

Transcript of the Sheku Bayoh Inquiry

Wednesday, 15 March 2023

(10.00 am)

(Proceedings delayed)

(10.07 am)

DETECTIVE CHIEF INSPECTOR (RTD) KEITH HARDIE (called)

LORD BRACADALE: Good morning, Mr Hardie. Would you take
the oath?

THE WITNESS: Yes.

(Witness sworn)

LORD BRACADALE: Ms Grahame.

MS GRAHAME: Thank you.

Questions from MS GRAHAME

MS GRAHAME: Good morning.

A. Good morning.

Q. You are Keith Hardie?

A. Yes.

Q. What age are you, Mr Hardie?

A. I'm 60.

Q. And as I understand it, when you retired, you retired as
a detective chief inspector; is that correct?

A. That's correct.

Q. And you had been in the police service for 28 years --

A. Yes.

Q. -- when you retired?

A. No, at the time of the incident.

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1 Q. Oh, at the time of the incident, sorry. How many years'
2 service did you have when you retired?

3 A. 31.

4 Q. Thank you. You were in the -- or attached to the
5 specialist crime division in the East Major
6 Investigation Team?

7 A. Yes, that's correct.

8 Q. And based in Leith, in Edinburgh?

9 A. Yes.

10 Q. Explain what area did your team cover?

11 A. Initially I was Lothian Borders Police so we covered
12 Lothian and Borders but obviously in 2013 we became
13 Police Scotland, so I had responsibility for the east of
14 Scotland although I was deployed throughout Scotland in
15 my role as senior investigating officer.

16 Q. We've heard from other witnesses that the MIT, as they
17 refer to your team --

18 A. Yeah.

19 Q. -- can be all over Scotland and deployed in different
20 areas; is that right?

21 A. That's correct, yeah.

22 Q. And you say you were SIO?

23 A. Yes.

24 Q. Is there only one team or are there different teams
25 within the Major Investigation Team?

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1 A. No, there are a number of officers who form enquiry
2 teams as and when a homicide, which is primarily what we
3 dealt with, so when a homicide's reported we would bring
4 together a team from our resources all within the Major
5 Enquiry Team.

6 Q. So any homicide, any murder, culpable homicide in
7 Scotland could involve members of the Major
8 Investigation Team?

9 A. It would involve, yes.

10 Q. Definitely would involve?

11 A. Yes 100%.

12 Q. And how quickly were members of the team brought in to
13 deal with unexplained deaths?

14 A. As soon -- basically the initial response would be the
15 divisional, the uniform, the CID. The minute there was
16 enough evidence to suggest it was a homicide or it was,
17 you know, suspicious, if you like, then there would be
18 an approach to the Major Investigation Team to come and
19 oversee it, I suppose, and potentially take it on.

20 Q. Tell us, in your work with MIT, how many unexplained
21 deaths or suspicious deaths were you dealing with?

22 A. At one time?

23 Q. In general, how often would you be called into action?

24 A. I think we were always in action, you know, once you're
25 deployed to a murder enquiry, for example, you can be

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1 there for a number of months, even longer, you know, if
2 it's not easily resolved. So the team would always be
3 in action somewhere but we would always have the
4 capacity to put a team together to attend and deal with
5 reported homicide or suspicious deaths.

6 Q. Can you give us an indication of how many deaths in
7 a year would you be dealing with?

8 A. It varies, probably somewhere in the region of 12, maybe
9 more than that, you know, depending on, you know, as
10 they were covered.

11 Q. Of course. Of course.

12 A. We would sometimes go into or take on an investigation
13 and establish there were no suspicious circumstances, in
14 which case it would be passed back to the division to
15 deal with and cede to that division. Our job within the
16 Major Investigation Team, because we were a specialist
17 crime division, would be to take on homicides,
18 basically. That was the core of our workload.

19 Q. So you'd be dealing with multiple deaths every year --

20 A. Yes.

21 Q. -- in your work?

22 A. Yeah.

23 Q. And how many years, remind us, you worked in that team?

24 A. I think it was about seven or eight years I was in the
25 Major Investigation Team.

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1 Q. So from that whole period of time that was what you
2 were -- that was your daily work?

3 A. That was my core role.

4 Q. And you were the senior investigating officer --

5 A. Yeah.

6 Q. -- in MIT?

7 A. Yes.

8 Q. And we've heard other evidence about the role of an SIO.

9 A. Yeah.

10 Q. So, I noticed in your -- I'll come on to your statements
11 in a moment -- I noticed in your statement that you'd
12 said you were SIO that day, and we've heard evidence
13 that Colin Robson was a duty on-call SIO for Fife
14 division, we've heard evidence that Pat Campbell, the
15 detective superintendent --

16 A. Sure.

17 Q. -- was appointed SIO. You weren't SIO for the
18 Sheku Bayoh incident, were you?

19 A. No. No. It was a Sunday, I wasn't on call on
20 the Sunday. We have obviously an on-call process where
21 somebody is available to come out and deal with anything
22 that's just been reported. I wasn't on call that
23 weekend but I was contacted by
24 Detective Chief Superintendent Lesley Boal, who asked me
25 to attend Kirkcaldy to assist in the investigation of

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1 a death after police contact, obviously Sheku.

2 Q. We'll come on to that in more detail, but I just wanted

3 to be clear, because we appeared on paper to have three

4 SIOs and we have heard there was only one

5 allowed really--

6 A. I was never appointed SIO for this.

7 Q. But that is your normal work?

8 A. Yes.

9 Q. Or was your normal work --

10 A. Yes.

11 Q. -- at the time? Thank you so much.

12 Could I explain, first of all, there's a blue folder

13 in front of you which you have opened.

14 A. Yeah.

15 Q. That contains hard copies of your statements.

16 A. Sure.

17 Q. Please feel free to refer to them at any time if you

18 wish. If there's something you'd like me to draw

19 attention to, we can bring a section up on the screen.

20 A. Okay.

21 Q. But when I maybe ask you questions about your Inquiry

22 statement, if I need you to explain something in

23 a little more detail, it will come up on the TV screen

24 in front of you.

25 A. Yeah.

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1 Q. But you can use that blue folder throughout.

2 A. Okay, thank you.

3 Q. Can we look, first of all, at a witness statement

4 PS00667. I think this is a self-penned statement.

5 A. Yeah.

6 Q. So others have called them operational statements, and

7 this is from yourself, Detective Chief Inspector

8 Keith Hardie, and it was -- the address given is Leith

9 Police Station in Edinburgh?

10 A. Yeah.

11 Q. And then if we can just move down that page, please, and

12 we see it's 27 May 2015.

13 A. Yeah.

14 Q. And it was at 8.00 in the morning by yourself?

15 A. Yeah.

16 Q. So this is effectively your equivalent of an operational

17 statement?

18 A. That's correct, yeah.

19 Q. I think in your Inquiry statement, which I'll come on to

20 in a moment, you said that you provided this particular

21 statement that's on the screen to PIRC?

22 A. Yeah.

23 Q. And you provided a true and accurate account to the best

24 of your recollection at the time, and you say the

25 statement you have here would be the most accurate

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1 because it was provided at the time as opposed to
2 seven years later, which is when you've provided your
3 Inquiry statement?

4 A. Sure, yeah.

5 Q. And you say:

6 "Because my involvement was limited, I do have
7 a good recollection of what was involved in relation to
8 what happened."

9 We will come on to that. So I will ask you further
10 questions today about it, but I think from what you said
11 in your Inquiry statement, this statement of 27 May was
12 prepared closest to the time, and if there's any
13 difference, should the Chair prefer this version?

14 A. Yes, absolutely.

15 Q. Thank you.

16 Can we look at your Inquiry statement now, please,
17 SBPI 00230. You will see on the screen this is the
18 Inquiry statement taken by the Inquiry on 2 November
19 last year, and this is your Inquiry statement. If we
20 can look, it's 25 pages, I think, if we can look at the
21 final page, please, and we see there it's redacted on
22 the screen but on your copy it may not be, and you've
23 actually signed it on every single page, and that was on
24 12 January this year.

25 A. Yeah.

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1 Q. You will see the final paragraph, 104, there says:

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

6 A. Yes.

7 Q. And you understood that when you signed?

8 A. Absolutely, yeah.

9 Q. I've asked you a little about your experience, and
10 you've explained, and you explained in this statement,
11 that you had quite limited involvement with the events
12 leading to Mr Bayoh's death. Could you explain to the
13 Chair how long you were involved in the investigation
14 regarding Mr Bayoh's death?

15 A. A matter of days. Around about the time of my call-out
16 to Kirkcaldy, I became aware that the PIRC were coming
17 out of -- I think, I can't recall whether they were
18 actually there before me, but my understanding was that
19 the PIRC were coming on to take primacy in the
20 investigation. So my role at the time was basically to
21 take an overview of that handover, if you like, of the
22 investigation from Police Scotland to the PIRC, and to
23 facilitate any requests on behalf of the PIRC.

24 So other than -- my involvement in the enquiry was
25 a matter of days, and after I, I suppose, attempted to

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1 interview the police officers, that is basically where
2 my involvement ended because, you know, I suppose the
3 terms of reference agreement was set up by that time and
4 there was no requirement for me at Kirkcaldy. I still
5 obviously had my core job back at Leith.

6 So a matter of days. After, I don't recall the
7 dates that, you know, I spoke to the police officers
8 involved in an attempt to get a statement from them, my
9 recollection is I had no more involvement in the
10 investigation whatsoever.

11 Q. We'll come on that. We've heard about the roles of
12 Colin Robson and Pat Campbell, and we've heard about the
13 gold, silver --

14 A. Yeah.

15 Q. -- the command structure that was put in place and
16 headed by ACC Nicholson --

17 A. Yeah.

18 Q. -- and others who were involved.

19 A. Yes.

20 Q. You've mentioned Lesley Boal, who contacted you that
21 morning.

22 A. Yeah.

23 Q. Can you explain to the Chair what your role was, did it
24 have a special name, was it simply that you were to, as
25 you say, facilitate requests from PIRC?

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1 A. It didn't have a special name. I wasn't called out for
2 any particular role. I've known Lesley all my service.
3 I knew Lesley was on call that weekend. She contacted
4 me and obviously it was a major incident we were dealing
5 with here, a significant incident, and she asked if
6 I could come out and assist with that. You know, it was
7 in its very early stages at the time, and obviously as
8 these enquiries evolve there can be specific parts of
9 the enquiry that take precedence over others. So my --
10 I suppose my role at the time was to come out, oversee
11 the handover to the police -- to PIRC basically -- and
12 to assist the PIRC with any requests that they made to
13 Police Scotland.

14 This was the first incident certainly I was involved
15 with where the PIRC came out and took precedence in
16 an enquiry, so it was kind of ground breaking, if you
17 like, so, you know, there was a process in place where
18 it was -- this was a first, in my experience, and
19 I think -- I'm not exactly sure, but the PIRC were
20 fairly much in their infancy as an organisation at the
21 time, and it's certainly the first time I was involved
22 in an enquiry where they came out and took over.

23 Q. So it was the first time you'd been involved in
24 an enquiry where PIRC took over --

25 A. Yes.

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1 Q. -- an unexplained death?

2 A. Yes.

3 Q. We've heard others say it was the first time --

4 A. Sure.

5 Q. -- that they'd been involved. When you were contacted
6 and got involved, do you remember what time that was?

7 A. I don't, but my initial statement says 3 o'clock, and
8 I accept that. My belief was it was perhaps a bit
9 earlier than that, but if that's what I've noted in my
10 statement then that's probably accurate.

11 Q. And what resources did you bring with you? You're
12 an SIO at MIT, you have been contacted to get involved,
13 it's the first time PIRC have been involved, there's
14 an unexplained death; what did you bring with you to
15 Kirkcaldy?

16 A. Nothing, just me.

17 Q. Just you?

18 A. Yeah. Obviously Lesley Boal being on the ground and
19 being on call at that weekend, it would be her
20 responsibility to bring the resources together to assist
21 in this investigation, I'm one of the people she
22 contacted -- I never called out a team. This, this was
23 a unique event in my police service, if you like.
24 I wasn't on call, for a start, and it was -- basically
25 I was asked by one of my senior officers to come out and

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1 assist in an investigation, and once I'd been given the
2 briefing from Lesley Boal I understood the significance
3 of it, so attended there to assist as requested by her.

4 Q. Tell us about the briefing that you got from
5 Lesley Boal.

6 A. To the best of my memory, the briefing I got on the
7 phone from Lesley was there'd been a call in the early
8 morning in relation to a male in possession of a knife,
9 police had attended, the male had been apprehended and
10 had since died after Police contact that was the brief
11 summary of what -- so when I left to attend Kirkcaldy,
12 in my mind that's what I was going out to assist to deal
13 with.

14 Q. Did you have any beliefs about the nature of the
15 situation, or was that simply the information you'd been
16 given?

17 A. No beliefs whatsoever. No. I mean, I based what I was
18 going out to on the very short telephone conversation
19 I had with Lesley, because I think at that time,
20 you know, as I said, I wasn't on call, so I wanted to
21 get home, get changed, and get there as soon as
22 possible, get on the ground as soon as possible to
23 assist in any way, that I could and obviously once you
24 get there you get a better idea.

25 I mean, I'd never attended Kirkcaldy Police Station,

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1 I didn't have access to Kirkcaldy Police Station, and
2 I'm just saying that to explain how groundbreaking this
3 was. I knew nobody in Kirkcaldy Police Station because
4 obviously it used to be Fife and we had limited/no
5 dealings with Fife.

6 Q. Had you ever had any contact with Kirkcaldy Police
7 Office or Fife really in general?

8 A. Minimal. I might have -- I mean, years and years ago
9 I worked on an internal inquiry, and I do recall
10 visiting Fife to interview police officers, but not
11 really, no. I mean, it was all new to me. As I said,
12 when I turned up at the station I had no way of
13 accessing the station because it was groundbreaking.

14 Q. So you didn't really know anyone there?

15 A. No.

16 Q. Or have any prior relationship with anyone there?

17 A. Not at all, absolutely.

18 Q. And you wouldn't have known any of the officers who'd
19 attended at Hayfield Road or any of that?

20 A. No, no.

21 Q. Can I ask you to look at paragraph 28 of your Inquiry
22 statement. So you're obviously there to facilitate
23 requests from PIRC. I'm interested in what contact you
24 had with PIRC. Maybe you could tell us a little bit
25 about that.

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1 A. Yeah. Again, based on my recollection, there was
2 a Gold Group meeting which Mr Nicholson chaired, at
3 that --

4 Q. We've heard there was one at 11.30 and we've heard that
5 you weren't at that meeting.

6 A. No, no.

7 Q. Is that the meeting you're referring to?

8 A. No, there would have been one later on. I was certainly
9 at one Gold Group meeting which Mr Nicholson chaired,
10 and it certainly wasn't the one at 11.30 because
11 I wasn't in attendance at Kirkcaldy at the time. So
12 there was a meeting that Mr Nicholson chaired.
13 I couldn't tell you the time, but I was present at that
14 meeting.

15 Q. We've heard that you were present at a Gold Group
16 meeting at 14.40 hours in the afternoon.

17 A. Possibly. Therefore the timing of the contact with
18 Lesley Boal is clearly wrong, if I did attend that
19 meeting. I always thought I was out earlier than that
20 time, to be honest with you, and I can't explain the
21 discrepancy in my statement, but --

22 Q. That's fine. So I think your recollection is it was
23 earlier that you were contacted --

24 A. Yes.

25 Q. -- and earlier you attended. If we've heard and the

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1 minutes show that you attended a meeting at 14.40 at
2 Kirkcaldy, then that would seem to support your
3 recollection rather than the time in your statement.

4 A. Absolutely. Clearly -- I can't explain why it's wrong.
5 I remember when I read my statement I thought it was
6 earlier than that, but yes, if the minutes show I was at
7 that meeting, and I was at a meeting that was chaired by
8 Ruairaidh Nicholson, because that was my first meeting
9 with the officers from PIRC.

10 Q. How long did you arrive at Kirkcaldy prior to that
11 meeting; do you remember now?

12 A. Not long. Not long. I would be guessing, but an hour
13 or so before it, perhaps.

14 Q. Right. And to go back to my question, I'd said you have
15 explained you were there to facilitate the requests from
16 PIRC?

17 A. Yeah.

18 Q. And I'd asked you to tell us about the contact --

19 A. Yeah.

20 Q. -- the relationship you had with PIRC that day.

21 A. So the first meeting I had with the officers, I don't
22 know if that's the right term for them, but the
23 individuals who came out from PIRC was at that
24 Gold Group meeting with Mr Nicholson when I remember the
25 sort of senior officers from PIRC was present.

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1 I thereafter spoke with him and a colleague to
2 establish what they required of us, because by that time
3 I was aware that they were taking primacy in relation to
4 it, and ... I don't remember much about the meeting.
5 I'm being totally honest here. I notice there I said
6 the relationship wasn't very good, I think. It wasn't
7 bad, but it was very much standoffish. This was, as
8 I say, groundbreaking that somebody was coming to take
9 charge. I had no issues with them taking charge, but
10 I think it was groundbreaking for them.

11 Now, the majority of the PIRC were previous
12 detectives, retired detectives from the west, Glasgow,
13 that was my recollection of the individuals that I met
14 at the time. Not all, but there was a number of them
15 who were retired police officers.

16 So I suppose the best way to describe it is maybe
17 a wee bit standoffish, you know, because we weren't
18 entirely -- I don't think either of us were comfortable
19 about this new groundbreaking process whereby we took
20 a step back and acted as agents for them, if you like.
21 No issues with it, we did, you know, if there was
22 a request came in to me, "We want this done or that
23 done", or whatever, I would do it without any -- you
24 know, at the end of the day it was the
25 Procurator Fiscal's decision that the PIRC should come

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1 out so I never had an issue with it, it was just
2 something I wasn't used to.

3 Q. We've heard evidence that the officer, the
4 investigators, I think they're often called, from PIRC
5 that were at that 2.40 meeting, the 14.40, were
6 Keith Harrower and John Ferguson. Do you remember those
7 names?

8 A. No, I don't remember.

9 Q. And you've mentioned their position, they were -- the
10 majority were retired police officers?

11 A. That was it. I think they weren't, but it was
12 an impression I got anyway, and I think that was,
13 you know, something I might have been aware of prior to
14 my attendance that day, that, you know, there was a lot
15 of retired detectives from Glasgow, the west of
16 Scotland, who had since joined PIRC. And I did know
17 a couple of them, you know, from my police career.

18 Q. What impact, from your impression of a number of people
19 being former or retired police officers from
20 a particular area --

21 A. Yeah.

22 Q. -- Glasgow and the west, what impact did that have on
23 you in your role, because you obviously were working in
24 the east. What was your impression?

25 A. No issue with it obviously, because, in my mind, they

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1 were previous detectives. In my mind they were
2 experienced at doing what they were about to do, because
3 they were experienced investigators.

4 Q. Did you have any knowledge or awareness at that time of
5 what their rank had been in Glasgow, the west, when they
6 were officers?

7 A. A couple of them, yeah, but generally speaking, no.
8 Again, I've -- my memory is, I think there was a retired
9 detective chief super, although I don't think he was
10 called out, I think he was the head of the PIRC who
11 I knew from previous -- my time in the police. But
12 I would say probably my recollection was they were
13 senior officers prior to retiring and joining the
14 PIRC...

15 Q. And you've said the majority from Glasgow or the west;
16 do you remember where the others came from?

17 A. I remember speaking to a fairly young guy who had no
18 police experience whatsoever, but again I don't --
19 you know, I don't recall specifics, but I think it was
20 at the post-mortem, which I attended at a later time,
21 I ended up meeting this guy who wasn't a retired police
22 officer but was a member of PIRC.

23 Q. We heard some evidence -- well, before I mention that,
24 do you remember how many people from PIRC were in
25 Kirkcaldy on the afternoon of 3 May?

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1 A. To be honest with you, I would be guessing. I think --
2 I would be guessing. I knew there was one, I don't know
3 if it was Keith Harrower or whoever, who was present at
4 the Gold Group meeting, but I suppose they would have
5 been called out as well and perhaps arrive not all at
6 the same time but I couldn't tell you, I would be
7 guessing at four or thereabouts, something like that.

