you speaking
11 a different language from him, that you were talking
12 about statements, which is the normal --

13 A. Yeah.

14 Q. -- language that officers would use.

15 A. (Witness nods).

16 Q. So here he's noted -- and again if we can just move back
17 to page 13 -- the "No need to take statements at this
18 time", he understood that you were not looking for
19 statements at that time --

20 A. Yeah.

21 Q. -- and he didn't seek either initial or personal
22 accounts or more detailed statements, and he wouldn't
23 have expected to be seeking detailed statements that
24 day.

25 A. Anyway, yeah.

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1 Q. So that's a summary of his evidence, as I understand it.

2 A. Yeah. No, I mean it does conflict with my way of -- me
3 saying what actually I believe happened around it,
4 unfortunately.

5 So, 27 years of being in the police, this is the
6 first time that a police officer has refused to provide
7 an operational statement to me, up until 2015 and from
8 2015 onwards, the only occasion.

9 The normal activity or course of events for any SIO
10 is that you look for operational statements prior to the
11 officers going off duty. Now, from Conrad's -- my
12 discussion with Conrad, the whole aspect of personal
13 initial accounts, I think he reduced that down almost to
14 "operational statements" as well or "initial
15 statements", other than utilising the phrase "personal
16 initial accounts".

17 However, the drive that day, which is documented in
18 all the Gold Groups, was the requirement for operational
19 statements. That didn't -- we did not stop that. There
20 was still a requirement for operational
21 statements/personal initial accounts. So that never
22 stopped. I mean, there was still that drive to
23 basically obtain some sort of direction from the
24 officers round about the use of force, who did what, who
25 utilised PAVA, CS, who was involved in baton strikes,

Transcript of the Sheku Bayoh Inquiry

1 who was involved in the restraint.

2 So, again, that just doesn't sit well with me, the
3 fact that I have stated that 13.40 -- now, 13.40 is
4 before the PIRC have actually arrived and been briefed
5 by me. I just wouldn't have that -- I mean, that
6 decision is not my decision to make round about no
7 operational statements. That decision would rest with
8 Keith Harrower to bascially make that decision, as SIO
9 for the investigation at that particular time.

10 So again --

11 Q. At 13.40?

12 A. 13.40. So Keith has only arrived at that particular
13 time and I thereafter get into a briefing at him. At
14 the 14.40 group we're still talking about their status
15 and operational statements, directly after this.

16 Q. Do you think the question of status had not been
17 resolved by PIRC until after they arrived at Kirkcaldy?

18 A. No, no. No, the question of status was very clear from
19 my discussion with Keith Harrower at 10.20 and
20 thereafter through the course of the morning. There was
21 nothing to indicate any criminality or misconduct on the
22 part of the officers at that time, there was no
23 reasonable cause to suspect, so myself and Keith were
24 very clear around that at that point.

25 So, as I say, the aspect of the 13.40, the quite

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1 detailed, on a number of occasions, "no need to take
2 statements, no need for operational statements".
3 Ultimately I was not the SIO at 13.40 and I wouldn't be
4 able to give that direction. That would have to come
5 from Keith Harrower and from PIRC.

6 I don't know if I'm explaining this very well.

7 Q. Do you feel that by 13.40 you were no longer the SIO?

8 A. At 13.40 I'm meeting with Keith Harrower.

9 Keith Harrower's just arrived at 13.35, and I'm going to
10 a briefing with Keith and with PIRC and with my own
11 team, which is detailed -- I think Colin Robson says
12 it's at 1400 hours, we get into the briefing before the
13 Gold Group, which is an investigative handover
14 briefing -- not handover, but an investigative briefing
15 around it.

16 So, again, that matter round about "no need to take
17 statements, no request for operational statements",
18 I cannot recall, and as an SIO I would -- it's something
19 I wouldn't actually say, because it was paramount that
20 we had -- and I think I've said it in my statement: the
21 critical aspect of what we were missing through the
22 investigation was who done what during the restraint on
23 Hayfield Road; the timeline, sequence of events from
24 Arran Crescent, from the previous night, to
25 Martyn Dick's house, all the way through to the members

Transcript of the Sheku Bayoh Inquiry

1 of the public in the cars seeing Mr Bayoh with a knife;
2 and thereafter the restraint. It became very clear as
3 we move through that day round about what had occurred,
4 obviously keeping an open mind to the hypotheses that
5 we've already discussed. But the critical aspect, as
6 an SIO, out of an IIO, what I was missing was what
7 actually occurred during the restraint, the use of force
8 and who did what.