8 Q. We've heard evidence from Pat Campbell that he thought
9 there were about four or five?

10 A. Yeah.

11 Q. Is that~..?

12 A. Yeah.

13 Q. When you arrived at Kirkcaldy, were you introduced to
14 the people who were there from PIRC?

15 A. No. No. I don't think they were there when I got
16 there. I don't know, but no, there was no introduction,
17 because -- no, I wasn't introduced. It was the meeting
18 with Mr -- that Mr Nicholson chaired that I became aware
19 of who they were. Because they were in attendance ...
20 and I think there would only have been one, because
21 obviously a Gold Group meeting is -- it's not everybody
22 that's involved in the case that's -- I suppose your
23 senior individuals from the different disciplines who
24 sat round the table for the meeting.

25 Q. We have heard evidence that Keith Harrower was from

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1 PIRC, and the minutes show he was from PIRC, and we've
2 heard the name John Ferguson was also there.

3 A. Okay.

4 Q. We've heard him in connection with PIRC.

5 A. Yeah.

6 Q. Do you remember if there was two people associated with
7 PIRC or ..?

8 A. I honestly can't remember.

9 Q. You've talked about this 14.40 meeting, and after --
10 sorry, before that meeting, did you have a briefing from
11 anyone?

12 A. I probably had a discussion with Lesley Boal, you know,
13 and --

14 Q. She was at Kirkcaldy when you arrived?

15 A. Yes, yes, she was.

16 Q. Tell us about that discussion.

17 A. This is -- I must stress this is from memory only.

18 Q. Of course, yes.

19 A. But my recollection of the briefing I had from
20 Lesley Boal was that the police had got called to a male
21 in the street in possession of a knife. When the police
22 attended, he went for or ran towards the female police
23 officer, in possession of a knife. She ran away and he
24 tripped her which caused her to fall to the ground, at
25 which point the other officers arrived and, I don't know

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1 if this is the correct word, but descended on the
2 individual who had gone towards the female police
3 officer. That is 100% what I was told at the time.

4 Q. Thank you.

5 I think you were asked about this in your Inquiry
6 statement?

7 A. Yeah.

8 Q. So let's look at paragraph 34, and there's another one
9 as well, 55, which we'll come on to in a moment. Let's
10 look at 34 first of all, and it says:

11 "From my recollection only, when I got to Kirkcaldy
12 I established, now I can't be sure where I established
13 this, but I established that the male had been walking
14 along the road in possession of a knife. He'd been
15 stabbing the knife at parked cars, is my recollection.
16 The police were called. They attended and they
17 attempted to apprehend him. One of the [police]
18 officers was approached by the male and she turned and
19 ran off, at which point she clipped her legs and she
20 fell to the ground. At this point, he was still in
21 possession of the knife, and the other officers who had
22 attended the scene overpowered him, and they were in
23 fear of their colleague's safety."

24 So that's paragraph 34. I'll look straightaway at
25 paragraph 55, because you give some further information,

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1 and then I'll ask you some questions about it:

2 "I had this clear picture in my mind of -- I met the
3 female who was assaulted, a very, very petite
4 individual -- running away, being tripped by the legs of
5 the male and the other officers reacting to that because
6 the male was in possession of a knife. So can I say,
7 I'm not saying 100 per cent that's what happened.
8 I wasn't there, but that was the picture that I had in
9 my mind and still do have because of what I was told on
10 that day."

11 So can we go back to 34, first of all, just to get
12 you to clarify one or two points, please.

13 So as I understand it, this is the briefing you
14 received prior to going into the Gold Group meeting?

15 A. Yes.

16 Q. At 14.40?

17 A. Yeah.

18 Q. And it says here:

19 "... the male had been walking along the road in
20 possession of a knife. ... stabbing the knife at parked
21 cars... The police were called. They attended and they
22 attempted to apprehend him."

23 Then you mention the female officer. You say she:

24 "... was approached by the male and she turned and
25 ran off~..."

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1 Was that, as far as you recall, the first thing that
2 happened, she approached the male and then -- sorry, the
3 female officer was approached by the male and she turned
4 and ran off?

5 A. Yes.

6 Q. And then you say:

7 "... clipped her legs and fell to the ground."

8 Now, in paragraph 55 you then talked about:

9 "... being tripped by the legs of the male~..."

10 A. Yeah.

11 Q. I wonder if you could just explain a little bit more to
12 the Chair --

13 A. Sure.

14 Q. -- what your recollection is of that briefing?

15 A. The best way I could describe it, and as it was told to
16 me, was a tap tackle, like the male using his leg to, as
17 the female's running away, to trip the individual, so to
18 knock one leg behind the other to cause her to fall
19 over. That's how it was described to me, not in so much
20 detail, but, you know, when I say "tripped" or
21 "clipped", that's what I was referring.

22 Q. So that's how you understood --

23 A. Yes.

24 Q. -- the description?

25 A. Yes.

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1 Q. Do you remember exactly what Boal said to you in
2 relation to that aspect? We've heard Lesley Boal wasn't
3 at the scene, so I'm quite interested in what she shared
4 with you.

5 A. Just exactly as it said there. You know, the picture in
6 my mind, and it's a picture I developed after the
7 information I got from Lesley Boal -- I wasn't there,
8 but the picture that developed in my mind was the police
9 attending because this guy was in possession of a knife,
10 the police approaching the individual, the individual
11 running towards the female, who ran away, he tripped
12 her, causing her to fall, and at around that time other
13 officers apprehended him. Apprehended him, descended on
14 him, I know that's perhaps not the right terminology.

15 Q. Thank you. You say at paragraph 34:

16 "At this point, he was still in possession of the
17 knife, and then the other officers ... overpowered
18 him~... in fear of their colleague's safety."

19 I think you say that again in paragraph 55:

20 "... because the male was in possession of a knife."

21 Was it your understanding from the briefing from
22 Lesley Boal that the man at the scene remained in
23 possession of a knife?

24 A. Absolutely, that was my understanding from the briefing.
25 But, you know, this -- the information was sketchy at

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1 the time, but nonetheless -- I'm not saying that's what
2 happened, that's what I was told had happened --

3 Q. Yes.

4 A. -- when I attended at Kirkcaldy.

5 Q. Thank you.

6 What impact did that have on you and the role that
7 you played that day in the events? What difference did
8 that make to you?

9 A. None. Nothing. Because at the end of the day, as
10 I say, I worked with Lesley all my service, huge respect
11 for her, the fact that she'd asked me to come out,
12 I knew -- obviously the circumstances dictate this is
13 a major incident. This is a -- however you want to call
14 it -- death after police contact, death in police
15 custody, but a serious, serious incident. A serious and
16 tragic incident.

17 So ... and how did it happen, I suppose, would be my
18 job as an investigator to find out how it happened, if
19 I had been appointed the SIO in the role. And what
20 I got from Lesley was -- it had to be what she was told,
21 so you're talking about third or fourth-hand
22 information, but as far as I'm concerned for my
23 statement, that was the information I was given at the
24 time. And, you know, nothing I did during my time at
25 Kirkcaldy -- you know, nobody came to me and said, "Oh,

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1 apparently this isn't what happened", you know there was
2 nothing, there was no information I got in my role that
3 would suggest anything different to me other than what
4 I was told initially.

5 Q. And was it any part of your role to be involved in or to
6 consider different hypotheses about what happened or to
7 identify priority actions or lines of investigation?

8 A. It would have been, but the difference was the PIRC were
9 taking it over, so therefore that was no longer my role.
10 If I'd been appointed the SIO, I would absolutely have
11 been looking at scene protection, if you like, looking
12 at major lines of enquiry. They talk about the golden
13 24 hours when something's reported, the first 24 hours
14 are massively significant because, you know, that's your
15 sort of best chance to secure any available evidence, so
16 I would be looking at house-to-house investigations as
17 a priority, to get out there and try and identify
18 anybody who may have witnessed some or all of this
19 incident. But it wasn't my role at the time, because
20 the PIRC were ...

21 Q. Did anyone ask you to help with that type of thing,
22 given your experience?

23 A. No. No.

24 Q. Er --

25 A. I don't recall anybody asking me.

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1 Q. I'm interested, you've said the golden hours are the
2 first 24 --

3 A. Yeah.

4 Q. -- is that a normal sort of~..?

5 A. It's a sort of recognised terminology when you're
6 dealing with an incident, that your first 24 hours are
7 the golden hours. They talk about the first hour, but
8 your first 24 hours are where your best opportunities
9 are to gather evidence that may be of significance to
10 investigate what you're dealing with.

11 Q. Can I ask you, when you've said that you went into the
12 14.40 hours Gold Group meeting and you met at least one
13 person from PIRC --

14 A. Yeah, yeah.

15 Q. We've heard that was Keith Harrower at that meeting.

16 A. Yeah.

17 Q. Did you have a clear understanding at that time what the
18 remit of PIRC was? You've talked about them taking
19 primacy, I think was the word you used, over the
20 investigation. Did you have a good understanding of
21 what aspects of the investigation they were taking over,
22 or not?

23 A. Yeah, my understanding was they were taking over
24 everything, every line of investigation. They were
25 taking over the enquiry but we were to assist them as

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1 agents to them, if you like. So, if Keith Harrower had
2 come to me and said, "I want this, this and this done",
3 we would obviously have access to far more resources
4 than they do, I would then get officers -- we would
5 arrange to raise the action and get officers from
6 Police Scotland to carry out these actions.

7 However, I can remember, for example, I think
8 house-to-house investigations, the PIRC said they wanted
9 to do that themselves, which is absolutely fine,
10 you know. As far as I was concerned you're in charge,
11 you tell me what you want done and I'll facilitate it
12 for you. That's what became my role on the Sunday and
13 thereafter.

14 Q. So we've heard that -- well, you used the word "we":

15 "... we have access to ... resources~..."?

16 A. Yeah.

17 Q. And I'm interested, you said that you arrived yourself,
18 with your experience, on the 3rd. And when you talk
19 about access to resources, what did that mean for you?

20 A. Well, for example, if you take the PIRC out of it, and
21 it's a normal, you know, a homicide enquiry, your gold
22 commander in the Gold Group process -- I, as SIO, would
23 go to the gold commander and say, "I want a team of 12
24 uniformed officers and a house-to-house co-ordinator to
25 be appointed by you and to be with me as soon as

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1 possible so we can carry out house-to-house enquiry"

2 Q. So if you were being brought in as SIO and you wanted
3 a team to work with you on an unexplained death, how
4 many officers would you -- or members of the police
5 would you be looking for to help you with that?

6 A. It would depend, I mean, it would depend on the nature
7 of the investigation, if you like.

8 If -- I mean, we had specialist roles, you know, so
9 me, as an SIO, I would always have a deputy, I would
10 always have a crime scene manager, who, you know, as the
11 title dictates, would manage the crime scene. We would
12 have family liaison officers who would liaise with the
13 family of the victim, all specially trained in their own
14 discipline. We would have a house-to-house co-ordinator
15 who would co-ordinate the house-to-house, and a CCTV
16 co-ordinator. His job would be -- or his or her job
17 would go to go and review the area and question to
18 identify any potential opportunities of CCTV.

19 So these would all be appointed by me immediately if
20 I was the SIO. And then after that you'd have your
21 enquiry teams, who would basically go out and interview
22 witnesses and carry out any other investigations in
23 relation to the crime itself.

24 So typically you would have all these experts,
25 family liaison officers, the ones I've referred to you,

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1 I would have a deputy to act for me in my absence as
2 the enquiry progressed, and then enquiry teams -- you
3 might have six or seven enquiry teams which are reduced
4 later on dependent on how the enquiry goes, you know.
5 If it's involved fairly quickly then you would be
6 talking about a reduction in your enquiry teams because
7 there's less to do and there's demands elsewhere. If --
8 I mean, I've had -- I've managed enquiries when I've had
9 maybe 25 to 30 enquiry officers carrying out various
10 enquiries, but you would always have your core of
11 experts there when you realise what you were dealing
12 with.

13 Q. So at the sort of head of that investigation team you'd
14 have yourself as SIO, a deputy SIO, crime scene manager,
15 family liaison officer, house-to-house co-ordinator,
16 CCTV co-ordinator.

17 A. Yes.

18 Q. You would have maybe six or seven enquiry teams?

19 A. Yeah.

20 Q. How many would be in the enquiry team?

21 A. Two, two.

22 Q. Two in each team?

23 A. Yeah, yeah.

24 Q. And they would be doing different parts of the enquiry,
25 taking witness statements, doing other investigations --

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- 1 A. Yes.
- 2 Q. -- and that type of thing, and you could have maybe 25
- 3 to 30 people --
- 4 A. On a larger enquiry. Basically the way the police
- 5 operated, and rightly so, is the minute you solved it,
- 6 if you like, you know, you've got the person in custody,
- 7 then I would review it as SIO to say: do I need this
- 8 amount of resources, because we're now satisfied we've
- 9 got the person responsible? There's still a lot of work
- 10 to do after that point, but it would normally result in
- 11 maybe two enquiry teams staying with the enquiry until
- 12 the end, if you like, and the rest would be able to be
- 13 deployed elsewhere.
- 14 Q. And if there were five separate loci, would that
- 15 increase the size of that team or would that be
- 16 accommodated within what you've described?
- 17 A. When you say a loci, five loci, what do you mean by
- 18 that?
- 19 Q. Let me explain the circumstances that we have heard
- 20 evidence about here. So there was the Hayfield Road,
- 21 where Mr Bayoh was restrained, but in addition there was
- 22 the hospital that he was taken to where he ultimately
- 23 passed away, there was his partner's address and his
- 24 address --
- 25 A. Yeah.

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1 Q. -- relatively near to the Hayfield Road area, and that
2 she had made a call in the morning saying he wasn't
3 there and there had been signs of a disturbance --

4 A. Yeah.

5 Q. -- and that house was seized. There was the property of
6 his friends, who he had been to in the early hours prior
7 to going to Hayfield Road, and there was -- we've heard
8 some evidence about an incident with a friend which had
9 occurred at roughly between 6.30 and 7 o'clock in the
10 morning where his -- there was evidence available, we've
11 heard from Pat Campbell, that he had -- the friend had
12 removed his clothing and put it in a laundry basket in
13 the bathroom of his family home, and that was another
14 area where the police attended.

15 A. Yeah.

16 Q. So that's the five, as I understand it.

17 A. Okay, yeah, yeah.

18 Q. So the actual incident itself at Hayfield Road was one
19 location, but there were other locations identified
20 where work needed to be done --

21 A. Yes.

22 Q. -- by the investigative team?

23 A. Without a doubt, without a doubt, yeah.

24 Q. So that's what I mean when I say five.

25 A. Yeah.

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1 Q. So in terms of the investigative team, if you'd been an
2 SIO in that situation, would that have expanded the team
3 numbers or would you have been able to accommodate it
4 within the numbers you've described?

5 A. Based on my experience -- and I totally get, you know,
6 there's four addresses, places of interest to us, right.
7 If I had been the SIO in that investigation my take on
8 it would have been: Sheku Bayoh was walking along the
9 road unharmed, right. After police contact he's dead.
10 So your number one priority has to be around the scene
11 of where he was apprehended.

12 The four other scenes I would describe as secondary
13 scenes where I accept you might get witness evidence as
14 to, for example, what Sheku had been doing or how he'd
15 been acting, et cetera, et cetera, but because we had
16 evidence of Sheku being fit and well, you know, not
17 injured walking along the road, then the number one
18 scene where I would be looking to put all my resources
19 would be Hayfield Road where he was apprehended by the
20 police. Albeit the other four scenes you described to
21 me would be relevant as the enquiry progressed.

22 The problem with scenes is you have to have officers
23 to protect a scene and it becomes really
24 resource-intensive if you've got five scenes protected
25 by police officers, you know, you run out basically. So

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1 you need to do a quick assessment of: why are we
2 protecting that particular scene; are we likely to have
3 any forensic evidence? Because you're protecting it
4 I suppose forensically, to allow the forensic team to
5 come in and seize any forensic evidence. But based on
6 the circumstances -- and I'm only saying this if I was
7 the SIO -- that's how I would have dealt with the
8 situation I found myself in.

9 Q. So in your experience as SIO, you would have classed
10 those as secondary --

11 A. Yes.

12 Q. -- scenes, and as a secondary scene does that need to be
13 generally forensically protected or secure in some way?

14 A. Not always, but, you know, in -- we always say you're
15 far better scaling something up when it's reported to
16 you, because it's easy to scale it down, it's not so
17 easy to scale it up if you scaled it down in the
18 first place, so I totally get, you know, the need for
19 that, but I think it would be important that we as
20 quickly as possible established how relevant these
21 scenes were to the investigation.

22 Now, my take on it would have been, at the time,
23 depending on your available resources, my number one
24 scene, without any shadow of a doubt, was Hayfield Road
25 where Sheku was apprehended, arrested by the police,

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1 because prior to that there was no evidence that any
2 harm had befallen him whatsoever.

3 So you're not talking about somebody who had been
4 the victim of a serious assault who ultimately died of
5 his injuries after being apprehended by the police, if
6 you get what I'm saying there. I know that's
7 hypothetical, but that's ...

8 So in my mind in the circumstances of Sheku Bayoh
9 we're dealing with a male who was not injured in any way
10 until he encountered the police. When he walked along
11 that road, to all intents and purposes -- and there was
12 no evidence to the contrary -- he was, you know,
13 uninjured, shall we say. Or that was the information I
14 had at the time.

15 Q. So in relation to those secondary locations, what
16 sort of resources would you have placed in relation to
17 those?

18 A. I suppose until we knew exactly what we were dealing
19 with, it's just about scene protection, if it is
20 a scene, you know, if it is a crime scene. So again, my
21 memory is that we had to take some people out of houses
22 that Sheku had been in to protect that scene, and that's
23 something that's just come to me now, actually, that I'm
24 thinking about it.

25 So, you know, it might well have been as the enquiry

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1 moved on we got evidence that there was a fight in the
2 house or something like that and then that house would
3 become significant. I'm not saying that happened,
4 absolutely, but these are the things you have to
5 consider. So you'd be talking about two officers at
6 every scene to protect the scene, but you don't really
7 know what you're protecting until the enquiry evolves.
8 If you had got information that there was something that
9 happened in the house, then you would want a full
10 forensic team in that house for any evidence of assault,
11 blood spill or anything.

12 Q. And in terms of the investigative team size, would you
13 need additional officers to protect secondary scenes?

14 A. You would need --

15 Q. Would that be accommodated within the numbers you
16 described?

17 A. It would be two uniformed officers at every scene, and
18 their job would certainly be to prevent anybody -- or
19 depending -- I'm talking about a house, for example, you
20 would have officers at the front and the back protecting
21 that house to make sure nothing -- anything evidential
22 cannot be changed or disturbed until we satisfy
23 ourselves that there's actually no relevance to that
24 scene, and it's not a scene.

25 Q. And in terms of, you know, you've talked about

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1 determining the relevance and how quickly you can maybe
2 stand those officers down, how long -- what sort of
3 information would you need before you could stand those
4 two uniformed officers down?

5 A. Well, you know, if Sheku -- and again, this is
6 hypothetical -- if Sheku was in a house with two other
7 individuals, the individuals had been interviewed and
8 said, "There was no problem, he left the house here, he
9 was fine at the time", then in my opinion that's time to
10 stand that down, it's not a scene, it's not a potential
11 scene any more. We've got two witnesses speaking about
12 Sheku's actions prior to the contact with the police,
13 but nothing else there that's going to assist the
14 progression of the investigation.

15 Q. When you use the expression, "When he left he was fine
16 at the time", what are you -- what do you mean?

17 A. That's a hypothetical.

18 Q. Right.

19 A. I'm just saying, you know, if we found out from the
20 witnesses who were in his company that there was no
21 incident of note in the house or whatever, and that he
22 left at a particular time, then that scene becomes
23 irrelevant to the enquiry. Therefore, you would be in
24 a position to stand the officers down and say there's no
25 longer a need to protect that as a potential crime

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1 scene.

2 Q. If there was evidence that -- or no evidence to suggest
3 he was not physically fine, but there was evidence to
4 suggest he felt disrespected and left the property, is
5 that something that would cause you to continue to
6 preserve that scene, or --

7 A. Yeah.

8 Q. -- are you~..?

9 A. If you're saying to me that he felt disrespected, then
10 in my mind that would be so there's been some sort of
11 argument, if you like, verbal or otherwise. If that
12 information was fed back to me, I would say, "Let's hold
13 on to this scene just now until we bottom this out one
14 way or the other.

15 Q. And what way would you as SIO expect that to be bottomed
16 out?

17 A. Witness evidence. You know, if you're saying to me he
18 felt disrespected where are we getting that evidence
19 from, can we corroborate it, if we've got two witnesses
20 to say that he'd been involved in an argument I would
21 absolutely want to keep that scene protected until we
22 got to the bottom of has anything happened in that house
23 which has led to his death.

24 Q. Right, and when you are talking about "has anything
25 happened", I appreciate we're talking hypothetically,

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1 but what type of thing are you thinking you would want
2 to know about, for this "anything happened"?

3 A. Physical confrontation, you know, what was going on in
4 the house, was there alcohol involved, was there drugs
5 involved, what -- you know, how were people's demeanour,
6 were people there enjoying themselves? You know, you
7 said if he'd felt disrespected, that would immediately
8 be a warning word for me, if you like, disrespected,
9 there's been an argument there, we need to know what's
10 happened in that house and until we find out what has
11 happened we will keep it protected as a potential crime
12 scene.

13 Q. And a physical altercation, is that, what do you mean by
14 that; is that a fight or ..?

15 A. Yeah, a fight, an assault, any physical coming together.

16 Q. If the information available to you was that there was
17 no physical altercation, what impact would that have on
18 your decisions about releasing the property?

19 A. If there was no evidence of physical altercation, then
20 I would be -- somebody would have to justify to me why
21 we're holding on to that as a scene, if you like. You
22 know, what can we take from that house that we are
23 protecting that's going to assist us in finding out what
24 happened to Sheku?

25 But, you know, as I said before, in my mind, Sheku

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1 was uninjured and, you know -- well, you know, he was
2 walking along the road, there was no evidence that I was
3 aware of that he was injured in any way. So I would
4 certainly be looking at putting all my resources towards
5 where the police contact was and get the surrounding
6 area, any property that has a view on to that area, like
7 you would do with anything, you know, need to get into
8 these houses to establish if anybody's seen or heard
9 anything suspicious. Or that would assist the enquiry.

10 Q. Talking about these houses, I'm interested in --
11 obviously, in your experience with MIT, as SIO, you have
12 had to consider the legal authority for seizing a house
13 in a situation where it may be a secondary location.
14 What processes do you go through or did you go through
15 when you did that job to secure the proper authority?

16 A. I know you're talking about sort of warrants here,
17 but -- well, I assume you are.

18 Q. We've heard that one of the options is consent and one
19 of the options is a warrant.

20 A. Yes, I was just going to say that, the first thing we
21 would do is we would ask the people present at the house
22 we were interested in if they would mind moving
23 elsewhere to allow us to protect the house until we
24 establish what we're dealing with.

25 Q. And how would you expect officers to obtain consent, in

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1 2015, for example?

2 A. Just by speaking to the people in the house, explaining,
3 you know, "There may be something in this house that may
4 assist us in our investigation, so would you mind coming
5 with us? We'll make arrangements to house you elsewhere
6 until we've carried out our investigation to prevent any
7 disturbance of any potential evidence within the house
8 itself.

9 Q. We heard some evidence from an officer who said he would
10 give an explanation for the reasons behind the request,
11 explain that he was looking for their permission or
12 their consent --

13 A. Yeah.

14 Q. -- and that on that basis it could be withdrawn at any
15 time, and he would note that in his notebook and get
16 a signature if possible.

17 A. Yeah.

18 Q. What would you say about that approach?

19 A. Absolutely, 100%, that would be one -- you know, one of
20 the many options available to you, and certainly the
21 easiest option, and if you've got people who are on
22 side, you know, and willing to assist with the enquiry,
23 I don't think they would have any issue with moving out
24 of a property. I mean, we wouldn't obviously just say,
25 "Right, you're out now, thanks very much", we would

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1 accommodate them and house them elsewhere until we were
2 in a position to return the property to the individual.

3 Q. And if a situation arises where that consent is not
4 given or that consent is not available for some reason,
5 you've mentioned warrant, what would the procedure
6 normally be? Would you just simply seize the house
7 without a warrant --

8 A. Yes.

9 Q. -- or what would you do?

10 A. Seize the house without a warrant and then apply for
11 a warrant to search the premises.

12 Q. Why would you do it that way?

13 A. Because if you don't have control over the house then it
14 becomes almost pointless to, you know, control it at
15 a later time. You know, if you go to somebody and say,
16 "Look, we would like to seize this house because it may
17 be a potential crime scene", and they say "No", then the
18 process of getting a warrant -- it wouldn't be something
19 that happened in minutes, and the minute you leave that
20 scene, you've lost control of it, so we would seize it
21 and apply for a warrant.

22 Q. We've heard those applications are through an on-call
23 Fiscal?

24 A. Yes.

25 Q. And the police will then explain the circumstances to

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1 the Fiscal, who will then, if he agrees or she agrees,
2 go on to seek that from the sheriff?

3 A. Yeah.

4 Q. And in relation to a secondary location, are the
5 circumstances for obtaining a warrant any different?

6 A. No, I think you would have to justify why you were
7 applying for a warrant in the first place. You would
8 have to put some form of case together to go to the
9 Fiscals with, who would then go to the sheriff, to
10 justify why you want to seize this, you know, property
11 if you like.

12 I've never found myself in a position of applying
13 for a warrant to seize a property just in case there
14 might be something in it, you know. So there really has
15 to be some sort of, even if it's circumstantial evidence
16 to suggest there's a good reason for getting a warrant
17 to search that house.

18 Q. Thinking about searching, we've been talking about
19 seizing the house.

20 A. Yeah.

21 Q. In terms of searching, is the authority the same
22 process, seeking either consent or going to get
23 a warrant?

24 A. Yeah, yeah.

25 Q. And in terms of timing for a search, so assume you've

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1 seized the property, would you want to get consent in
2 advance of a search, to make sure --

3 A. Yeah, yeah.

4 Q. And if you didn't have that consent, what would your
5 position be about a warrant?

6 A. We would apply for a warrant to search.

7 Q. Before searching?

8 A. Oh, yes, yeah, absolutely.

9 Q. And if you hadn't obtained consent or a warrant, would
10 your officers just simply search a property?

11 A. Again, it would depend on the circumstances, to be
12 honest. That becomes -- I wouldn't -- I wouldn't -- if
13 I was in charge of the investigation I wouldn't want my
14 officers seizing items of property from a house without
15 consent from the owner or a warrant to do that. It
16 wouldn't happen, you know, because then that evidence
17 would become contentious at a later point. That's my --
18 that would be my take based on that, if that scenario
19 was presented to me. When I say search the house, I'm
20 also talking about a forensic examination of the house
21 you know, our forensic team going in there to see if
22 there's any evidence of assault or whatever.

23 Q. Would you want the warrant before you did that?

24 A. Yeah, absolutely.

25 Q. Or consent?

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1 A. Yes.

2 Q. And you said, when I asked you if you didn't have
3 consent or a warrant, and you said, "Well, it depends on
4 the circumstances", is there another power or authority
5 available to the police to carry out a search of
6 a house, even if there's no consent or a warrant?

7 A. There are certain circumstances, you know, if somebody's
8 made off from the place, you have a common law power if
9 you're in close pursuit to enter a property and search
10 it. But in a situation like this, which isn't a live
11 incident, if you like, we're well past that time,
12 I would certainly be of a mind of: we're protecting --
13 we're seizing the house, without a warrant or consent,
14 but we're applying for the warrant, because if you don't
15 protect the scene it becomes a point -- potentially
16 a pointless exercise.

17 Q. We did hear some evidence that the police have the
18 power, if they have concerns about preservation of
19 life --

20 A. Yeah.

21 Q. -- they could search a house. In a sense of urgency,
22 an emergency situation.

23 A. Yes, absolutely.

24 Q. And is that the sort of common law power you're --

25 A. Yes. I mean, you know, if the police attend an address

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1 and there's screaming coming from the house or any
2 concerns for the occupants, then we have a common law
3 power to force entry if we think somebody's in danger.

4 Q. I think the description was also not just preservation
5 of life but perhaps protecting or avoiding a situation
6 where they're concerned that evidence, important
7 evidence is being destroyed.

8 A. Yeah.

9 Q. Would that be the same~..?

10 A. Absolutely.

11 Q. But assuming that situation or circumstances did not
12 exist, then you would still seek consent or a warrant?

13 A. Yes.

14 Q. Can I ask you about some evidence we've heard about
15 a knife being recovered at the scene?

16 A. Yeah.

17 Q. I think you were asked about this, I think in
18 paragraph 35, actually, of your Inquiry statement. You
19 say:

20 "I learned from someone else that a knife had been
21 recovered at the locus of the scene of the incident, and
22 if I'm being personally honest here, the knife had been
23 recovered already, forensically, and photographed by
24 an officer using his mobile phone. I had some
25 reservations around that, however no major reservations.

Transcript of the Sheku Bayoh Inquiry

1 "When I saw the photographs from the phone I thought
2 no, I had reservations about it. I do know why, but
3 obviously if you were going to protect that knife
4 in situ, it's lying on the ground, and you would have
5 two officers to protect it. There was a lot going on
6 with limited resources available at the time and they
7 possibly thought, 'We can't afford to keep two officers
8 here purely to protect a knife on the ground. Let's
9 recover it forensically in one of the plastic tubes',
10 and the officer photographed it on his mobile phone
11 prior to recovery."

12 I'm interested in a situation where maybe you'd been
13 SIO and you're looking at an incident in a particular
14 location; what steps would you normally take in terms of
15 recovering a knife forensically?

16 A. I would get the forensic officers, the scenes of crime
17 officers, they were called, to come out and recover that
18 knife, photograph it in situ and recover it
19 forensically. It's just how I would do it.

20 Q. Why would you do it that way?

21 A. Because I was aware of the importance of the knife in
22 the whole scenario. It was, you know, it was massively
23 important.

24 Q. Why do you say that, in terms of the scenario, of what
25 you were aware?

Transcript of the Sheku Bayoh Inquiry

1 A. Because if Sheku hadn't have been in possession of
2 a knife or the male hadn't been in possession of a knife
3 then he presents less of a threat to the officers who
4 had attended.

5 Q. And that's what makes the knife important?

6 A. In my opinion, crucial, and I get -- well, I kind of get
7 why it was done in the way it was done, but to
8 photograph it with your mobile phone and then recover it
9 in a tube, albeit forensically, I wouldn't have had
10 that, I wouldn't have -- you know, if I had any control
11 over that I would have said, "I want two cops standing
12 by that knife and I want the scenes of crime, the
13 experts to come out, photograph it in situ", so you're
14 not only photographing the knife, you've got general
15 shots that show you exactly where the knife was,
16 you know, to put some context round about it and then to
17 seize it forensically so you're not potentially damaging
18 any evidence that's contained on the knife .

19 Q. And what are the benefits, you know, from an SIO
20 perspective, of doing it forensically with a scenes of
21 crime officer?

22 A. The scenes of crime are experts, that's their job, so
23 there would be no possibility whatsoever that that knife
24 was contaminated during its recovery. Officers don't
25 have that training. I know how they would do it, they

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1 would put gloves on and they would put the knife in the
2 plastic tube so, you know, there's a good likelihood
3 they're not going to contaminate it. But because of the
4 significance of that item in this investigation, I think
5 it would be unprofessional for it not to be done by the
6 experts.

7 And to photograph a knife on a bit of grass isn't
8 really, it doesn't tell you much, you know, you need the
9 surrounding shots of the scene. I accept they could
10 have been taken at a later date, but I would have
11 insisted on the experts coming out to recover that knife
12 and to take the photographs of it in situ and the
13 general shots to allow you to put context on where it
14 was recovered.

15 Q. Would your position on that be the same, the evidence
16 you've given be the same, if the person was not declared
17 deceased at the scene but has been taken away in
18 an ambulance, unconscious, not breathing? Would that
19 change your evidence on that?

20 A. If I was dealing with something that ultimately led to
21 somebody's death, it wouldn't change no.

22 Q. We've heard evidence that the officer who recovered the
23 knife from the scene then travelled in the ambulance
24 with Mr Bayoh --

25 A. Yeah.

Transcript of the Sheku Bayoh Inquiry

1 Q. -- to go to a hospital. I wonder if you have any
2 comments to make about that?

3 A. I never knew that, but it's -- in my mind it's a no-no.
4 An absolute no-no.

5 Q. Why do you say an absolute no-no?

6 A. Well, you know, what sort of inferences can be drawn
7 from somebody being in an ambulance with the knife and
8 the individual who was allegedly in possession of it?
9 That's just another example of why, you know, you bring
10 two experts, scenes of crime experts to a scene. They
11 take that knife away and don't -- you know, they have no
12 contact --

13 Q. I don't want to give you the wrong impression.

14 A. Right.

15 Q. We've heard evidence that the individual who recovered
16 the knife went into the ambulance with Mr Bayoh but not
17 with the knife. Sorry, I've made --

18 A. Again, a potential of cross-contamination. I wouldn't
19 like it, I wouldn't have it, you know, I would have the
20 scenes of crime officers totally separate. I mean,
21 contamination is massive, you know, during a criminal
22 investigation. So, no. To me, it's not right. It's
23 not right, in my experience of dealing with major
24 investigations. I understand these things happen,
25 I kind of understand why they do happen, but I'm sorry,

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1 but in my opinion that's not right.

2 Q. We've also heard evidence about officers going to the
3 hospital where Mr Bayoh died, and the SIO understood
4 they were standing outside a side room where his body
5 was retained, but we may hear that they were within the
6 room and they were not wearing forensic clothing.

7 Now, again, I'm interested in your experience as
8 an SIO, whether you have any comments about officers
9 sitting in a room for, as we understand it, ten hours
10 without forensic clothing other than gloves?

11 A. Not officers who have attended the scene, different
12 officers who have never --

13 Q. Different officers.

14 A. I've got to be honest, I wouldn't really have much of
15 an issue with that. No, I -- I wouldn't have an issue,
16 to be honest with you.

17 Q. All right.

18 A. I wouldn't see the need for these officers to be
19 protected forensically. If they'd been at the scene,
20 yeah, absolutely, if they'd been at the scene they
21 should have no further contact or be at the hospital
22 anyway. But if these are officers who have not been at
23 the scene and are just there, you know, to carry out
24 a role, then personally I wouldn't have an issue with
25 it. I wouldn't see the need for them to be forensically

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1 protected.

2 Q. And would the position be the same if they were
3 collecting the samples that had been taken at that time
4 from the medical practitioners?

5 A. Sorry, I don't ...

6 Q. So if the medical practitioners had taken blood samples
7 and things and ... would that cause any concern for you,
8 that those were handed to those officers?

9 A. There's a process you have to go through when you're
10 doing that, you know, so by the time it's handed to the
11 officers that sample should be secured in a bag or
12 a tube or whatever so that there's no issue around
13 contamination. So that process would negate the chance
14 of contamination.

15 Q. Could I ask you about a couple of the Gold Group meeting
16 minutes? We looked at these yesterday. PS06492. If we
17 don't have them at the moment, I can move on. I'll move
18 on.

19 Do you remember at any of the Gold Group meetings or
20 any of your discussions in Kirkcaldy that day about the
21 issue regarding obtaining initial personal accounts or
22 statements, detailed accounts from the officers? Do you
23 remember anything about that?

24 A. This is something I've thought about a lot, to be honest
25 with you, and ... (Pause).

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1 To the best of my knowledge, when I attended
2 Kirkcaldy, my number one priority would be to get the
3 statements from the officers who attended the scene,
4 because they are -- never mind house-to-house or
5 anything, they are 100% witnesses to what has happened.
6 My understanding, when I got there, is I asked the
7 question, you know: have we got statements from the
8 officers?

9 The perfect scenario for me in these circumstances
10 would be two detectives to interview the police
11 officers. Detectives are more experienced in taking
12 statements and tend to go into more detail, so that
13 would be the perfect scenario in my opinion.

14 I do recall getting told that they were preparing
15 their own operational statements.

16 Q. When were you told that?

17 A. It would have been fairly soon after I got there,
18 because, as I said to you, you know, common sense
19 approach would be: I want to hear what the officers who
20 attended there are saying, basically. So --

21 Q. Do you remember who told you that?

22 A. I don't remember, honestly I don't. There's another --
23 and this is what stuck in my mind, there's
24 a post-incident procedure called a PIP that I was
25 trained in many years ago and it involves when a police

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1 officer's involved in shooting someone. Now, they'll
2 get taken away, the officers involved, and they get --
3 this was the training I was given, because it was
4 sort of questioned at the time, it might have changed,
5 but they get 24 hours to sort of come to terms with what
6 they've dealt with and discuss it with their colleagues
7 before they provide their statements, which as you can
8 imagine from the outside looking in, you know, that
9 would be like: well, why, if you like, why are they
10 allowed to~..?

11 That was -- so I'm not saying that's 100% true, that
12 was my recollection of my training from that, and I just
13 had in the back of my mind that these officers might be
14 afforded that same opportunity. But I do remember being
15 in Kirkcaldy and I remember it well, and in my -- as far
16 as I was aware the police officers were in the station
17 preparing their operational statements. But that never
18 ever came to fruition. But that was my belief very
19 shortly after arriving at Kirkcaldy because it would be
20 one of the first things I would want to know. I mean,
21 you're talking about however many officers were there,
22 six, they are your most significant witnesses in all of
23 this, so to seize their evidence immediately would be my
24 number one priority, if I was the SIO in the
25 investigation.

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1 Q. And if -- I mean, have you been faced in your experience
2 as an SIO with a situation where officers weren't
3 prepared to provide operational statements?

4 A. Other than this investigation, no. No.

5 Q. And is that in your full years of service or only up to
6 2015?

7 A. My full service, yeah. I worked in the
8 countercorruption unit for a while, and the -- there
9 were a couple of occasions that an officer refused to
10 provide a statement, but they were suspects as opposed
11 to witnesses, and obviously you have a right to remain
12 silent, but on this occasion these officers were
13 witnesses, that was made clear to them, and I never
14 experienced that in any other time in my 31-year
15 service.

16 Q. Do you remember when -- you say it was made clear to
17 them that they were witnesses, do you remember how that
18 was done?

19 A. Yeah, it was a sort of pre-arranged preamble, if you
20 like, but I do recall attempting to take statements off
21 the officers concerned and making it perfectly clear to
22 them that it was a witness statement we were looking for
23 and they weren't suspects.

24 Q. And I think we'll come on to that.

25 A. Yeah.

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1 Q. As I understand it, that wasn't on the 3rd.

2 I'm interested in your experience as SIO. If you
3 had been faced with a situation where your priority is
4 to get the statements of the officers but you haven't
5 obtained them, what techniques or tactics or leverage
6 would you use to obtain statements of some sort or
7 accounts from officers who had been told that they were
8 witnesses, not suspects?

9 A. I suppose my answer to that is I was never in that
10 position, so I don't know what tactics I would use.
11 I would probably just -- if I'm being honest, and
12 obviously what happened on that day was, I never
13 accepted it, I thought they were coming, that was 100%
14 my belief, and then, you know, as the day progressed
15 I was no longer in charge of the investigation, so it
16 was no longer my call.

17 Q. When you say you were no longer in charge, you've talked
18 earlier about you facilitating --

19 A. Yeah.

20 Q. -- PIRC, who were leading the investigation; what do you
21 mean as the day went on you were no longer in charge?

22 A. Because PIRC had been called out to take over the
23 investigation and my job was to facilitate the handover
24 and act as their agents, if you like, to carry out any
25 requests they made of me and my team.

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- 1 Q. Initial requests?
- 2 A. Yeah.
- 3 Q. Did there come a point that day where you felt that you
4 were no longer required to facilitate requests from
5 PIRC?
- 6 A. Oh no, no, not at all, not at all, no, I was always --
7 until you're talking about the early hours of the
8 morning where everybody was like, you know, "People need
9 to get home here and have a sleep and get back out in
10 the morning". But no, I was always there for them to
11 carry out any requests that they would have asked. It
12 perhaps didn't have to come through me but, you know,
13 I was there.
- 14 Q. Sorry, it's maybe me, I was trying to understand what
15 you meant when you said you were no longer in charge of
16 the investigation.
- 17 A. Well, I suppose after the Gold Group meeting it was made
18 clear then that the PIRC had taken ownership of the
19 enquiry so I was no longer -- I -- in my opinion, I was
20 never in charge of the investigation, I was out there
21 to -- a unique set of circumstances, I was called out to
22 assist with an ongoing investigation and to assist with
23 the handover to the PIRC, who were taking primacy in the
24 investigation.
- 25 Q. Just to go back to the situation with the status of the

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officers, were you ever part of any discussion about advising the officers about status or anything along those lines? Did you ever speak to the officers in the PIM suite or the canteen, as it was?