9 So, to say that there is no need for statements is
10 totally against everything that I'm trying to drive
11 round about: this is a gap, this is an investigative gap
12 that exists, as an SIO, which -- as I say, this was the
13 first time that I'd ever come across police officers
14 involved in an incident, when you ask them for
15 operational statements it's refused.

16 Q. I'm going to come on to your own Inquiry statement,
17 because there's a couple of paragraphs that are quite
18 helpful, I think, in exploring this. But before we
19 leave the PIM log, if I may, can I just go through the
20 entries? When it says "take external clothing", do you
21 agree that that was something --

22 A. Yes.

23 Q. -- that was part of the discussion?

24 A. Yes.

25 Q. So that part is correct?

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1 A. Mm.

2 Q. And it was a PIRC enquiry?

3 A. Yes.

4 Q. And that's correct.

5 Can we move on to page 14, please. So this is
6 13.41, and we heard evidence from Conrad Trickett that
7 this is the part where you go into the canteen and speak
8 to the officers, and he says:

9 "Detective Superintendent Pat Campbell speaks to
10 officers.

11 "Provides initial circumstances of enquiry to date."

12 Do you remember if that is indeed what you did?

13 A. It did, yes, it was a general overview, yeah.

14 Q. Then it says:

15 "No suspicion on part of any officer."

16 Do you remember telling the officers --

17 A. No, I think it was more about their status I detailed at
18 this -- I said to them that the information and the
19 evidence we have at this point that your status is that
20 of witnesses.

21 Q. And while they were witnesses, was that because there
22 was no suspicion on the part of any of the officers?

23 A. Yeah, there was no reasonable cause to suspect, with any
24 of the evidence that we had obtained at that time, that
25 suspicion fell on them in respect of criminal conduct or

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1 even misconduct at that stage.

2 Q. So could you have conveyed to the officers that there

3 was no suspicion on any --

4 A. Yeah, it could have been taken like that, yeah.

5 Q. Then you say, sorry, in the PIM log it says:

6 "No injuries (visual) on deceased."

7 Does that say "occurred at the hospital"? Sorry.

8 "Examined".

9 A. Examined.

10 Q. Thank you very much.

11 A. Yeah.

12 Q. My ability to read handwriting isn't the best. So:

13 "No injuries ... on deceased.

14 "Examined at hospital."

15 Do you remember if that was information that you

16 shared with the officers?

17 A. I can't recall saying that, but I may have said that

18 just through the -- I didn't have anything written down,

19 it was just a ...

20 Q. So you don't have --

21 A. Just a recall --

22 Q. -- any notes --

23 A. No.

24 Q. -- prepared --

25 A. No.

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1 Q. -- as part of the discussion?

2 A. No.

3 Q. And then it says:

4 "5 loci of deceased movements during night."

5 A. Yeah.

6 Q. Do you recall whether that was part of your discussion

7 with the officers?

8 A. Yeah, yeah, I basically explained that we had timelined

9 the movements of the deceased through the night and

10 there was a number of locations which were now being

11 examined.

12 Q. And we've looked at your daybook and we've looked at the

13 other things that show the five loci --

14 A. Yeah.

15 Q. -- the forensic strategy meeting.

16 Then there's a line saying.

17 "Clothing in bags."

18 Now, from my recollection of Conrad Trickett's

19 evidence, he wasn't exactly sure in his recollection

20 about what that went, but do you remember talking to the

21 officers --

22 A. Yeah.

23 Q. -- about their clothing?

24 A. Yeah, it was about the fact we were looking to seize

25 their clothing and their officer safety equipment.

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1 Q. And if that clothing had been received and recovered,
2 would that have been placed in bags?

3 A. That was part of the forensic strategy which thereafter
4 happened later on when we brought them out individually
5 into the room and forensically recovered their clothing
6 and property.

7 Q. So, do you remember talking to the officers and
8 preparing them --

9 A. Yeah.

10 Q. -- for that possibility?

11 Then it says:
12 "No operational statements at this time."

13 A. Yeah, and the only thing I can think of in respect to
14 that is that: has Conrad simply meant at this time, as
15 in just now, whilst I'm speaking to them about actually
16 detailing their operational statement there and then?

17 Q. Because we see that phrase "at this time".

18 A. Yeah.

19 Q. Not only on page 14 in that section but also it's the
20 first line, "at this time".

21 A. Yeah.

22 Q. Which relates to the conversation prior to this.

23 A. Yeah.

24 Q. Do you remember if you could have said or did say "No
25 operational statements at this time"?

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1 A. No, I can't recall saying that, because I did emphasise
2 the fact we would be looking for statements from them
3 prior to them going off duty.