A. As per my statement, I spoke to them a couple of days later in an attempt to take their statements from them.

Q. I'm just thinking about 3 May at the moment.

A. No, no, I never. I didn't know them, you know, it wasn't as a -- I probably did pass them in the corridor or whatever, but I didn't know who they were, because -- I mean, if it was Lothian and Borders, there'd be every chance I would know the individuals. Because I was in a different force area, albeit we were Police Scotland at the time, I didn't know them. But I certainly had in the back of my mind the officers involved in this investigation are away being given privacy to sit down and prepare their operational statements. That's what I had in my mind. And somebody's told me that, that they were preparing their operational statements. But it's because I asked the question. It was in response to --

(Pause)

LORD BRACADALE: I think we can carry on. Well, in fact, it's nearly half past, we usually have a break anyway at this point. So we'll just take the 20-minute break now.

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1 (11.28 am)

2 (A short break)

3 (11.48 am)

4 (Proceedings delayed)

5 (11.59 am)

6 LORD BRACADALE: Sorry you were interrupted there,

7 Mr Hardie. The transcription is now, I understand,
8 working again.

9 Ms Grahame.

10 MS GRAHAME: You've explained to us, before the break, in
11 relation to the status of the officers and their
12 statements, as you understood the position on the day.
13 I'd like to ask you something else about the gathering
14 of the officers who had been at Hayfield Road. We've
15 heard evidence that they were gathered together in
16 Kirkcaldy in the canteen area. I appreciate you don't
17 know Kirkcaldy Police Office. And we've heard some
18 evidence about consideration being given whether to
19 gather them all together, as they were, or to separate
20 them. We've heard evidence about the PIP SOP --

21 A. Yeah.

22 Q. -- and ...

23 I'm interested in your perspective. Obviously
24 you've got a lot of experience as SIO. Where an event
25 had taken place in a location like Hayfield Road and the

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1 officers are all from Kirkcaldy Police Office and they
2 returned there and they're held in -- not held, gathered
3 together in the canteen, what your views are on that
4 decision?

5 A. I think you would have to take cognisance of the fact
6 that these officers might be traumatised, for example.
7 Being totally professional about it, and obviously with
8 my job being securing the best evidence possible, what
9 I would have liked in those circumstances was two
10 detectives for each of the officers to interview them
11 immediately before they gathered together. And --

12 Q. And why would you have taken that approach? If you had
13 been SIO.

14 A. It's the perfect scenario, you want to interview
15 a witness before they're influenced by other people's
16 version of events. If you take a room of people and
17 show them an incident, they'll give you totally
18 different versions of what they've seen, that's just the
19 way it is, you know, it always has been. But in
20 a perfect scenario I would have had two detectives
21 interviewing each of the officers as soon as reasonably
22 practical to prevent any -- I'm not saying there's
23 conclusion, absolutely not, but to prevent being
24 influenced by other witnesses' versions of events.

25 Q. So as an SIO, you would consider that approach to give

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1 you the best evidence available?

2 A. Yeah. But it's not necessarily considering the impact
3 on the individuals who have been at the scene, and the
4 possibility of them being traumatised in any way. But
5 that, you know, in a sort of cold light of day that
6 would be my preference as to how we would secure them,
7 the witness testimonies of these individuals who were at
8 the scene.

9 Q. If officers were traumatised, or there was a suggestion
10 they were traumatised, how would you then accommodate
11 that knowledge into this preference that you've
12 described?

13 A. I think it would be a matter of speaking to the officers
14 concerned and just to try and grasp the impact this
15 incident has had on them. You know, it will impact on
16 different people in different ways, and to a different
17 level, if you like. So it would be -- you would have
18 to -- again, if you put two detectives in to interview
19 a police officer, part of their expertise and their
20 training would be to assess the state of the individual
21 as to whether or not they're capable of giving
22 a statement.

23 So, you know, again talking hypothetically, two
24 detectives might go into a room to interview a police
25 officer and come out the room and say, "Look, that

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1 officer's not in the right state of mind to obtain
2 a statement". If that scenario presented itself,
3 I would be looking for the officers to say to the
4 officer, "Can you sit down and write down what you
5 remember happened in as much detail as you possibly
6 can", that type of thing. And then revisit that at
7 a later point with that version of events and go over
8 that with the officer to perhaps add more detail where
9 it was necessary.

10 Q. So that would have been another option, to simply
11 interview?

12 A. Yeah, yeah depending on the demeanour of the police
13 officer.

14 Q. And on that basis -- would you have envisaged that on
15 a sort of one-to-one basis, so there may be some
16 officers that were traumatised and unable to assist and
17 others who were able to assist?

18 A. I would -- rather than one-to-one I would say two
19 detectives taking the statement and if the officer
20 wanted somebody else there to accompany them, it would
21 be somebody who was not involved in the incident,
22 for example a Federation representative or somebody like
23 that. That's in an ideal world.

24 Q. And is that the type of arrangement that can be put in
25 place reasonably -- within a reasonably prompt time, or

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1 does it take time to get resources to do that?

2 A. No, I think that would be fairly easy to put in place,
3 other than, you know, the Federation representative
4 might be difficult because you might have to call them
5 out, but you could be talking about a colleague who
6 wasn't involved in the incident sitting with them, just
7 to offer them that reassurance, if you like, that it's
8 not two on one.

9 Q. And the benefits to an investigation if that approach
10 was taken, what would they be?

11 A. You're getting their version of events as soon after the
12 event as possible, and they're not being influenced by
13 any other persons who attended the scene and honestly
14 and legitimately saw things differently, if you like, or
15 had a different recollection of the event.

16 So the witness isn't being influenced by anybody
17 else, if you can get them as soon as possible.

18 Q. We've heard evidence about paperwork, you've already
19 talked to us about statements and accounts. I'm
20 interested in your perspective of the value of use of
21 force forms or use of spray forms. Now, we've heard
22 evidence that use of spray forms -- CS spray is treated
23 as a firearm in terms of legislation, and we've
24 discussed with other witnesses about a memo that said
25 those forms should be completed before going off duty.

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1 A. Yeah.

2 Q. And then they are emailed to officer safety training and
3 then passed to PIRC within a short timescale. Have you
4 experience of officers completing use of spray forms?

5 A. Limited experience, but I've been aware of it having to
6 be done and it's part of the process, because, as you
7 say, it's treated as a weapon, if you like. But not
8 overly so.

9 Q. We've heard that officers didn't complete those forms
10 that day and didn't complete use of force forms that
11 day. Did you have any awareness or discussion or
12 impression of the position regarding the forms and
13 whether they were going to be completed.

14 A. If I'm being totally honest, it wouldn't have been
15 something that was high on my list of priorities, it's
16 a process that has to be done. But my observation would
17 be there if they've given a statement then that would be
18 sufficient information to complete that form. But it
19 certainly wouldn't -- I mean, as a senior investigating
20 officer my job is to establish what's happened, it's
21 somebody else's role to make sure all the forms are
22 filled out, if you like, not mine, if that makes sense.

23 Q. In the absence of statements or accounts being provided
24 by the officers, would your interest in the forms be
25 elevated in that situation as SIO?

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1 A. If it was a way of getting evidence of what happened,
2 yes, absolutely. Yeah.

3 Q. Can I ask you about the situation, we've heard evidence
4 that equipment and clothing was recovered from the
5 police officers that day. Can you tell us about the
6 type of approach you would normally take as SIO if you
7 were recovering equipment from police officers who had
8 been involved in an incident?

9 A. Yeah. I have been involved in similar type situations
10 whereby we've had to take officers' clothes and personal
11 effects, and it's always -- my attitude has always been
12 to explain to the officers that it's in your best
13 interests to hand over the clothing you were wearing at
14 the time and your officer protection equipment for
15 example.

16 Q. In terms of timescale, what would you be aiming for in
17 relation to recovering that?

18 A. As soon as possible.

19 Q. Why?

20 A. Again, to protect any potential forensic evidence on
21 that clothing or on the pieces of equipment. So my
22 action around then would be: do you have a change of
23 clothing in the station? If not, get somebody to pick
24 up a change of clothing for that individual and get that
25 clothing seized as soon as reasonably practicable.

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1 Q. And could you help the Chair understand what that phrase
2 means, "as soon as reasonably practicable"? Could you
3 give us a sort of estimate of timescale?

4 A. It would depend -- in these circumstances, it would be
5 dependent on the availability of another set of
6 clothing, if you like. A lot of officers come to work
7 in civilian clothes and change into uniform when they
8 get to the station. If that was the case, I would want
9 it done right away. If it wasn't the case, I would want
10 somebody despatched to the officer's home address or
11 wherever to get a change of clothing for them and get
12 back, to allow us to seize the clothing that they were
13 wearing at the time of the incident. And that would be
14 a priority.

15 Q. Right. We've heard some evidence a while ago now that
16 in terms of threat levels that officers were being
17 encouraged to wear civilian clothing to work --

18 A. Yeah, yeah.

19 Q. -- in May 2015, round about that sort of time. So in
20 those situations, if officers had worn civilian clothing
21 and had it in their lockers, is that something that
22 could have been done reasonably quickly?

23 A. Almost immediately, yeah.

24 Q. And "almost immediately", is that almost immediately
25 after return to the police station?

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1 A. There again you would have to have the officers
2 available to seize the clothing and also to seize it in
3 a way that's protecting it for any further forensic
4 examination later down the line. So I'm talking about
5 bagging and sealing the clothing and labelling it and
6 getting signatures on the labels. So it's a relatively
7 straightforward and recognised process, but it wouldn't
8 be a matter of, "There's my clothes there, thanks very
9 much", it would be item per item, bagged separately and
10 protected for any necessary further future examination,
11 forensic --

12 Q. And that would be a scene of crime person rather than
13 a forensic medical examiner?

14 A. No, a police officer. In an ideal world a scene of
15 crime, but a police -- so it would be a matter of one
16 detective, the officer himself, putting a jumper in
17 a bag, putting the trousers in a bag, sealing them,
18 signing them off, and then that's them protected for
19 any -- so there's not a lot of expertise needed for that
20 type of recovery, if you like.

21 Q. Were you involved in any way in any discussions
22 regarding the seizure of a house occupied by
23 a Martyn Dick and his partner Kirsty MacLeod on the 3rd?

24 A. No.

25 Q. Were you involved in any way in recovering a property

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1 that related to the family of Mr Zahid Saeed?

2 A. No.

3 Q. Was that part of any of your role or part of any
4 officers that you were bringing from Edinburgh?

5 A. No, I have no recollection of that whatsoever.

6 Q. Okay.

7 We were going to turn to the Gold Group meeting, so
8 there was a couple of things I would like to ask you
9 about your recollection. I understand that they're
10 available. Could we look at the Gold Group meeting
11 minutes of 14.40 hours, please. You'll see those on the
12 screen. And this -- you'll see the list of people who
13 were present. If we move down the screen, it was
14 chaired by ACC Nicholson, and we'll see that -- if you
15 keep going down please, you'll see:

16 "Keith Hardie - MIT."

17 A. Yeah.

18 Q. So it would appear at this meeting at 14.40 you were
19 present. Do you remember this meeting?

20 A. I remember being at a meeting that ACC Nicholson
21 chaired, yeah.

22 Q. Could we look at page 2 of these minutes, and I'm
23 interested in what's effectively item 3 of the agenda,
24 "Investigative process", so it was part of the agenda in
25 the meeting which was discussed by DCS Boal and

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1 Detective Superintendent Campbell, and we've heard from
2 Pat Campbell that he was SIO.

3 I'm interested in the bullet point which is at the
4 bottom of this page that says:

5 "Witness strategy -- MIT to be deployed to note
6 statements from significant witnesses. (Update MIT to
7 progress with investigation, on going discussions re
8 witness strategy, to be discussed with PIRC, discussion
9 re seizure of production from police witnesses."

10 Do you remember this part of the meeting?

11 A. Vaguely, if at all, to be honest with you. Erm, I ...

12 Q. Seeing those minutes, do they prompt any memories?

13 A. My overwhelming memory of statements from officers
14 were -- and seizing the clothing -- was that was work in
15 progress, if you like, it was being done. And ... to be
16 honest, if I made any further comment I would be
17 guessing. I really don't -- I don't recall ever being
18 given an action to go away and ensure with my team that
19 the statements were being -- were to be taken from the
20 officers, or indeed to seize their clothing. My
21 understanding was that was being done, the officers were
22 preparing their own operational statements and their
23 clothing was being seized.

24 Q. Well, just to show you the complete section 3 of the
25 minutes --

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1 A. Yeah.

2 Q. -- there's, just before section 4, it's on the next
3 page, there's no task or action listed there in relation
4 to that item about witness strategy or statements.

5 So -- and again, at the end of the minutes there's
6 nothing there that would suggest there was a particular
7 action allocated to you --

8 A. No.

9 Q. -- or MIT?

10 A. Yeah.

11 Q. All right, thank you.

12 Can I ask you to go back, please, to page 2 of the
13 minutes, again remaining with item 3 of the agenda, and
14 if we can move up the page, please, I'm interested in
15 the section that's at the bottom of the page there:

16 "Seizure of productions from officers being carried
17 out today ..."

18 A. Yeah.

19 Q. "... staff have been advised by Federation staff not to
20 provide any statements."

21 Do you remember that part of the meeting?

22 A. No, I don't, I genuinely don't. It's clearly, by
23 that -- I was aware of Federation representatives being
24 present at Kirkcaldy or being told they were present at
25 Kirkcaldy, but that, I would have to say -- I've no --

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1 I've no recollection of that, but if that was the case,
2 then you couldn't action a request to get the officers
3 interviewed because the Federation have already
4 instructed them not to provide statements.

5 LORD BRACADALE: Ms Grahame, I interrupt again because the
6 transcript has stopped. I think what we'll do is just
7 continue and the stenographer can complete the
8 transcript from the YouTube broadcast subsequently.

9 MS GRAHAME: Thank you.

10 Then I'd like to move on to the NOK, next of kin
11 strategy, you see the bullet point just towards the
12 bottom of that page?

13 A. Yeah.

14 Q. It says there:

15 "... Partner of deceased made aware and statement
16 noted, no formal ID has taken place but ID has been done
17 by a Facebook image initially. NOK identified as sister
18 and a FLO being identified. (2 x Police Scotland FLOs
19 have been identified 1 x DI as FLO to brief and
20 co-ordinate."

21 I'm interested in two aspects of this bullet point.
22 Do you have any recollection of a discussion about ID
23 having been done via a Facebook image?

24 A. None whatsoever, no.

25 Q. No?

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1 A. I'm not ... I'm not sure how that could be done to serve
2 any purpose, to be honest with you. But no, I've no ...
3 I mean, I don't:

4 "... no formal ID has taken place but ID has been
5 done by a Facebook image~..."

6 What does that mean? Somebody has looked at
7 a Facebook image of Sheku and said, "That's him"?
8 I don't know.

9 Q. That's my understanding, that a Facebook image or images
10 have been obtained and officers have gone to the
11 hospital to carry out --

12 A. Oh, right, to compare the Facebook image with the
13 deceased?

14 Q. Yes. Can I ask you for your comments about that
15 approach, using a Facebook image to carry out an ID?
16 Not a formal ID, obviously.

17 A. Never heard of it before. (Pause). I don't see a huge
18 issue with it, because it's informal, but just to
19 confirm, you know, that it is who we think it is, if you
20 like, I would be okay with it. I've never heard of it
21 and would consider it a wee bit unusual, but nothing ...
22 identification's vital, obviously, but I've never heard
23 of it being done that way, to be honest.

24 Q. Would you have any concerns about it being done that
25 way?

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1 A. My only concern would be that you're asking a police
2 officer to say 100% either way whether an image of
3 somebody is the person who's now deceased, which,
4 you know, it might sound easy but it isn't easy, it
5 definitely isn't. I've been at post-mortems before for
6 unidentified males and officers have come to view the
7 male because they've had numerous dealings with that
8 individual in the past and they've been unable to say
9 with any certainty that it's the same person.

10 Q. They've not been able to say?

11 A. Not been able, absolutely.

12 Q. If that informal process was followed, how comfortable
13 would you be about then sharing a death message on the
14 back of that informal ID?

15 A. It would all be down to the wording of the death
16 message, I think. You know, "We believe this individual
17 may be your son/your husband", whatever, "But we haven't
18 formally identified him". So it would be that -- you
19 know, it's like if a person goes missing and a body's
20 found, they'll tell the family immediately a body's been
21 found, "The body of a female", for example, but there
22 would be no definitive, "This is your daughter/son", or
23 whatever until there was a formal identification through
24 a number of ways: DNA, dental records or whatever, or
25 formal viewing by the family of the deceased individual

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1 to confirm that identification, which is required before
2 the post-mortem would take place.

3 Q. Thank you.

4 Then the other aspect I'm interested in, in relation
5 to this bullet point, are the comments about the next of
6 kin strategy. What would your approach normally have
7 been in relation to next of kin strategy, and
8 particularly with regard to deployment of FLOs?

9 A. Yeah. First and foremost, the FLOs would never be
10 responsible for passing on the death message to the next
11 of kin. That would be done by somebody independently
12 and then the FLOs would be deployed thereafter. It's
13 just considered best practice, and I think it's to do
14 with the relationship with the family or the next of kin
15 and the FLOs themselves, because their job is to build
16 up a very good relationship with the family, and I think
17 if they delivered the death message it would be harder
18 to build up that relationship. So it would always be
19 somebody independent who would deliver the death message
20 and then the FLOs would be deployed from there.

21 Q. Were you aware at that time of any discussions about
22 difficulties deploying FLOs or getting FLOs in place,
23 either in relation to Police Scotland FLOs or PIRC FLOs?

24 A. My recollection is that the PIRC had trained family
25 liaison officers but I wasn't aware of any significant

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1 difficulty on this occasion.

2 Q. You mentioned a death message; what in your experience
3 would the normal practice be for a death message? You
4 talked about independent people delivering the actual
5 death message. I'm interested in how a death message is
6 drafted, whether there's a record of it, that type of
7 thing. What's the normal procedure?

8 A. I suppose it would depend on the circumstances, but it
9 would generally be -- two officers would attend at
10 a home address and inform them in the simplest of terms,
11 without using police jargon or terminology, if you like,
12 whoever has died. But obviously in a situation like
13 this, or a homicide, the family liaison officers would
14 be ready to step in as soon as the people who had passed
15 the death message left the house, if you like, and the
16 family liaison officers would be briefed by the SIO as
17 to what they can tell the family or what they can't tell
18 them, because obviously it's important that all the
19 information passed to the family is correct and
20 accurate, to build that relationship of trust between
21 the FLOs and the family of the deceased.

22 Q. So you've talked about the FLOs going in as soon as
23 possible after the death message is relayed. Is that
24 something that has to be co-ordinated in advance in
25 terms of the timing?

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1 A. Yeah, yeah. As an SIO, I would always go and meet the
2 family of the victim. That would be facilitated by the
3 FLO. (Pause). Excuse me. And I would go and give them
4 an update as to the progression of the investigation.

5 Q. When would you do that?

6 A. It would depend on the -- again, the -- how upset the
7 family were. I would seek information from the FLOs,
8 I would say to the FLOs, "Tell them I want to meet the
9 next of kin or the family and find out when it's
10 convenient and when they're ready to meet me", and
11 I would take it from there. But I would always, every
12 time I've been deployed as an SIO I would go and meet
13 the family as soon as I possibly could and when they
14 were ready for it, if you like.

15 Q. What have the benefits of that been in relation to
16 family members of the deceased?

17 A. I think normally in an investigation like that there's
18 media coverage and I would do the media, and there was
19 quite often a request from the family to meet the
20 officer in charge of the investigation, and I would go
21 and -- go there and introduce myself, explain what I was
22 doing, what I was trying to do, and basically leave them
23 with the FLOs being the conduit to them contacting me if
24 they wanted to speak to me about any particular,
25 you know, line of enquiry or what's happening with the

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1 investigation.

2 Q. So when you've acted as SIO, have you been accessible to
3 families to provide information?

4 A. Absolutely, yeah. I would tell them that at the first
5 meeting and I would get the FLOs to tell them that,
6 "I will make myself available at any point, within
7 reason, but at any point if you want an update and I'll
8 do my best to tell you everything I can, but you have to
9 understand there's potentially specialist knowledge
10 involved which I wouldn't be able to impart to you".

11 Q. Have you felt that benefited the investigation, having
12 that good relationship with the family?

13 A. That's the role of the FLOs, it's the FLOs' role to
14 ensure that we have a good relationship with the family,
15 but yeah, absolutely, I think it does. I think,
16 you know, to take the time to go and meet the family,
17 explain who you are, explain what we're going to do to
18 try and resolve this and bring the person responsible to
19 justice, it builds on the relationship that you have to
20 build up with the family, which is massive, as
21 the enquiry progresses.

22 Q. What impact does that have on building trust with the
23 family?

24 A. A huge impact. That's why the FLOs are there, the FLOs
25 are a conduit between the police and, you know, the

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1 victim's family, if you like. It's ... it's not new as
2 a concept, it goes back to the sort of Stephen Lawrence
3 Inquiry and the importance of -- I mean, in some
4 investigations the family are an absolute minefield of
5 information which assists the investigation, if you
6 like.

7 Q. A mine of information?

8 A. Yeah, yeah, not a minefield. And you have to try and
9 use that to your benefit as often as you possibly can,
10 so ...

11 Your FLO deployment is one of the main deployments,
12 one of the most important deployments at the start of
13 an investigation, and they're all trained to a level
14 that, you know, if you're -- you have to be trained as
15 a family liaison officer and the training's quite
16 intensive.

17 Q. Does that relationship that's built up have wider
18 implications, not just in terms of the benefits of
19 liaising with the family but in terms of the community
20 impact? What benefit is there in that?

21 A. I think it ... well, the purpose of it is to show
22 an openness and a bond between the investigation team
23 and the victim's family, if you like. The impact on the
24 community, I don't really know that it would necessarily
25 have a big impact on the community. But obviously if

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1 the family are sharing their experiences of their grief
2 and what the police have done to help them, then that's
3 going to spread throughout the community.

4 Q. Thank you.

5 Can I move on to the next Gold Group meeting
6 minutes, these are at 2015 hours on the same day, and
7 the number I have is PS06493. But I think that's
8 incorrect.

9 Again, we see, if we can look at those present at
10 this meeting, it appears from the list that you again
11 were present at this meeting. Do you remember having
12 a meeting in the evening that day?

13 A. Vaguely. Vaguely.

14 Q. And again, it appears Keith Harrower was there from PIRC
15 and John Ferguson.

16 Could I ask you to look at page 2 of these minutes,
17 and it's item 3 on the agenda, and -- sorry, it's item 3
18 at the end, it says:

19 "Task -- Keith Hardie MIT collate another enquiry
20 team outwith P Division for transparency/independence.
21 Liaise with PIRC."

22 Do you remember a discussion at the Gold Group
23 meeting about transparency and independence?

24 A. I think it was an ongoing theme of the meetings. I do
25 have a vague recollection of that, for me to identify

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1 another enquiry team. But I do remember it being,
2 I suppose, transparency and independence, a theme of
3 both Gold Group meetings, if you like. As I said
4 previously, this was groundbreaking for me and the
5 majority of people in attendance there, that the PIRC
6 were coming in to take over an investigation which was
7 started by the police.

8 So yeah, a vague recollection. I mean, for
9 something like that, I'm just interested in the task.
10 By that time, you know, I don't have any responsibility
11 by way of a senior investigating officer, I'm
12 accommodating the PIRC and my job is to ensure their
13 requests are met.

14 Q. And in terms of the issue of transparency and
15 independence, do you remember having an impression about
16 why that was being discussed, in connection with this?

17 A. Yeah, well, my recollection was, you know, at the end of
18 the day, the police have arrested a black male and he
19 has died after police contact, so it's massive,
20 you know, it's significant, there's all sorts of
21 concerns round about that and rightly so.

22 Q. When you say "concerns", can you explain to the Chair
23 what you mean by that?

24 A. I would say the most obvious one would be: is there
25 a racial element to it? You know. And there would be

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1 concern -- at the end of the day, we are -- the police
2 are meant to be here to protect, you know, protect
3 communities, protect individuals. Now, something's gone
4 wrong during that apprehension of Sheku which has led to
5 his death, so the police are going to be scrutinised for
6 it, and rightly so. So transparency is massive, we have
7 to be seen to be transparent and not hide anything, or
8 being as open and honest as we possibly can.

9 Q. Being open and honest about the events at Hayfield Road,
10 would that in some way damage the investigation that is
11 being done?

12 A. I don't see how it could. Sometimes you have to
13 withhold information for the protection of the enquiry
14 because it's specialist knowledge, if you like. That
15 might be considered as not being open and honest, but
16 there's a good reason for that. Other than that,
17 I think openness, honesty and transparency is what we
18 should be all about.

19 You know, in tragic circumstances, which has led to
20 the death of an individual, we have to be open, we have
21 to be transparent and we have to be honest. You know,
22 a lot of the things that I've spoken about today, the
23 recovery of the knife, I don't like being critical of
24 the police because I was an officer for 31 years, but
25 you have to be honest about it, these things could have

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1 been done better, in my opinion.

2 Q. You're talking about a situation where there maybe

3 special knowledge you would withhold. For the

4 non-lawyers that are listening to your evidence, would

5 you be able to give an example to explain what you mean?

6 A. It's difficult actually, but it's knowledge that belongs

7 to one person which can't really get in the public

8 domain because it's no longer specialist, if you like.

9 So if it's published in a newspaper or media it's no

10 longer specialist knowledge, and that specialist

11 knowledge might be significant in the inquiry.

12 Q. And that specialist knowledge could ultimately be

13 significant at a trial?

14 A. Yeah.

15 Q. Against that particular one person?

16 A. Yeah, absolutely.

17 Q. And if they were the only person that knew that special

18 knowledge --

19 A. Yeah.

20 Q. -- that could be a significant piece of evidence at the

21 trial?

22 A. Yeah. Yeah.

23 Q. You've talked about concerns, you've talked about the

24 significance of being open and honest and transparent.

25 In relation to independence, can you explain why that is

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1 important in an investigation?

2 A. It's always important, but I think on this occasion it

3 was to take away the investigative responsibility from

4 the police to an independent agency so that, again,

5 you know, there could be no inference of collusion,

6 of -- you know, a police force investigating itself

7 doesn't sit well with the public. An independent

8 organisation coming in to investigate, or investigate

9 the police force or the actions of police officers sits

10 far better with members of the public because you have

11 that element of independence.

12 Q. Did you have any concerns about the independence of the

13 investigation? Obviously you've talked about you not

14 having any contact with Kirkcaldy Police Office or the

15 officers. Did you have any concerns about the

16 independence in relation to PIRC's role?

17 A. No, I never, no.

18 Q. And the fact that many, the majority I think you said

19 this morning, were former police officers; did that

20 cause you any concern?

21 A. I'm not sure that's actually accurate, but it was my

22 perception of -- but no, I would say -- I know it can be

23 looked at in two different ways, but my interpretation

24 of it is: these guys know what they're doing or,

25 you know, these individuals know what they're doing

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1 because they've done it for a long period of time.
2 They're experts in their field. That's how I would look
3 at it.

4 Q. And what about the -- we've heard evidence that there
5 was ongoing -- initially actions taken, we've heard
6 Colin Robson was the Fife division --

7 A. Yeah.

8 Q. -- SIO, and actions were prioritised, initiated, actions
9 taken by Fife officers --

10 A. Yeah.

11 Q. -- on 3 May. What would your comments be about that, in
12 relation to this issue of independence?

13 A. My only observation would be: was that before the Fiscal
14 had determined that it was going to be taken over by the
15 PIRC? There is, you know, in these type of enquiries,
16 when there's a number of different people involved from
17 a number of different areas and organisations, it's
18 vitally important that everybody understands who is in
19 ultimate charge, who is the SIO.

20 It's an issue I had throughout my career, you know,
21 that we had to make -- especially when you are being
22 deployed to -- like, for example, I was deployed to
23 Inverness on a homicide enquiry, there was a DCI in
24 Inverness and the officers involved in that enquiry were
25 reporting to him, so that had to stop and it had to be

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1 made known that: here's the individual in charge of this
2 investigation, to ensure not only independence but to
3 avoid confusion. You know, there would be no point in
4 somebody coming back and briefing the DCI at Inverness
5 when I'm the officer in charge of the investigation.
6 That was difficult at times because it was only natural
7 for the officers there to go back to their manager but
8 we had to put a strategy in place whereby, no, you go to
9 me because I've been appointed as the SIO, you know, I'm
10 appointed by the deputy chief constable or whoever, but,
11 you know, it's me that's in charge of this.

12 Q. Is that -- how, in the example you give about the
13 Inverness case that you were involved in, how did you go
14 about sharing with officers, all the officers, that you
15 were the SIO and everything had to come through you?

16 A. A briefing with the officers. I had a briefing with
17 them all and explained to them, "I've been appointed
18 here, I'm the SIO", and I also spoke to the divisional
19 DCI and said, "Look, if anybody's coming to you with
20 information in relation to this investigation, you have
21 to direct them directly to me because it's ultimately me
22 that's in charge", to avoid any confusion, and there was
23 no point in him sitting with information that was vital
24 to my investigation, it had to come through me.

25 So getting everybody together and explaining: look,

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1 to avoid confusion here I'm the SIO and you report to
2 me.

3 Q. What would you do if some officers were out tasked with
4 priority actions already and only some were available at
5 the police office when you arrive? How would you
6 resolve that issue?

7 A. Before I had the briefing I would make sure everybody's
8 gathered together, I wouldn't necessarily take somebody
9 away from priority actions but I would put out
10 a message: the minute you're finished with that come
11 back to Kirkcaldy for, for example, a 6 o'clock
12 briefing, where I would brief everybody involved in the
13 investigation and make the lines of supervision and
14 who's in charge of the enquiry perfectly clear.

15 You know, the best way of doing it with the DCI at
16 Inverness was I just said to him, it was after his tour
17 of duty, "You'd better not be in here", if he wasn't
18 there and present in the office nobody can go back to
19 him with information. Because that is quite often the
20 simplest and best way to do it, if there is confusion.

21 Q. So that's something that, could that be done -- how
22 quickly could that be done after you arrive and as SIO?

23 A. I would -- very quickly, very quickly. So I can set out
24 the terms of reference set out what's important, what's
25 not important, highlight your priority actions,

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1 highlight what you want done that day, immediately, and
2 what's a lesser priority.

3 When we became Police Scotland it was about
4 introducing different people from different forces prior
5 to becoming Police Scotland, so we all could at least
6 put a face to the name, type of thing. And obviously as
7 SIO I have a policy file I have to fill out and I would
8 record all that to ensure that it stands scrutiny later
9 down the line, should it go to court.

10 Q. Tell us about your policy file as SIO, how would you
11 fill that in?

12 A. It basically starts with a summary of what you are faced
13 with, if you like, so you would basically write a brief
14 summary of what you're dealing with and then from there
15 you would start documenting your policy decisions.
16 That's not every decision, that's your policy decisions.
17 For example, appointing a crime scene manager. And you
18 would -- the way the form was set out, you would have to
19 justify that action, as to why you're doing that
20 particular -- or making that particular decision. And
21 that forms a document that would be available at any
22 court proceeding further down the line.

23 Q. If you were doing a particular handover, for example --

24 A. Yeah.

25 Q. -- to another officer or to an organisation such as

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1 PIRC, is that the type of decision that would be noted
2 in your policy file?

3 A. I suppose because of the timings around this
4 investigation and the fact that I was never appointed
5 the SIO, I would never have started a policy file. But
6 I'm sure it's been policied somewhere by Mr Nicholson,
7 Lesley Boal or whoever: Procurator Fiscal's decision for
8 PIRC to be called in to investigate the death of
9 Sheku Bayoh, and the reason for that would be
10 independence, transparency, et cetera. And then it
11 would be over to the PIRC to -- for them to complete
12 their policy files, or the SIO, if you like.

13 Q. And if a handover was to be done with an SIO and PIRC,
14 is that the type of level of decision that would go into
15 that file?

16 A. Yes. Yeah.

17 Q. We've heard evidence about things called daybooks as
18 well.

19 A. Yeah, yeah.

20 Q. And we understand they're different from policy files?

21 A. Oh yeah, yeah.

22 Q. Can you tell us, in your normal practice is a daybook
23 something that you've used?

24 A. All the time, yeah, yeah.

25 Q. So could you explain the distinction and how you use the

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1 daybook as opposed to the policy file?

2 A. Sure. A daybook, as it's called, is an A4 hard-backed
3 book of lined paper, and I would use that to --
4 for example, at a briefing, I would note down, "This
5 witness has said this, this witness has said that", type
6 of thing. And at some point later I would review what
7 I've written down and decide what needs to go into my
8 policy file. But the policy file was for sort of
9 strategic decisions, not the, you know, "Keith Hardie
10 was a witness and saw this". To go and interview
11 Keith Hardie wouldn't be a policy decision but an action
12 would be raised on the HOLMES to go and interview that
13 witness, if you like.

14 So your policy is all about why you -- how you're
15 directing investigating the circumstances and why you're
16 directing it a particular way. So you might have
17 a policy file with only ten, 12 decisions in it because
18 they're at a strategic level, but you would make over
19 100 decisions around how the enquiry's being developed.

20 Q. In each of those areas?

21 A. Yeah, yeah.

22 Q. We've heard about, as part of an investigation, as SIO
23 that hypotheses may be considered, possible reasons why
24 someone has died.

25 A. Yeah.

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1 Q. And that these hypotheses will be then the subject of
2 various tasks or priorities themselves. Would
3 hypotheses be something that would be noted in the
4 policy file or in the daybook?

5 A. To be honest with you, and this is personal, I didn't
6 like hypotheses, I didn't -- I never ever used it.
7 I know it was a tool that could be used. I never used
8 it because you can hypothesise as long as you want,
9 you know, at the end of the day my job was to try and
10 evidence and prove what's actually happened. You can
11 sit and discuss all the potential -- hypothetically, the
12 scenarios that have brought you to that point. I've, in
13 my experience only, I know it's quite big and, you know,
14 investigative training, I've never really seen a huge
15 benefit in it, to, you know, consider could this have
16 happened, could that have happened.

17 You know, the girl who was found, Nicola Bulley, who
18 was found in the river and the hypothesis was she was in
19 the river. I don't see how that helps an investigation,
20 you know, you can hypothesise all you want, I want to
21 stick to evidence and fact. That's my job, to provide
22 evidence and fact to the Procurator Fiscal to allow them
23 to consider a prosecution.

24 So it's very much personal, but I never really used
25 it. I mean, you would often think, you know, in

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1 an unexplained death: could this have happened, could
2 that have happened? But I wouldn't want to make that
3 the focus of my investigation. I would want to look at
4 securing evidence to prove that one thing happened
5 leading to where we are.

6 So, you know, a hypothesis for Sheku Bayoh, it's not
7 something I would have necessarily considered if I'd
8 been appointed the SIO.

9 Q. And in terms of something you said a moment ago about
10 briefing, if you were doing a briefing, you'd note down
11 what a witness said; in terms of conducting a briefing
12 as SIO, would you prepare notes in advance of that?

13 A. The initial briefing, yes. The briefing -- so, the
14 initial briefing when you bring the team together,
15 I would have a summary of what we're dealing with to
16 brief the team. Or it could be off the top of my head,
17 you know, because it's fast-running, if you like. For
18 that briefing, yeah. Thereafter, the briefing is more
19 about the enquiry team's given me the information so
20 I can decide where that information is taking the
21 investigation. So I wouldn't have notes for that. It
22 would be more about me looking for the enquiry teams to
23 brief me so I can decide, based on what they tell me,
24 where I'm going to take the investigation.

25 Q. If the enquiry team brought you information which was of

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1 significance to your enquiry, is that something that you
2 would note down?

3 A. Well, possibly, probably, but it would all go into the
4 HOLMES computer and from that you have an action raiser,
5 somebody who raises actions from that. So I might say,
6 "Right, that's really significant, can we get that
7 logged on to the HOLMES computer and get the actions
8 raised from that as soon as possible", then you would
9 have a statement reader who would read that statement
10 and say, "Right, I need to interview him, I need to
11 raise an action to get him seen", or, "I need to raise
12 an action to recover this", or whatever. So the actions
13 would be raised through the statement reader.

14 But if it was vitally important I would say, "Right,
15 based on that information I want you to go and do that,
16 that and that immediately and you'll get your actions
17 when you come back". So an action is something that's
18 produced by the computer, to go and take a statement, go
19 and recover this, and then the officers who carry out
20 the action fill out the action log and complete the
21 action and then it goes back into the HOLMES computer.

22 Q. So once something's put on the HOLMES computer --

23 A. Yeah.

24 Q. -- actions will be dictated through the system, the
25 HOLMES system?

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1 A. Not the system, through myself or the person who's
2 inputting the information on. What we would call
3 a statement reader, if you like. So they would read the
4 statement and if one individual has named two other
5 individuals, then obviously we would need statements
6 from them. So they would mark up the statements and
7 action what needs to be done based on that statement.
8 If it was high priority I wouldn't go through that
9 process, I would say, "Right, I want him seen and her
10 seen tonight, if you like, if possible".

11 Q. All right. And prior to a matter being put on to
12 HOLMES --

13 A. Yeah.

14 Q. -- or if it's high priority, you would deal with that
15 yourself?

16 A. Yeah.

17 Q. Sort of --

18 A. Or -- yes --

19 Q. It would be dealt with immediately?

20 A. Yes. But it wouldn't -- my deputy or my crime scene
21 manager might come to me and say, "Look, I think this is
22 important", and I would say, "Yeah, go ahead and get
23 that done as a matter of urgency".

24 Q. You're the one dictating the direction or the strategy
25 and I'm not suggesting you're going out and taking

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1 statements yourself?

2 A. No, not at all, no.

3 Q. Can I ask you, we've heard some evidence about the
4 taking of statements from civilian witnesses, and in
5 particular we heard evidence about Collette Bell, who
6 was the partner of Mr Bayoh, being brought to Kirkcaldy
7 Police Office, and she was breastfeeding her baby at the
8 time, her mother arrived at Kirkcaldy with her with the
9 baby to assist.

10 I'm interested in your perspective in relation to
11 how a breastfeeding mother would be dealt with in terms
12 of an investigation, so someone who is the partner of
13 the deceased, and I'm interested in your views about,
14 first of all, passing a death message to that person.
15 Do you have any comments about that?

16 A. I think the overriding feeling would be sympathy towards
17 the individual who's about to receive some tragic and
18 life-changing information, it would be -- you know,
19 sometimes you pass the death message and then you have
20 to leave that individual for days until they're ready
21 to -- you know, until they've started to manage their
22 grief, got an understanding of what they're dealing with
23 before you would be in a position to attempt to obtain
24 any information from them which may be relevant to an
25 investigation.

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1 Q. In terms of that timescale, how would you -- would you
2 have any comments to make about a death message being
3 passed and then within a short period going straight
4 into an interview, or to take a statement from that
5 person?

6 A. It would depend on the demeanour of the witness, the
7 person who has received that information. I would
8 question it being done relatively quickly. I would
9 question somebody who's breastfeeding going to a police
10 station. But, you know, there might have been other
11 circumstances that dictated that was a good idea. But,
12 you know, again, in my mind breastfeeding, you know --
13 was it Collette?

14 Q. Collette Bell.

15 A. Collette would go into another room to breastfeed the
16 baby before coming back and continuing to ... that's how
17 I would perceive it. I wouldn't be comfortable with two
18 officers taking a statement off a mother who is
19 breastfeeding. Absolutely not.

20 Q. I don't want to give you the impression that that was
21 happening in the interview.

22 A. Right, yeah, yeah.

23 Q. I'm telling you that in terms of the context of her
24 personal circumstances at the time. The evidence we
25 heard was that Collette Bell had breastfed the baby and

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1 then gone to Kirkcaldy Police Office and then at the
2 police station in the interview room was told the death
3 message. The baby was with her at the time and her
4 mother was there at the time. We've heard she was very
5 upset after the death message was relayed. I'm
6 interested in your comments about the location, your
7 views on -- what are your views on interviewing a mother
8 who has a baby with her in an interview room in a police
9 station?