4 Q. So you did make a request --

5 A. Yeah, yeah.

6 Q. -- at the canteen that day?

7 A. Absolutely, yeah.

8 Q. And after that, then I think there's an entry:

9 "DCI Stuart Houston."

10 Do you remember discussing Stuart Houston with the
11 officers in the canteen?

12 A. No, I don't know if that's maybe Conrad detailing
13 Stuart Houston would be involved in the forensic
14 recovery of their clothing as crime scene co-ordinator.

15 Q. Now, we heard evidence from Conrad Trickett and we've
16 heard evidence from you yesterday that you're -- and you
17 were on that day extremely busy, and you had a lot of
18 things happening in a short period of time --

19 A. Yes.

20 Q. -- if I can summarise it that way. He did in evidence
21 talk about you having other pressures of time and he
22 thought you were going to meet with PIRC who were due to
23 attend at Kirkcaldy. Is it possible, because you were
24 busy that day, that perhaps you did say "No operational
25 statements at this time" and you've simply forgotten

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1 that you said that, or ...?

2 A. I just -- it's something I would -- would not say. As
3 an SIO, as identifying the gap in the investigation that
4 I was still overseeing was the fact that we had no
5 indication of what the officers involved in the
6 altercation at Hayfield Road did.

7 So, again, that discussion thereafter progresses
8 into the Gold Groups, it progresses into -- I think,
9 Keith Harrower indicates I speak to him about 3.30 about
10 the fact that officers are still not willing to provide
11 operational statements.

12 So it just doesn't sit -- it doesn't sit right with
13 me, to be honest with you. It's something that I would
14 not and I have never done through my full service when
15 we're looking for statements. I mean, that's your bread
16 and butter, I mean, that's exactly what you're looking
17 for.

18 LORD BRACADALE: Just on that point, can I ask you this: you
19 said a little ago that for the first time in 27 years
20 officers had refused to provide statements; at what
21 point in the day did you understand that the officers
22 were refusing to provide statements?

23 A. So I think as the day progressed, sir, that the initial
24 notification I believe was from Amanda Givan that the
25 direction that she was giving was until legal advice is

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1 sought not to provide it.

2 LORD BRACADALE: That's not a refusal in itself.

3 A. No, no. No, no. But through the course of that
4 afternoon, as I say, it became clear that the officers'
5 position was consistent with that advice from Amanda,
6 that they would not be providing operational statements.

7 LORD BRACADALE: And how did that become clear?

8 A. It came clear through discussions at the Gold Group
9 meeting, it came from some of the stuff that --
10 Nicky Shepherd spoke to them as well, and also that --
11 some of the information that I was getting from kind of
12 third parties back, saying that they would not be
13 willing to provide statements at this particular time.

14 LORD BRACADALE: I'm sorry, when you say "from kind of
15 third parties", you mean --

16 A. Yeah, so basically I was getting information coming from
17 the canteen, via Colin Robson and one or two others,
18 that their position was that they would not be providing
19 statements at that particular day.

20 LORD BRACADALE: Thank you.

21 MS GRAHAME: Just to be clear on that, in terms of providing
22 statements, was it your understanding that what was
23 being discussed was the equivalent of initial personal
24 accounts?

25 A. Yes.

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1 Q. In terms of the PIP procedure?

2 A. Yes.

3 Q. Rather than any other type of --

4 A. Yes.

5 Q. -- statement, operational or witness or otherwise?

6 A. Yeah, yeah.

7 Q. And was it your understanding that statements of that

8 more detailed nature would not --

9 A. No.

10 Q. -- have been provided --

11 A. No.

12 Q. -- by the officers on that day?

13 A. No.

14 Q. And you weren't expecting those more detailed statements

15 then, were you?

16 A. No, no, it was just that initial account or that initial

17 statement round about what occurred in that focused

18 aspect of Hayfield Road, what basically happened there.

19 I think it'd detail it in the SOP as this honestly held

20 belief around it. But, again, it was just about who was

21 there, who done what, what force was used, and justify

22 exactly what actually happened at that particular time.

23 Q. So when that language is used of "statements" or

24 "operational statements", looking back now, do you feel

25 there was any confusion in your mind between the nature

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1 of initial personal accounts and what was described as
2 operational statements or statements?