10 A. I don't like it, I wouldn't -- I would prevent it
11 happening, if it was me. I don't understand why -- this
12 is my opinion, I don't understand why she was taken to
13 a police station to be given the death message, because
14 my take on it would be you're better in the comfort of
15 your own home with perhaps family round about you when
16 that information is imparted to you as an individual.
17 I mean, to take somebody to a strange environment, if
18 you like, to pass on that message, I don't get it,
19 I don't understand, you know, what the benefits of it
20 would be. But there might have been circumstances that
21 I don't know about it, but ...

22 Q. We've heard evidence that Collette Bell called the
23 police, had returned to her house looking for her
24 partner, he wasn't there, and there were signs of
25 a disturbance, if you like, and that was the reason that

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1 the property was being seized.

2 A. Yeah.

3 Q. In that situation, would you maybe see cause not to keep
4 her in the house?

5 A. I would see cause not to keep her in the house but
6 I wouldn't see cause to take her to a police station,
7 I would then be looking at alternatives like her mother,
8 a sister, a relative, let's take her there and then pass
9 the information on and then withdraw to give them
10 a chance to come to terms with the information before
11 you would go back in with your family liaison officers
12 to start building up that trust and start getting any
13 information by way of witness testimony which may assist
14 the investigation.

15 Q. In a situation such as we have here, would that cause
16 you concern -- if you'd been SIO, would that cause you
17 concern about any delay in taking a statement from
18 Collette Bell?

19 A. I think it's about priorities and what takes precedence,
20 and I think the wellbeing of the individual, you know,
21 you could -- would take precedence over any delay and
22 how that might impact on the investigation. So for me,
23 it would be: we'll take a statement from her when she's
24 ready and not before that point.

25 And if that has a negative impact on the

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1 investigation, personally I could justify that,
2 you know, and that's again -- that would be something
3 you would log in your policy file, would be, you know,
4 "Collette Bell, potential witness, informed of the death
5 of Sheku Bayoh, however no statement taken at the time
6 based on her traumatic state. Will be revisited
7 tomorrow by FLOs".

8 So then, you know, if there is some criticism around
9 the delay in taking her statement, should it go to
10 court, I would be able to justify why that decision was
11 made. I mean, you know, the grief of somebody who's
12 just been told information like that, I would question
13 whether it's even possible to start taking a statement
14 from somebody like that. You have to give her time
15 to -- I'm not saying you ever come to terms with it, but
16 at least to begin to come to terms with it.

17 MS GRAHAME: I'm about to move on.

18 LORD BRACADALE: If you are, that's a convenient point to
19 stop.

20 So we'll stop for lunch and sit at 2 o'clock.

21 (12.57 pm)

22 (The short adjournment)

23 (2.00 pm)

24 (Proceedings delayed)

25 (2.03 pm)

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1 LORD BRACADALE: The transcription is now up to date and
2 running, so I'm grateful to the stenographer.

3 Ms Grahame.

4 MS GRAHAME: Thank you.

5 We were looking through the Gold Group meeting
6 minutes, and I wonder if we could go back to the minutes
7 from 20.15 hours, so this was the meeting in the
8 evening, and I would like to ask you if you have
9 a recollection of some other matters.

10 A. Okay.

11 Q. If we could look at page 2, I'd asked you about agenda
12 item 3 and the task; I'd like to move on to number 5,
13 please, and this relates to, "Family concerns", and
14 initially there's a discussion regarding
15 Chief Superintendent McEwan.

16 A. Yeah.

17 Q. He had attended with the family, we've heard evidence
18 about that, on 3 May. And there's a discussion about
19 McEwan and Shepherd attending at the home address of
20 next of kin. It was a highly charged environment:

21 "... deceased partner Collette and extended family
22 within, family [were] concerned that early contact they
23 had was purposely vague. They were unhappy they had not
24 been told anything about who contacted the Police and
25 Ambulance. [Chief Superintendent McEwan] provided them

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1 with an understanding of events. ... discussed the role
2 of the PIRC, and reassured them it would not be
3 P Division officers investigating the incident.

4 Then the task was:

5 "Family crave reassurance and are asking about
6 witnesses etc they do not wish anything publicised until
7 they inform deceased Mother who is in London."

8 Then if we turn the page we will see that this item
9 continues:

10 "Discussed that Police didn't know ... whilst
11 Collette ... was at Police Station."

12 There was an:

13 "... initial decision to have Police Scotland FLOs
14 but now hand over to PIRC FLOs for arrangement to gain
15 entry of house of deceased re collecting belongings for
16 child. Discussion re initial contact on phone from
17 PIRC.

18 "[Chief Superintendent] discusses Family desperate
19 to know about [post-mortem], and also arrangements on
20 having them conveyed to mortuary in Edinburgh."

21 Then:

22 "TASK -- To address all family issues raised."

23 Now, I know your role was to facilitate what PIRC
24 needed as they had primacy of the investigation.

25 A. Yeah.

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1 Q. Do you remember that being part of the discussion, the
2 family concerns?

3 A. I was certainly -- I do remember concerns from the
4 family, not specific concerns but I was aware the family
5 had a number of concerns, yes.

6 Q. In terms of this entry, we've heard evidence that these
7 matters were handed over to PIRC in their entirety --

8 A. Yeah.

9 Q. -- and PIRC were going to lead on that, and I'm
10 wondering if you have a recollection in your role of
11 facilitating any matters arising out of this task?

12 A. No, I don't have any recollection around the family,
13 concerns they had or us being involved or being asked by
14 the PIRC to carry out anything in these to these
15 concerns. But my understanding by this time was that
16 the PIRC FLOs were being deployed, therefore the PIRC
17 would take ownership of all interaction with the family.

18 Q. Was that anything to do with your role, that day?

19 A. No.

20 Q. No. Can I also ask you if you have any recollection of
21 the comment which is at the bottom of the second page,
22 so just go back, please, to the previous page, and
23 you'll see there:

24 "TASK -- Family crave reassurance and are asking
25 about witnesses etc they do not wish anything publicised

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1 until they inform deceased Mother who is in London."

2 Do you have any recollection about part of the
3 discussion relating to the deceased's mother, who was in
4 London?

5 A. I do have a vague recollection of that, and I remember
6 thinking at the time how difficult it would be to
7 prevent the mother getting information about the
8 incident through social media and the likes, and,
9 you know, news reporting. I remember thinking that's
10 going to be really difficult to prevent her getting any
11 information, not through the police but through
12 social media and, you know, media itself.

13 Q. And that was your concern at that time?

14 A. It was just an observation, it was going to be
15 difficult -- albeit she was in London, so I don't
16 suppose it would have had national coverage, although
17 I don't know, but social media became, latterly in my
18 service, a massive issue around imparting information,
19 because of, I suppose, how quickly social media spreads.
20 So we would -- on occasion I've experienced family
21 phoning in saying, "There's a body been found at this
22 house, I think it's my son, I've heard on social media
23 it's my son", so we would then have to deploy people
24 immediately to there. It is, I suppose, the power of
25 media and social media.

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1 Q. Going back to the next page, the minute notes that
2 a comment regarding:

3 "... arrangements on having them [the family]
4 conveyed to the mortuary in Edinburgh."

5 Do you remember any part of the discussion being
6 about those arrangements?

7 A. No, I don't, I'm sorry.

8 Q. Do you remember any discussion or involvement with you
9 regarding the post-mortem and the family going to the
10 mortuary?

11 A. Not -- not the family going to the post-mortem -- or
12 transportation, no. By that time that wasn't my --
13 you know, it was the PIRC's responsibility. I did
14 attend the post-mortem along with the PIRC, but that was
15 part of the handover, I suppose. But around
16 facilitating the arrangements for the family to attend
17 the mortuary, I had nothing to do with that.

18 Q. Can you tell us, what would -- normally what
19 arrangements would you make in relation to families
20 attending the mortuary as an SIO?

21 A. It would be done through the family liaison officers.
22 The family liaison officers would, under normal
23 circumstances, pick the family up and take them to the
24 mortuary to facilitate the identification of the victim
25 before the post-mortem took place.

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1 So a pathologist wouldn't start the post-mortem
2 until a member of the family had identified the
3 individual, if you like, so that that would be the role
4 of the FLOs. Whether -- if the family wanted to
5 transport or make their way themselves, then the FLOs
6 would be there to meet them, but under normal
7 circumstances the family liaison officers would take the
8 family to the mortuary and be present when the family
9 identified the victim and then take them back to their
10 home address.

11 Q. In terms of the arrangements for this family, that
12 wasn't anything to do with you?

13 A. No, no.

14 Q. Can I move on, then, please, to 4 May. Could I ask you
15 to look at some briefing notes. We've looked at these
16 previously, and it's, as I understand it, PS00784.
17 We'll have these brought up on the screen. You'll see
18 that this is a document typed up. The briefing notes,
19 as they're called, the first ones are 10 o'clock on
20 4 May 2015, and it was a briefing chaired by
21 Detective Superintendent Campbell.

22 There's no list there of who was present at that.
23 From your recollection do you remember if you were
24 there? We can show you more of the --

25 A. Yeah.

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1 Q. -- notes on the screen if that would assist.

2 (Pause)

3 A. I don't think I was present at that meeting. I don't --

4 I've no recollection of it. That's all I can say.

5 I don't recall. I might have been there, but

6 I don't ... was that the day of the post-mortem? No.

7 Q. 4 May was the day of the post-mortem. Can I ask you to

8 look at the second page. Now, your name is mentioned,

9 DCI Hardie, unless there was another Hardie?

10 A. No, that's me, I think.

11 Q. And it says there, "Social media is being researched",

12 it doesn't indicate on the face of it whether that's

13 a comment about you or by you. Does that help prompt

14 any memories? That was just after it says:

15 "Mr Campbell -- UKBA [Borders Agency] and

16 Passport Office are being contacted to confirm the

17 spelling of the deceased's name."

18 A. I don't see that on the --

19 Q. If we can bring that just slightly down, you will see

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20         the top line --
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21 A. Yeah, yeah.

22 Q. -- says that and then your name and, "Social media is

23 being researched", is underneath that. That's the only

24 reference to you --

25 A. Yeah.

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1 Q. -- that I can find in the document.

2 A. There wouldn't have been another DCI Hardie, I can --
3 I'm confident of that, but it might well have been that
4 the PIRC had asked me to research social media and I'd
5 given that task to one of the enquiry teams. I'm sorry,
6 but I don't have a recollection of doing that, but,
7 you know, if that's what the minute says, that -- I'm
8 pretty sure that would be me that's being referred to,
9 but I don't recall it, sorry.

10 Q. Not at all.

11 Can we then move on to the -- we'll stick with
12 4 May. I understand there was another Gold Group
13 meeting at 12.30 that day, so we'll just move away from
14 these briefing notes initially and if we could look at
15 the Gold Group meeting minutes, PS03161, and you'll see
16 this appears to be a minute from the 12.30 hours meeting
17 on 4 May. There's no reference to who was present at
18 that meeting, as there had been in other minutes we've
19 looked at.

20 A. Yeah, yeah.

21 Q. Do you remember if you were present at that meeting?

22 A. No, I don't remember. The only thing I would say is if
23 that was the day of the post-mortem, the chances are
24 I would have been in Edinburgh because I was attending
25 the post-mortem, but I don't have a recollection of that

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1 meeting.

2 Q. If we look at page 2, actually, this is part of agenda
3 item 3, which relates to the investigative process, and
4 it's named as being discussed by a DI Stuart Wilson?

5 A. Aye, okay.

6 Q. Do you remember him?

7 A. Yes, yeah.

8 Q. And then on page 2, just towards the end of 3, there is
9 a task that says, well, you can see that on the screen
10 at the bottom:

11 "... Advice to be gained from PIRC regarding the
12 disclosure of the PM results to the officers involved in
13 the incident. Supervisor to be identified to carry this
14 disclosure out."

15 Do you remember attending a meeting where that was
16 discussed?

17 A. No, Stuart -- I spoke previously about, you know, if
18 I was -- albeit I wasn't appointed as the SIO, I would
19 have a deputy. Stuart Wilson was on paper my deputy for
20 our involvement in this investigation. Stuart was based
21 at Kirkcaldy, knew the officers at Kirkcaldy, so I still
22 think I would have been in Edinburgh that day but Stuart
23 was carrying out the role of assisting the PIRC in any
24 requests they had of us.

25 Q. Do you remember any discussion about disclosing PM

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1 results to the officers who'd attended the incident?

2 A. No, I don't.

3 Q. Do you remember being part of any discussion, either on
4 that day or the next day, regarding whether the results
5 of the post-mortem should be disclosed to the officers
6 who were at Hayfield Road?

7 A. I'm pretty confident I was never involved in any
8 discussion in relation to that.

9 Q. And as an SIO, I'm interested in your perspective about
10 advising officers who have been at the scene --

11 A. Yeah.

12 Q. -- after the post-mortem, the day after he's died, about
13 the results of the post-mortem. I'm interested in any
14 comments you have on that.

15 A. I think it would be unusual, but if there was a request
16 from the officers, you know, if it was a traumatic
17 incident that they attended and if there was a request
18 from the officers to find out the result of the
19 post-mortem, once it's sort of -- once the result is
20 determined, I wouldn't have an issue.

21 I've never ever been involved in an incident where
22 the police have asked if they could be informed of the
23 result of a post-mortem. But I wouldn't necessarily --
24 you know, sometimes it's about the officers being able
25 to deal with -- they've been involved in an incident

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1 which has led to the death of an individual, they might
2 want to know, to reassure themselves or others, what the
3 result of the post-mortem had been. But I probably
4 wouldn't -- I wouldn't have an issue with the officers
5 being made aware of that, shall we say, once it
6 became -- you know, once we had the result and it was in
7 the -- well, when I say in the public domain, the family
8 were informed.

9 Q. Would the family being informed first be a priority for
10 you?

11 A. Absolutely, yeah. I think for something like that,
12 I think we would refer -- in my position I would refer
13 that decision to the Procurator Fiscal, because they,
14 you know, own the body or they have the custody of the
15 body for a period of time, so I think that would be
16 something that I would look to speak to the
17 Procurator Fiscal about and see if they had any opinion
18 as to whether they thought it was relevant or fair that
19 the officers should be made aware of the result of the
20 post-mortem. But family first on every occasion.
21 Nobody outwith the pathologists and the police in
22 attendance should get to know the result of that
23 post-mortem before the family.

24 Q. Do you have a particular view about why the family
25 should always be first to know?

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1 A. I suppose it's to continue the trust that you're trying
2 to build with the family, to ensure that they're not
3 hearing it from a third party, which in my mind would be
4 totally unprofessional, you know, they should hear
5 everything first, everything. And then if they hear it
6 from other sources that's fine, but to maintain that
7 trust that's hopefully been built between the police and
8 the family, all the information they get about the
9 investigation should come from us, and if it doesn't,
10 then that trust is perhaps breaking down.

11 Q. Now, this is 4 May --

12 A. Yeah.

13 Q. -- so we've heard that on that date there had been no
14 initial accounts, no operational statements, no detailed
15 accounts given, no forms completed.

16 A. Yeah.

17 Q. And you've explained your views about the importance of
18 the officers' accounts?

19 A. Yeah, yeah.

20 Q. Would you have -- through the lens of an SIO, would you
21 have concerns about sharing the results of a post-mortem
22 with officers where those accounts haven't been
23 provided?

24 A. Yes. Absolutely.

25 Q. Why?

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1 A. Good question. If they haven't provided their version
2 of events, the cause of death could influence their
3 version of events, that would be my concern. Albeit it
4 might be, you know, a wee bit extreme to consider that,
5 I would certainly have reservations about providing that
6 information to officers who were at the scene and hadn't
7 provided their statement, prior to them providing the
8 statement. If they had provided their statement,
9 I would have probably less or no concern about it, but
10 I would have concerns around how that could be
11 perceived.

12 Q. And in terms of how that might be perceived, either by
13 the family or in a wider --

14 A. Yeah.

15 Q. -- view, the public, what would your concerns be about
16 perception?

17 A. My concerns were -- and I'm talking about the officers
18 not providing statements and other issues -- it's adding
19 fuel to the conspiracy or it's adding fuel to the fire
20 of some type of -- maybe conspiracy is the wrong word,
21 some type of cover-up, if you like. I think it would be
22 difficult for members of the public to understand why
23 these officers hadn't provided statements two or
24 three days later into the enquiry, and all that does, in
25 my opinion, you know, and others', is why? You know,

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1 explain that to me, why don't we -- why haven't these
2 officers -- I know the reason, because their legal
3 advice from the Federation solicitor was to not provide
4 a statement, which is fair enough, I suppose, but it
5 doesn't take away from the suspicion that that might
6 cause in the general community.

7 Q. And in terms of -- if we imagine you as SIO -- carrying
8 out an investigation, what concerns would you have if
9 suspicion is being generated in the community or with
10 the family? How would that impact on your
11 investigation?

12 A. Massively, I think. You know, any suspicion towards
13 an investigative team has to have a detrimental effect
14 on the future relationship between the police and the
15 family but also the community, you know: how can we
16 believe what you're telling us when you're saying,
17 you know, the most important witnesses to this have not
18 yet provided a statement?

19 Q. Can I look again briefly at the briefing notes that we
20 looked at, and if we can return to these, page 2 of 4,
21 and you'll see halfway down that page it says:

22 "Briefing: 0915 hours. 05/05/2015. AM briefing
23 Tuesday - Hall Kirkcaldy. Chaired by DCI Hardie."

24 A. Yeah.

25 Q. Do you remember this meeting?

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1 A. Yes, I do, yeah.

2 Q. Tell us a little bit about this, you obviously chaired
3 a briefing on that day.

4 A. It was about moving forward and it was about briefing
5 the officers who were assisting the requests from the
6 PIRC, to let them -- and it's to save that confusion and
7 ambiguity about who's in charge here. So the briefing
8 was to update officers from Police Scotland as to what
9 our role was as this investigation progressed, and
10 I think at the start it refers to, you know, the primary
11 investigators, and we're working under the instruction
12 of the PIRC. And that was an instruction from the
13 Procurator Fiscal David Green. And after that it's
14 just, you know, what -- giving them an update as to what
15 we were dealing with and as to what the PIRC expected of
16 us. And what it was -- I suppose what was expected of
17 us by way of service of the PIRC investigation.

18 Q. Who was present at that briefing?

19 A. My guess, and it is a guess, would be officers from the
20 MIT who were now working with me to carry out the
21 requests given to me by the PIRC. So a team of MIT
22 officers.

23 Q. Can you describe that team of MIT officers to us, even
24 generally?

25 A. They would all be detectives with various expertise,

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1 for example I know there was productions officers there,
2 that was for the purpose of the post-mortem, to seize
3 the productions during the post-mortem. There were
4 some -- when I say a local, there was the MIT team at
5 Kirkcaldy, so there would have been some of them. So it
6 was a make-up of officers from the Major Investigation
7 Team who, for a period of time, were working under me,
8 if you like, so I had people to delegate the tasks that
9 the PIRC gave to me.

10 Q. How many officers did you have working underneath you by
11 this date? This is 5 May.

12 A. I would -- again, I'm guessing but I would say about
13 six, maybe three enquiry teams -- I know there was two
14 productions officers who were I think identified to
15 attend the post-mortem to take the samples during the
16 post-mortem and then another two enquiry teams. By this
17 stage my understanding was the lead PIRC officer had
18 changed -- in fact, I know it did -- it changed from the
19 guy who came out on the Sunday to another PIRC
20 officer --

21 Q. We've heard that initially it was Keith Harrower.

22 A. Yeah.

23 Q. And then it became Billy Little.

24 A. Yeah.

25 Q. Would that accord with your recollection?

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1 A. Yes, yeah.

2 Q. This is 5 May, these notes, the PM had been on 4 May.

3 A. Oh, right, okay.

4 Q. So when you talk about production officers being
5 present, did they continue to work as part of the MIT
6 team?

7 A. Yes. They can be deployed in another role as
8 an enquiry -- excuse me, as an enquiry team, if you
9 like.

10 Q. I'd like to briefly look at a memo, but before I do
11 that, can I ask you, in relation to your role during
12 that period, did you have any direct liaison with the
13 legal representation of the officers? Were you involved
14 in any way with exploring that or discussing that?

15 A. From memory, I think I had a discussion with -- well,
16 there was an inspector at Kirkcaldy Police Station who
17 was a Federation representative. And I did have
18 discussions with him. But that was around attempting to
19 take statements off the officers who were involved and
20 I think he was present at the request of the officer on
21 a couple of occasions.

22 I have a vague memory of speaking to the solicitor,
23 the Federation solicitor, to confirm with him that his
24 advice was they should not provide statements. But, as
25 I say, it's a vague, vague memory. I was certainly

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1 aware before I attempted to note statements that it was
2 highly unlikely any of the officers were going to
3 provide a statement to me and Stuart Wilson who was my
4 deputy.

5 Q. But you, despite knowing -- your thinking it was highly
6 unlikely, why did you then go on and make that attempt?

7 A. It was at the request of the PIRC, and I understand why,
8 because the PIRC wanted to ensure that these officers
9 were -- it was made perfectly clear to them that they
10 were being interviewed as a witness, as opposed to
11 a suspect. Just to see if that changed their position
12 around giving a statement. And as each of the -- as
13 Stuart and I interviewed each of the officers, that's
14 the first thing we did, we informed them that they were
15 here to give a statement as a witness and not a suspect.

16 So that, that request came from the PIRC. I totally
17 understand why they made the request, just so, you know,
18 any time looking to the future there couldn't be any
19 sort of suggestion, "I didn't know whether I was
20 a suspect or a witness", type thing.

21 Q. And that would also allow you to check whether people
22 wanted to follow their legal advice or not?

23 A. Yes, absolutely.

24 Q. Did you, at any point during that week, consider the
25 possibility that the officers' status may change, either

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1 when PIRC came on board and became more involved, or
2 even at a later stage?

3 A. No, to be honest with you, I didn't. I didn't think
4 that far ahead, to be honest, no. Certainly at that
5 time they were witnesses as far as I was concerned and
6 certainly as far as the PIRC were concerned. Yeah,
7 I accept that as the enquiry progressed it may well have
8 been that, you know, one or more than one officer became
9 a suspect, if you like, but then they would be entitled
10 to the same rights as any other suspect.

11 Q. I think you said earlier before lunch that if they had
12 become suspects, they would not be obliged to give
13 statements?

14 A. Yes.

15 Q. Thank you.

16 Can we move on to Thursday 7 May, please, and we
17 don't need to carry on with the briefing notes,
18 thank you. Now, there's reference to this in your
19 operational statement, PS00667, and if we look at
20 page 2, paragraph 5, we see here reference -- and you
21 have a hard copy of this -- that you:

22 "... received a request from the PIRC to make
23 contact with all officers who were known to be involved
24 in the arrest of Bayoh and establish whether they were
25 willing to provide an operational statement."

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1 Then throughout this part of your operational
2 statement, you talk about:

3 "From 1335 hours DI Stuart Wilson and I spoke with
4 first of all PC Craig Walker~..."

5 And the paragraph reads:

6 "At 1335 hours, same date, DI Stuart Wilson and
7 I spoke with PC ... Craig Walker, P Division within
8 Kirkcaldy Police Station. PI Alan Seath was also
9 present. PC Walker was asked if he was willing to
10 provide a statement regarding his involvement in the
11 arrest of Sheku Bayoh and the events leading up to his
12 death. It was clarified that the position of PC Walker
13 was that he was to be treated as a witness. PC Walker
14 provided that he did not wish to provide a statement, on
15 the advice of his solicitor at this time."

16 A. Yeah.

17 Q. And I think, without going through every single
18 paragraph, you then replicate --

19 A. Yes.

20 Q. -- that paragraph for each individual officer?

21 A. Yeah.

22 Q. The Chair can consider that in his own time. But on
23 page 3, do we see, if we look at page 3, paragraph 3,
24 this relates to Scott Maxwell --

25 A. Yeah.

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1 Q. -- we've heard evidence that he was the acting police
2 sergeant at Hayfield Road or T/PS, a temporary role, and
3 it says:

4 "About 0920 hours on Tuesday 12th May 2015,
5 DI Wilson and I spoke with [Temporary Police Sergeant]
6 Scott Maxwell ... [He] was asked if he was willing to
7 provide a statement regarding his involvement in the
8 arrest of Sheku Bayoh and the events leading up to
9 his ..."

10 And then there's the word "death" is missing there:

11 "T/PS Maxwell provided that he did not wish to
12 provide a statement, at this time, on the advice of
13 his solicitor."

14 I'm interested in the phrasing of that paragraph and
15 whether or not temporary Police Sergeant Maxwell was
16 also advised that he was being treated as a witness, or
17 if the position was somewhat different for him?

18 A. Not different at all, that's -- each and every one of
19 the officers got furnished with exactly the same
20 information after agreement with the PIRC, so that's
21 an omission in the statement, but there was no
22 difference between Scott Maxwell and the other police
23 officers.

24 Q. So that's an omission in the statement?

25 A. Yeah.

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1 Q. And if there wasn't that omission or typo or whatever,
2 would that paragraph have read the same as all the
3 previous other~..?

4 A. Exactly the same.

5 Q. Can I ask you about the arrangements for the officers
6 coming in that day? Many came in on 7 May. We see
7 Maxwell, he was 12 May.

8 A. Yeah.

9 Q. So not all of them were dealt with on 7 May. But I'm
10 interested in the arrangements that were made for the
11 officers to come in. It may have been suggested during
12 the first hearing of the Inquiry last May that a number
13 of officers were under the impression they were
14 attending the police office for the purposes of TRiM, so
15 trauma --

16 A. Yeah.

17 Q. -- and they were not given notice that they were going
18 to be asked for statements. They were brought in to
19 speak to you and DI Wilson, the senior officers from MIT
20 in Edinburgh --

21 A. Yeah.

22 Q. -- and they weren't told about that. I'm wondering if
23 you can tell us a little about the arrangements and why
24 the officers weren't told?

25 A. I ... I don't ... well, I wouldn't have been involved in

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1 making the arrangements personally. That would have
2 been somebody else's job, probably through
3 the Federation. The person referred to there,
4 Alan Seath, I think it is, was the Federation
5 representation for that area and I spent a lot of time
6 with him. And I think because he was a local police
7 inspector, it would be him that made the arrangements to
8 bring the officers in.

9 I would have certainly explained to him why I wanted
10 to speak to the officers, and I'm ... I can't say
11 they're not being truthful, not at all, but I'm not so
12 sure that they didn't know they were going to be asked
13 to provide a statement at the time. I certainly -- none
14 of them expressed surprise to me or Stuart that, "Nobody
15 told me you were going to ask for a statement", none of
16 that.

17 So my assumption from that was that the proper
18 arrangements had been made. I know or my understanding
19 is a lot of them weren't -- didn't return to duty
20 immediately, and it was all about availability. But
21 there were -- certainly none of the officers who I spoke
22 to expressed surprise or concern that they were being
23 asked to provide a statement. And I'm not saying --
24 you know, I was firmly of the belief that none of them
25 were going to provide a statement to me at the time

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1 because of the advice had been given by the Federation
2 solicitor which had been fed back to me.

3 So I really can't say any more on that, you know, to
4 say they were surprised that they were asked to give
5 a statement, I can't really comment any more, other than
6 none of them said to me -- it was very much, "I've been
7 advised by my solicitor that I'm not going to provide
8 a statement".

9 Q. If we assume they hadn't been advised, would that cause
10 you concern, that they weren't given advance notice?

11 A. Not overly, not overly, no. I wouldn't want to spring
12 it on somebody, you know, and if ... if it was a case
13 that, "Look, I'm in for a TRiM process, nobody told me,
14 I haven't got time to give you a statement just now", or
15 whatever, then we would have facilitated that further
16 down the line.

17 So I would never want to spring that on somebody,
18 but ... I'm not sure I can say any more about that. You
19 know, my memory doesn't serve me overly well around
20 specific arrangements, but all I can say to you is
21 I know 100% sure none of the officers expressed surprise
22 that they were being spoken to by me and Stuart, a DCI
23 and DI, with the hope that they would provide
24 a statement.

25 Q. Then I think if we remain with your original operational

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1 statement --

2 A. Yeah.

3 Q. -- do we see that you later spoke to PC Paton and, if

4 we move up the page -- that was on 13 May, and then

5 PC Short on Monday 18 May?

6 A. Yeah.

7 Q. And again, it appears that it was the same process

8 carried out in terms of your statement?

9 A. Yeah.

10 Q. Was that again the approach that you took with both

11 those officers?

12 A. Yes.

13 Q. Thank you.

14 Can I ask you to go back to -- we'll go back to your

15 Inquiry statement now, please, and I would like to just,

16 first of all, look at paragraph 19, 19/20, if we can

17 have those on the screen, please, and you were asked by

18 the Inquiry team about experience you had of

19 investigating complaints against police officers.

20 A. Yeah.

21 Q. And you explained that as an inspector you were

22 routinely allocated complaints against the police and

23 you worked in the countercorruption unit as a DI --

24 I think you mentioned that before lunch actually --

25 A. Yeah.

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1 Q. -- for a couple of years and that during that time you
2 investigated allegations of criminality against police
3 officers.

4 Then you mention in paragraphs 20 and -- if we look
5 at 20, first of all, you do comment:

6 "I have been asked if race was a factor in any of
7 these previous investigations."

8 And you investigated a number of ethnic minorities
9 in relation to criminality, and you comment about that.

10 And then at 21 you talk about being involved with
11 an incident of a black male who was arrested when you
12 were a sergeant, who made a complaint against you, and
13 you carried out an investigation and reported the
14 complaint that had been made against you?

15 A. It wasn't made against me, it was made against the
16 officers who dealt with him.

17 Q. Sorry, I've misread that:

18 "I was involved with an incident of a black male who
19 was arrested when I was a sergeant in [redacted] and he
20 made a complaint to me~..."

21 Not "about me", sorry, I misread that?

22 A. That's fine.

23 Q. "... that he'd been arrested purely because he was black
24 and it was racist."

25 So it was a complaint about racism by a gentleman

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1 made to you?

2 A. Yes.

3 Q. About another officer?

4 A. Yes.

5 Q. Or officers?

6 A. About the officers who arrested him.

7 Q. Thank you, I apologise.

8 A. That's okay.

9 Q. I am interested, now if we can turn to paragraph 98, and
10 you say:

11 "I have been asked about equality and diversity
12 within Police Scotland. Diversity was absolutely
13 massive in the police for obvious reasons and rightly
14 so. There was such an awareness of diversity."

15 Then 99:

16 "I've investigated a cop for alleged racism, if you
17 like so. But, you know, gone were the days that people
18 were reluctant to come forward and make any form of
19 complaint in relation to mistreatment or any influence
20 of racism. People were coming forward left, right and
21 centre, and rightly so. The canteen culture, if you
22 like, had gone. With, I would have to say,
23 unfortunately, the odd exception but, generally
24 speaking, because of the massive training programme [and
25 if we could move down the screen, please] that was

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1 undertaken and the diversity courses that I attended,
2 and others, were so impactful."

3 So I'm interested in this aspect of your Inquiry
4 statement. You've talked about investigations that
5 you've conducted, you've mentioned the countercorruption
6 unit and a specific example, and then in this paragraph
7 you talk about the canteen culture having been gone.

8 Could you explain, first of all, what you understand
9 as the canteen culture?

10 A. Yeah. Comments that -- it became known as the canteen
11 culture because generally speaking officers, constables,
12 if you like, had their lunch separately from
13 supervisors. So I can, you know, I was a supervisor for
14 most of my service, but generally speaking any sort of
15 inappropriate -- I'm talking about sexism more than
16 racism, to be honest with you, sexist behaviour towards
17 female police officers, the ones that were reported were
18 reported when there was no supervisors present.
19 I suppose for obvious reasons, because the individuals
20 concerned wouldn't behave like that when a supervisor
21 was present because it's more likely they would be taken
22 to task by the supervisor, if you like.

23 So I've always said, you know, in my service that
24 I'm not convinced I've ever witnessed racism, sexism or
25 whatever, but because I was a manager, a supervisor,

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1 that perhaps doesn't suggest that it wasn't going on,
2 it's just that it never went on in my presence, because
3 I would absolutely challenge it at the very least or
4 report it if it was serious enough to report.

5 Q. So you think that perhaps other officers, whether in
6 a canteen or otherwise, would feel more able to say
7 things along those lines if you weren't present
8 yourself?

9 A. Or any other supervisor.

10 Q. Or any other?

11 A. Yeah. Not in all -- I mean, not in every police station
12 on a daily, you know, a daily occurrence, but I've no
13 doubt that it did happen. But, as I say, the massive
14 training programme we undertook around not just racism,
15 diversity, you know, and treating everybody fairly, it
16 had a huge impact on the culture within the police,
17 without a doubt.

18 Q. When was the massive training programme?

19 A. I can't remember. A long, long time ago. I remember
20 attending diversity training when I was either
21 a sergeant or a PC, so you're talking about going back,
22 you know, a number of years, a number of years.

23 Q. And the comment here that you make about:

24 "... gone were the days when people were reluctant
25 to come forward and make any form of complaint in

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1 relation to racism. People were coming forward left,
2 right and centre, and rightly so."

3 Can you give us some understanding of what you mean
4 when you say "Left, right and centre"?

5 A. I think, you know, comparing the past with the present,
6 female officers, ethnic officers would allow, you know,
7 comments which were maybe on the edge or not --
8 inappropriate, they would let it pass. Where I think
9 because of the campaign we went through, the advertising
10 campaign, the posters on noticeboards, that message of
11 reassurance that, "If you come forward you'll be
12 listened to and we'll do something about it", we started
13 anonymous reporting, if you like, so people didn't have
14 to put their head above the parapet, they could actually
15 report something anonymously, and we had a process that
16 allowed us to investigate that, if you like.

17 So I think we just -- the organisation moved on, as
18 I'm sure all organisations have. And there was
19 a realisation that these comments, although they should
20 never have been acceptable, were certainly not
21 acceptable now and would be challenged and the person
22 would be taken to task.

23 Q. Can you remember when the facility for anonymous
24 reporting came in?

25 A. I don't, but I worked in the countercorruption unit and

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1 we had it then, so we would -- when I worked in there,
2 we would get what you would call an intelligence report
3 and we employed Crimestoppers to provide that facility
4 to us, so whoever phoned -- it's like whistleblowing, if
5 you like, whoever phoned that line could remain
6 anonymous and they wouldn't be speaking to a police
7 officer, they would be speaking to an employee of
8 Crimestoppers. Crimestoppers would note the detail and
9 then report it to us in the countercorruption or
10 Professional Standards Department and we would --

11 Q. Is countercorruption akin to Professional Standards?

12 A. Similar, yeah.

13 Q. Yes.

14 A. Countercorruption is investigating criminality.

15 Professional Standards is more about misconduct and
16 discipline-type things. But they're run in the -- the
17 same department.

18 Q. Thank you.

19 Can we look at this paragraph. You've talked
20 about -- in light of the previous paragraphs we looked
21 at and this paragraph, you've talked about carrying out
22 investigations where there's been allegations of racism,
23 and I'd be very interested in hearing about the -- how
24 you go about investigating a situation or a complaint
25 where there has been an allegation of racism or racial

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1 discrimination or something along those lines. What
2 sort of steps would you take to investigate that?
3 A. The same steps you would take investigating any
4 allegation. There really is no difference, other than
5 in incidents like this it might be about having to spend
6 time with potential witnesses to offer them the
7 reassurance and understanding that by coming forward
8 they're doing the right things -- the right thing, if
9 you like. And, you know, a lot of people would have
10 reservations about coming, coming forward. But, so you
11 might have to spend time with a witness just reassuring
12 them that they're doing the right thing, there's --
13 protection's probably not the right word, but there's
14 support and mechanisms in place. And just to offer that
15 reassurance that to come forward and actually put your
16 name to a statement was the right thing to do to root
17 these type of things out.

18 Q. In the situation that we had in Hayfield Road, we've
19 heard that on 3 May the family raised concerns about
20 potential racism or racial discrimination or race having
21 been a factor.

22 A. Yeah.

23 Q. And there was mention of events which had, prior to
24 3 May, taken place recently in Baltimore and other
25 matters along those lines. In terms of investigating

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1 those concerns, or those allegations, was there anything
2 particular that you as an SIO know you could have done
3 on those days in relation to investigating those
4 concerns that had been raised?

5 A. Er ... I think when your starting point is your most
6 significant witnesses are not giving you a statement,
7 then where do you go with it, you know, to try and go
8 back to the family and offer them reassurance that this
9 wasn't a racist -- you know, there was no -- and how can
10 you possibly give that reassurance at the start of the
11 investigation? You can't because you don't know until
12 you've investigated it.

13 The number one sort of line of investigation for
14 this would be to get the take on what had happened from
15 the officers themselves, which wasn't immediately
16 available. So you had to look elsewhere, if you like.
17 But I still -- you know, I still think the officers were
18 called there because of the behaviour of Sheku Bayoh
19 that, you know, there's no -- there's no doubt about
20 that. They didn't happen upon him, you know, in the
21 street. They were called to him because of his
22 behaviour. And I think it would be dangerous to lose
23 sight of that as well. I know that's probably not the
24 best of answers, but it's all I can --

25 Q. No, absolutely not, I'm happy to hear all your answers.

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- 1 A. Yeah.
- 2 Q. If we're looking at things that can be investigated in
3 a situation where you cannot procure the initial
4 accounts or the initial statements, would you have
5 considered accessing call cards showing the STORM
6 records in the lead-up to the events at Hayfield Road to
7 consider what information you could glean from those?
- 8 A. When you say call cards, you mean somebody phoning in
9 and reporting something?
- 10 Q. Yes, that's what I mean, we've heard they're called call
11 cards, we've heard they're called STORM records, that
12 type of thing.
- 13 A. Absolutely, yeah. Look at the history of, you know,
14 Sheku's house, if you like, to see if the police have
15 been called there previously, to see if there's any
16 evidence of allegations of racism, that would be
17 a routine -- when you start a major enquiry you get
18 a list of round about 50 actions which are, I suppose,
19 your bread and butter, if you like, so as an SIO you get
20 given that sheet and invariably you tick every one, and
21 that would be -- one of these actions would be to
22 research the properties and the individuals to see what
23 we as an organisation hold on record in relation to the
24 addresses or the individuals.
- 25 Q. Would you consider looking into the records of the

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1 officers themselves who had attended the scene,
2 disciplinary, misconduct, any records?

3 A. At some point down the line, yeah, yeah, you would have
4 to. I think you would have to, yeah, because it's
5 information that may or may not be relevant to the
6 investigation. But yes. And in these circumstances,
7 yes.

8 Q. When you say "somewhere down the line", do you have in
9 your mind a timescale?

10 A. Not really, but because anything that isn't going to
11 change wouldn't necessarily be priority. So if,
12 you know, one of these officers had a record of
13 discipline, it's not going to change, so, you know,
14 whether we'd carry it out on the Monday or a week on
15 Monday we're still going to get the same answer.

16 Q. And would you consider looking at the Airwaves to
17 consider what was said?

18 A. Again, that would be in the list of the 100 actions to
19 seize all communications that were made around the time
20 of the incident to hear exactly what each officer has
21 transmitted over the radio, yeah.

22 Q. And presumably also CCTV that was maybe available?

23 A. Yeah.

24 Q. Would these be actions, when you talk about 50 or 100
25 actions, would those be generated via the HOLMES system

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1 or something that you would have reference to yourself?

2 A. I think it -- from memory, it's called document 1 or 2
3 in the HOLMES system, so that is a list of 100 actions,
4 some of which may not be relevant to your investigation,
5 and one of the first jobs as the SIO would be to go
6 through that list, tick the ones off you wanted done,
7 which was normally at least 90% of them, and then feed
8 that back into the HOLMES team and they would generate
9 the actions. And I would also prioritise the actions,
10 if there were some that I thought I want them high,
11 medium or low basically.

12 Q. So the comment you made a moment ago about disciplinary
13 or misconduct records, that wouldn't be the number one
14 priority?

15 A. No, no, and that would perhaps not sit on the -- it
16 probably wouldn't sit on the, you know, that list if you
17 like, that would be something that would be unique to
18 this investigation.

19 Q. Can we look at paragraph 100, which is on the screen, at
20 the bottom:

21 "I was involved in two big inquiries, massive
22 inquiries, around institutionalised racism. We never
23 uncovered it, if it existed at the time, we just didn't
24 and my feeling was that the conclusion of the Inquiry
25 that it didn't exist."