3 A. Yeah, I mean, I think there was a bit of confusion
4 around the whole aspect of that. When I spoke to Conrad
5 round about operational statements, Conrad came back to
6 me with "operational statements" and not "personal
7 initial accounts", so I think both of us knew what we
8 wanted -- I mean, what I was saying I was looking for,
9 the information regarding the restraint and the incident
10 at Hayfield Road, and I think from Conrad's evidence,
11 I think he even actually speaks to the officers as being
12 initial statements and not personal initial accounts,
13 because that wasn't actually -- I mean, the whole PIP
14 process was so new at that particular stage to
15 Police Scotland, I think this was the first time we'd
16 ever actually utilised it for a non-firearm related
17 discharge as such. So, again, there were real
18 challenges round about the understanding and the
19 expectation of what we were looking for. But, as I say,
20 it was clear in my mind what the gap in my investigation
21 was round about initial statements or personal initial
22 accounts was where the gap basically lay.

23 Q. We'll come to that in a moment.

24 A. Yeah.

25 Q. As I understood your statement, you hadn't actually had

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1 training in PIP --

2 A. No.

3 Q. -- at that stage --

4 A. No.

5 Q. -- on 3 May?

6 So you weren't trained in post-incident

7 procedures --

8 A. No.

9 Q. -- and the stages --

10 A. Yeah.

11 Q. -- that are set out within that SOP?

12 A. That's correct.

13 Q. Have you subsequently had that training?

14 A. I have, yeah.

15 Q. So does that mean that you're now, having had that

16 training, available to be appointed as a post-incident

17 manager?

18 A. No. So I'm trained due to the fact I'm a trained

19 strategic firearms commander. So as a firearms

20 commander, part of the inputs and the training you get

21 is around the process of PIP and the role of the PIM.

22 So I've not trained in PIP or as a PIM, but I've got

23 that awareness training because I'm a strategic firearms

24 commander.

25 Q. Right, so you have an awareness now of PIP --

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1 A. Yeah.

2 Q. -- the post-incident procedure, that maybe wasn't
3 available to you in 2015?

4 A. Yes.

5 Q. And do you think that lack of training and awareness
6 maybe has caused further confusion in relation to the
7 procedures in your own mind in May 2015?

8 A. So there was -- there was a distinct lack of awareness
9 in 2015 across Police Scotland around what PIP involved
10 and the various stages of it. I was aware of the SOP.
11 I came across it, I think it was about a year before, in
12 respect of -- I think I was on a mailing list for one of
13 the agencies down south where the extension had been
14 utilised for non-firearm related discharge, and I was
15 just kind of nosying, I was looking at the intranet
16 round about what the standard operating procedure up
17 here did say. But, again, looking at -- I looked at the
18 stages, but I did not go into any detail with them. So
19 with limited knowledge I had at that particular stage,
20 and again the understanding I had was that there had to
21 be a balance between the investigation and the welfare
22 and wellbeing of the staff around that, but again I was
23 relying -- I think the majority of the Gold Group were
24 perhaps relying on Conrad with -- as being the trained
25 PIM to come in and provide us with that direction,

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1 oversight, governance, staged approach to it and
2 basically how we could thereafter go through that.

3 Q. We heard that Conrad Trickett wasn't part of the
4 Gold Group meetings --

5 A. Yeah.

6 Q. -- and would have had, as I understood his evidence,
7 difficulty in educating everyone in relation to
8 post-incident procedures on the day in a real live
9 situation.

10 Looking back now, do you think having -- for
11 yourself and for others -- having more information and
12 education about PIP in those days might have been
13 beneficial?

14 A. Without a doubt. No, I mean, it's -- with hindsight,
15 I mean, Conrad should have been part of that Gold Group
16 with the crucial role that he was playing on that
17 particular day, to allow him to provide that more kind
18 of thorough overview of what his role involved as well
19 as enhance his engagement with PIRC, who were leading on
20 the investigation as such. So I think with hindsight it
21 would have been more beneficial at that time for
22 a trained specialist, who has went through the PIP
23 process and has experience, to brief less experienced
24 members of the team at that time.

25 Q. And we also heard that not just the individual officers

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1 may have lacked training in relation to PIP, but
2 I wonder if you were aware to what extent the PIRC at
3 that time -- they later joined the Gold Group meetings,
4 not the first one but later -- to what extent were they
5 aware of post-incident procedures and this distinction
6 between stage 3 initial personal accounts and the more
7 detailed stage 4 accounts?

8 A. I think they were similar to ourselves, it was pretty
9 limited knowledge that they had, if any at all. There
10 hadn't been any awareness training across
11 Police Scotland other than if they were an A4 firearms
12 officer or they were a PIM or they were a strategic
13 firearms commander or a tactical firearms commander.

14 So, again, that wider awareness -- and again, when
15 you look at the officers involved in this, they had no
16 awareness at all around this whole PIP process and what
17 that entailed. So, again, it was education to not just
18 them but to the Gold Group as well round about some of
19 the intricacies of PIP and what it did involve.

20 So, again, at that time we had -- we had not
21 deployed -- I couldn't recall any other deployments of
22 PIM -- sorry, PIP within Police Scotland over the first
23 two years frae 2013. This was certainly the first
24 deployment of PIP for a non-firearm related discharge
25 which we did not even have the standard operating

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1 procedure for. We had -- Conrad on that day had to
2 adapt the firearms SOP to basically incorporate his
3 approach to it as such.

4 So I think, in answer to your question, there was
5 distinct lack of awareness across both Police Scotland
6 and PIRC.

7 Q. Thank you.

8 You've mentioned a couple of times about you as SIO
9 identifying a gap in your knowledge.

10 A. Yeah.

11 Q. Just for completeness today, can we look at your Inquiry
12 statement?

13 A. Yeah.

14 Q. And paragraphs 95 and 97 are -- we won't get both of
15 them on the same page. If we start with 95, not quite
16 halfway down, but the sentence begins:

17 "The gap in my knowledge was that I was not aware of
18 exactly what had occurred with the key police witnesses
19 when they came into contact with Mr Bayoh on
20 Hayfield Road. In the absence of eyewitness testimony
21 at this stage, what were the actions and the use of
22 force of the individual officers involved while
23 retraining and arresting Mr Bayoh? That was the gap
24 that I had identified and I believe that it was
25 operationally critical to the investigation. This was

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1 why I was keen to seek the submission of their personal
2 initial account and/or operational statements. This is
3 the aspect that crosses over with my role and that of
4 the PIM more than any other."

5 Looking at that paragraph, is there anything else
6 you want to add about the process of identifying that
7 gap in your knowledge?

8 A. No, that was a significant gap in the investigation.

9 Q. And how did you believe at that time, as SIO, that you
10 would be able to plug that gap?

11 A. Operational statements or personal initial accounts.

12 Q. And when you say "operational statements", we've heard
13 the personal initial accounts were less than an A4 --

14 A. Yeah.

15 Q. -- and just the sort of much less detailed --

16 A. Yeah.

17 Q. -- than a stage 4.

18 A. Yeah.

19 Q. Is that the type of thing you were looking for?

20 A. Yeah. I mean, we didn't have, with hindsight now, the
21 basic facts as part of the process. So there was no
22 basic facts, there was no personal initial accounts
23 submitted. So, again, we had officers involved in the
24 restraint of Mr Bayoh at that time but the gap was, as
25 I said there, what did they do, what activity did they

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1 take, what was the force that was used? And again,
2 other than -- on that first day, you're talking -- as
3 you run through the investigation, you'll get CCTV,
4 you'll get eyewitnesses, you'll get stuff from
5 house-to-house or door-to-door, you'll get other
6 witnesses coming forward through media appeals. But to
7 get some sort of account of what the officers actually
8 did at that location, it was going to come from their
9 testimonies at that stage.

10 Q. How would that have helped you, as SIO, with the
11 investigation?

12 A. Because it would have filled that gap round about who
13 did what. What we had was a group of police officers
14 involved in some sort of restraint, but we did not know
15 which either or each of the officers actually did whilst
16 basically involved in the confrontation with Mr Bayoh.

17 Q. Then very briefly looking at a short paragraph,
18 paragraph 97, where you talk about the PIP process
19 sitting with Conrad:

20 "I explained in the briefing that there was
21 requirement for operational statements/personal initial
22 accounts (stage 3 of PIP). I told Conrad Trickett the
23 requirement and the need for them to account for their
24 actions and in particular their use of force. It sits
25 with Conrad however it's important for me in my

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1 investigation. With PIP activated, it is the remit of
2 the PIM to obtain this, not the IIO."

3 A. Yeah.

4 Q. And we understand that as SIO you were also the IIO.

5 A. Yeah.

6 Q. And so was it your understanding that, as post-incident
7 manager, Conrad Trickett would facilitate obtaining
8 those personal initial accounts?

9 A. Yes.

10 Q. And if that was your expectation, when would you have
11 expected that to be made available to you?

12 A. So before the close of play, before they went off duty
13 that day.

14 MS GRAHAME: Now, I'm conscious of the time.

15 LORD BRACADALE: Yes, we will adjourn there, then, until
16 Tuesday at 10 o'clock.

17 (4.16 pm)

18 (The hearing adjourned until 10 am
19 on Tuesday, 14 March 2023)

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