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1 Can you tell us a little bit more about the
2 background to this?

3 A. Yeah, it was an officer who got arrested for attempting
4 to pervert the course of justice whilst giving evidence
5 at court, and he was given a custodial sentence, and he
6 made -- at that point he made allegations of
7 institutionalised racism within the police culture in
8 the station he worked at, and significant allegations.
9 I was part of the investigation in relation to that
10 allegation and, like I say in my statement, I mean, that
11 was an investigation I worked on for a number
12 of weeks/months, and we never ever got any corroborative
13 evidence of the officer's allegations. That's not to
14 say he was making it up, what I'm saying is we never
15 managed to capture corroboration of his allegations.

16 Q. Were these allegations by other officers of racism shown
17 towards this individual who made the complaint?

18 A. Yes.

19 Q. You've said that you were involved with two big
20 inquiries; were they in relation to separate matters,
21 separate allegations or were they both in relation to
22 this one individual?

23 A. Both in relation. So there was an investigation around
24 him and the fact that he was given a custodial sentence
25 for perjury, and he then made the allegations of

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1 institutionalised racism which we investigated.

2 Q. So this was in relation to one individual rather than
3 a Police Scotland-wide or a regional investigation?

4 A. Yeah, one individual, and it was Lothian and Borders
5 Police at the time, as opposed to Police Scotland, not
6 that that matters.

7 Q. Thank you.

8 Can I just ask you one or two final questions.
9 You've talked in paragraph 58, if we could go back to
10 that, that as at 3 May, I think you've given a comment
11 earlier that you -- I'm interested in whether you had
12 had any formal training on race at the point of
13 3 May 2015.

14 A. Sorry, can you say that again?

15 Q. Sorry. Had you had any training specifically about
16 race --

17 A. Yes.

18 Q. -- by 3 May? You had?

19 A. Yes.

20 Q. Do you remember anything about that or the impact it had
21 on you?

22 A. Yeah, I do, I remember it. I remember it well, for
23 a number of reasons, but yes. Yeah.

24 Q. Do you want to tell us what the reasons were?

25 A. I can, it involves I suppose racial speech, not

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1 particularly bad, but it's one of the many things that
2 stuck in the mind of my training.

3 Q. Right. When you talk about racial speech, we've heard
4 evidence about comments being made regarding Mr Bayoh
5 being the size of a house or that type of thing, being
6 a very strong individual, very large individual compared
7 to others.

8 A. Yeah.

9 Q. We've described that variously as potentially racial
10 stereotypical language. Is that the type of speech that
11 you're talking about?

12 A. I would never ever describe him as the size of a house,
13 I would describe him as a very, very fit individual. To
14 me the size of a house is somebody who is overweight, if
15 you like. But no, I would never describe him as that.

16 What I'm talking about is a reference to Chinese
17 people, but referring to them as a shortened version of
18 Chinese, and it's something before my training I was
19 guilty of myself, and my young daughters used to refer
20 to Saturday night being "Chinky night", because we had
21 a Chinese meal, and I always thought it was a reference
22 to a Chinese meal. There was a Chinese lady at the
23 diversity training who spoke about being referred to in
24 that manner, and the reason I refer to this is my
25 daughters were young at the time, 9-year old, 6 or

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1 whatever, and when I finished the training and went back
2 and said to them, "Look, you don't refer to them by that
3 name and you don't refer to Saturday being Chinky night,
4 it's Chinese night", and I always use it as an example
5 of, if you can educate young kids at that age to stop
6 using that word, because it's offensive to others,
7 although it was never meant towards a Chinese person,
8 then it's pretty easy to educate everybody else to do
9 the same thing, in my opinion.

10 Q. So the education that you received, although you were
11 an adult, that had an immediate impact on your own
12 behaviour?

13 A. Absolutely, and I would never ever refer to Sheku as
14 being -- he was a fit, strong, very much in shape guy,
15 if you ask me.

16 MS GRAHAME: I'm conscious of the time and of the
17 transcriber.

18 LORD BRACADALE: Yes. Well, we'll stop for 15 minutes
19 there.

20 (3.01 pm)

21 (A short break)

22 (3.21 pm)

23 LORD BRACADALE: Ms Grahame.

24 MS GRAHAME: Thank you very much.

25 I've two final matters. Can we go back to

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1 paragraph 100 of your Inquiry statement, please. And
2 I've already asked you about this, and this related to
3 your investigations into what's described as
4 institutional racism. How do you or how did you go
5 about investigating institutional racism, or
6 institutionalised racism?

7 A. The same as you would investigate any other allegation,
8 is go to the witnesses or those who the allegations were
9 made against, then look around the periphery for any
10 other opportunity of evidence. I mean, these
11 allegations were all about verbal comments, if you like,
12 so, you know, forensics, CCTV -- well, CCTV could come
13 into it, but they were very much historical, so it was
14 really all about interviewing witnesses and going beyond
15 that, you know, interviewing people who may have been
16 present who were not necessarily -- so this one,
17 for example, the guy made allegations at a particular
18 time somebody made some comment to him. We would then
19 identify those who were on duty at the time and go and
20 interview them and find out if they heard the comment or
21 if they were aware of, you know, any inappropriate
22 remarks or comments made towards this individual. So it
23 would be very much a -- not a fishing exercise, but you
24 would go out there and speak to as many people as
25 possible to try and get corroboration of the allegation.

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1 Q. And then at paragraph 102, I asked you -- this says:

2 "Prior to May 2015, if there was racism in the
3 workplace, there were processes in place to report this.
4 I mean anybody could report. We had like
5 a whistleblower type which was used fairly regularly,
6 I would have to say, to report anything where somebody
7 never had the courage to put their name to
8 an allegation. After that it would be dealt with
9 anonymously thereafter. There were so many processes in
10 place that would allow you to report that."

11 And you gave evidence just before the break about
12 that anonymous reporting facility?

13 A. Yeah, yeah.

14 Q. Can I ask you about the word "courage" there? Are you
15 aware of what reasons there may be why officers or staff
16 or others may be reluctant to put their names to
17 an allegation of racism?

18 A. A fear of being ostracised, I suppose. You know,
19 sometimes -- I personally believe it takes courage to
20 put your head above the parapet and come forward,
21 because you're fighting against what could be the norm,
22 if you like, so that's what I'm referring to as the
23 courage to come forward. And we would always, you know,
24 offer reassurance when we did our briefings and that,
25 that, "You will be fully supported if you want to come

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1 forward". So I suppose that's what I meant by courage.

2 MS GRAHAME: Thank you.

3 I have no further questions, thank you.

4 A. Sorry, can I just clarify one thing, if that's okay?

5 LORD BRACADALE: Yes.

6 A. In relation to my previous evidence.

7 Going back to the very start when I told you the
8 briefing I was given about the female officer's running
9 away and Sheku clipping her legs, I'm not 100% sure
10 I can attribute all of that to Lesley Boal, it may have
11 been something that I picked up once I'd arrived at
12 Kirkcaldy. I think it would be unfair on her, you know,
13 to say that she told me -- she definitely gave me
14 a briefing and she may well have told me exactly as
15 I described, and she certainly told me most of it, but
16 the bit about the female officer running away and having
17 her heels clipped may have come from somebody else once
18 I got to Kirkcaldy.

19 LORD BRACADALE: Thank you.

20 Are there any Rule 9 applications?

21 Thank you very much, Mr Hardie, for coming to give
22 evidence to the Inquiry. I'm going to rise briefly to
23 allow the next witness to be introduced, and you will
24 then be free to go.

25 THE WITNESS: Okay.

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1 (The witness withdrew)

2 (3.26 pm)

3 (A short break)

4 (3.29 pm)

5 LORD BRACADALE: Good afternoon, Superintendent Shepherd.

6 DETECTIVE SUPERINTENDENT INSPECTOR NICOLA SHEPHERD

7 (affirmed)

8 LORD BRACADALE: Ms Grahame.

9 Questions from MS THOMSON

10 MS GRAHAME: This witness is going to be taken by my learned

11 junior, Ms Thomson.

12 LORD BRACADALE: Ms Thomson.

13 MS THOMSON: Thank you.

14 What is your full name, please?

15 A. Nicola Shepherd.

16 Q. And I understand that you're a superintendent with

17 Police Scotland?

18 A. I am, yeah.

19 Q. May I ask your age?

20 A. 48.

21 Q. And your years of police service?

22 A. 29.

23 Q. Superintendent, there's a blue folder in front of you,

24 if you open that up you should find inside a copy of the

25 statement that you gave to a member of the Inquiry team,

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1 that's got reference 00261. We can pull that up on the
2 screen as well, please. If we go to the very final
3 page, we will see that you signed the statement on
4 7 February of this year.

5 A. I did, yes.

6 Q. You will see that on the screen your signature has been
7 blacked out, but I think your signature's on the copy in
8 front of you. If we can go briefly to paragraph 63 of
9 your statement, you say:

10 "I believe the facts~..."

11 Sorry, do you have that? It's very at the end.

12 A. Yeah.

13 Q. "I believe the facts stated in this witness statement
14 are true. I understand that this statement may form
15 part of the evidence before the Inquiry and be published
16 on the Inquiry's website."

17 You should also find in the folder in front of you
18 a copy of your operational statement, that's PS00643,
19 which you prepared yourself, I believe, on 18 May. If
20 we scroll down, we should see the date, 18 May 2015, at
21 Kirkcaldy Police Station. Leaving that to one side, you
22 gave a number of statements in addition to your
23 operational statement, a statement that you gave to the
24 PIRC on 18 June, that's PIRC 00208. There we are, taken
25 on 18 June by investigator John Clerkin and

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1 Alistair Lewis at Kirkcaldy Police Office?

2 A. Yes.

3 Q. And finally a supplementary statement that you gave to
4 the PIRC on 11 January 2018, that's PIRC 00209. Noted
5 on that occasion by Investigator Garry Sinclair at
6 police headquarters?

7 A. Correct, yes.

8 Q. Anything that I refer to will pop up on the screen in
9 the way that the statements have done in the last few
10 moments but there are also hard copies in the folder in
11 front of you, and if you would find it helpful at any
12 point in your evidence to look at them, please feel free
13 to do so. If there are any paragraphs that you would
14 like to come up on the screen, please just let me know.

15 If we can return briefly to your Inquiry statement,
16 and look at paragraph 3, paragraph 3, please, where you
17 were referring to your operational statement and the two
18 statements that you gave to the PIRC, which we have just
19 looked at very briefly, and you went on to say:

20 "These statements I have given to the best of my
21 memory at the time and I did my best to be truthful and
22 accurate in what I said. I've read over the PIRC
23 statements and confirm the content is correct. I'm
24 asked if there was any discrepancy between this
25 statement and my earlier statement, which statements

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1 I would prefer. I would say my operational statement
2 and PIRC statements because they were given at the
3 time."

4 Also in the folder, and we don't need to bring it up
5 on the screen just yet, but they're there in case you
6 need them, Superintendent, you should find copies of
7 your daybook, which is a series of pages, the first one
8 is PS09169, it might be that the numbers are on the tabs
9 on the side.

10 A. Thank you.

11 Q. There should be four pages, but they are individually
12 numbered. They appear to be there.

13 A. Thank you.

14 Q. Grand. And your notebook. Again, it's a series of
15 separately numbered pages, they're sequential this time,
16 and they begin PS18479. They should be there too.

17 A. Yeah, I have them, thank you.

18 Q. Grand. And again, if you want to make reference to them
19 at any time you can do that. And if there's anything
20 that you would like to be put on the screen, let me
21 know.

22 If I can take you back to May of 2015, what was your
23 position at that time?

24 A. So my position on 3 May was the local area commander for
25 Kirkcaldy and Glenrothes.

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1 Q. And in terms of rank, were you a superintendent at that
2 point in time?

3 A. I was a Chief Inspector.

4 Q. So you were a Chief Inspector and local area commander,
5 are these one and the same thing or are the rank and the
6 role different?

7 A. I think I'm correct in saying so every local area
8 commander has the rank of Chief Inspector.

9 Q. But would every Chief Inspector also be a local area
10 commander?

11 A. No.

12 Q. No, is that a specific role?

13 A. Yes.

14 Q. Can you tell us a little, then, about the role and the
15 responsibilities as local area commander?

16 A. Yeah, of course. I think the easiest way to describe
17 it, then, so in an operational -- there's an operational
18 sense, there's a local area committee sense in terms of
19 the partnership and then there's a national aspect to
20 it. So if I take the operational, the day-to-day
21 policing response is a duty that I would oversee, so
22 I've got a -- I'm overseeing a cadre of constables,
23 sergeants, inspectors that are delivering on the
24 policing priorities in the local area. So the community
25 teams, the response teams, that's -- they fall within my

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1 remit.

2 Into the local area there is a local area committee
3 that sits in terms of the partnership. So I'm the
4 conduit for the local area partnership. So community
5 safety, local authority, that's the kind of more
6 strategic landscape that I'll operate in, and again
7 delivering on those local priorities. So, Kirkcaldy
8 would have a local plan in terms of priorities for
9 Kirkcaldy, and then nationally clearly the force, and
10 prior to Police Scotland Fife Constabulary had
11 priorities for Fife and then obviously Scotland, so I'm
12 the conduit for national priorities.

13 So I suppose I'm the most senior officer in
14 an operational sense at Kirkcaldy Police Office and I'm
15 overseeing the deployment of staff, how we perform
16 against those both very local, those partnership
17 priorities, and also those national priorities.

18 Q. Thank you.

19 We can perhaps go to your statement, the Inquiry
20 statement that is, and look at paragraph 6 where you say
21 a little more about your role back in 2015:

22 "I'm asked about the remit of my role as at
23 3 May 2015. As the local Area Commander for Glenrothes
24 and Kirkcaldy, my remit was to oversee the delivery of
25 our local and national policing priorities."

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1 As you've just explained:

2 "I was responsible for the operational delivery of
3 policing in both areas and that included the deployment
4 and co-ordination of resources and generally managing
5 overall performance in the area~..."

6 Which again, you have explained to us.

7 "... The local area commander also plays a lead role
8 in community planning with multi-agency partners and
9 reports on local performance to local authority scrutiny
10 boards on a quarterly basis."

11 I'd like to ask you just a little more about
12 community planning. You've told us about your local and
13 national role in terms of policing response, but tell us
14 what your role as -- or indeed lead role in community
15 planning with multi-agency partners involved?

16 A. So in effect Kirkcaldy had a local plan, so the service
17 leads across local authority, health, health and social
18 care, you know, we would collectively come together to
19 look at what the priorities are for Kirkcaldy as
20 an area. So there's local co-ordinating groups that sit
21 at, you know, a senior partnership level looking at
22 everything from educational attainment to health to
23 unemployment. So the police play, you know,
24 a significant role in that, that partnership.

25 So the role of the local area commander will be,

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1 you know, that service level manager with the equivalent
2 partners within the local area. So those -- we all
3 co-ordinate and share resources and assets to deliver on
4 the priorities for Kirkcaldy. Not always policing
5 priorities, but they should complement one another. So
6 that's probably the community planning role, but it's
7 a statutory role as well.

8 Q. If we can scroll down a little to paragraph 7, please,
9 you explain that:

10 "In terms of the incident itself [on 3 May], my
11 duties were to effectively continue to perform my role
12 as Local Area Commander but with the additional
13 responsibility to monitor community impact as well as
14 the impact on staff. In addition, my role was to ensure
15 we were able to continue to provide a policing service
16 to the communities in the Kirkcaldy area and a visible
17 and responsive police service."

18 I would like to ask you some questions about the
19 additional responsibilities that you took on, on 3 May.
20 You mentioned there being an additional responsibility
21 to monitor community impact as well as the impact on
22 staff.

23 So let's begin with community impact. What is
24 community impact?

25 A. The role of a local area commander is to, you know, work

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1 within that partnership to look at community
2 relationships, community tensions, you know,
3 successfully delivering the priorities I've mentioned
4 come with, you know, a cohesive set of public and
5 certain voluntary sectors working together, but also
6 with our communities. So community impact, certainly in
7 the sense of the enquiry, was obviously in the aftermath
8 of the incident, but the actual role of the local area
9 commander is actually looking at any community tensions
10 from really, not a lower level but maybe less notable
11 acts of antisocial behaviour to neighbour disputes,
12 to -- you know, these are all things that happen within
13 a local community and a single reported incident might
14 not appear significant but clearly if they were to
15 become more frequent or profound then there's
16 potentially an issue for either the police or those
17 local partners.

18 So the community impact is probably just looking in
19 a general sense, that's what the local area commander
20 will do with their teams, make sure they're picking up
21 on any -- well, any community concerns, really.

22 I suppose for the enquiry in terms of the community
23 impact, so I suppose when I use the word "addition",
24 it's because there was a very specific community impact
25 over and above these local more day-to-day issues that

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1 happen within communities.

2 Q. You say there was a very specific community impact, what
3 do you mean by that?

4 A. Well, in terms of the incident that took place on 3 May
5 the impact in relation to that was going to require
6 a significant individual focus as well as managing the
7 day-to-day impact of other incidents, crimes, anything
8 that might be happening in that area, so this was going
9 to be an additional community impact that I was going to
10 go and oversee.

11 Q. Would it be fair to say that from a very early stage you
12 recognised that there would be an impact on the local
13 community as a result of the death of Sheku Bayoh?

14 A. I did, yes.

15 Q. At an early stage did you anticipate what that impact
16 might look like and how policing might play a part?

17 A. I think it would be fair to say when I'm first notified
18 of this incident, I was informed it was a critical
19 incident, so the sheer mention of that term to describe
20 what it was let me know that it was going to be
21 significant community impact, because to be a critical
22 incident or be assessed as such it's assessed as having,
23 you know, a significant impact on the confidence of
24 families, victims and the community. So I took from
25 that assessment that it would be significant.

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1 Q. And what is meant by community; what community are we
2 talking about here?

3 A. Everybody, you know, not just community in terms of
4 geography: people that visit, work, live, have
5 associations with. Not just communities of geography.

6 Q. It goes beyond a geographical border around Kirkcaldy or
7 perhaps even Fife and it would encompass anybody perhaps
8 who would have reason to come into that geographical
9 area?

10 A. Absolutely, yeah.

11 Q. And within that sort of broadly geographical sense of
12 community, did you take a cognisance of there being
13 communities within that community? So, for example,
14 we've heard some evidence about the black community
15 within Kirkcaldy.

16 A. Yeah, absolutely, you know, we would look in the
17 community in the sense of, you know, those that -- like
18 I said, that are employed there, the demographic of
19 Kirkcaldy. And not just Kirkcaldy, as you've
20 highlighted, you know, Kirkcaldy's the urban centre of
21 the local area, but we had smaller, you know, areas that
22 are still within the local area but don't actually fall
23 within Kirkcaldy.

24 So absolutely, you know, communities, you know, when
25 we look back, the police were almost a community,

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1 another community to be considered as part of that
2 community assessment as well.

3 Q. So there's the police as a community --

4 A. An additional --

5 Q. -- as an example, there's the black community within the
6 wider geographical community that makes up the Kirkcaldy
7 or Fife area. But should I understand that, in terms of
8 community impact, your interest wasn't restricted to the
9 black community, it was the community in the wider sense
10 of the word?

11 A. It was, yes.

12 Q. You had additional responsibility in relation to
13 monitoring community impact. How do you monitor the
14 impact on the community?

15 A. Again, you know, going back to that, that was my core
16 role, you know, was to work on a daily basis. So it's
17 looking at, you know, media reporting; it would be,
18 you know, information that would come to me from elected
19 members, who are clearly representative of their
20 communities; they would raise, you know, issues,
21 you know, complaints to the police in terms of calls for
22 service, you know, reported crime, intelligence, all --
23 you know, a multitude of systems, processes and
24 information feeds allow me to -- and the officers and
25 staff that work, certainly in Kirkcaldy, because that's

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1 what we're talking about, tell me of anything that would
2 heighten concern, of any incidents that, you know,
3 clearly would give concern to communities.

4 So there's lots of different ways to do it. It
5 could be the staff coming in having spoken to, you know,
6 members of the community, to any groups that we attend.

7 So there's a number of ways that we would look right
8 across that spectrum to get a sense of, you know, what's
9 normal, and then how do you then get an assessment of
10 when something happens that's out of the norm, how do
11 you recognise it? It is things like media, intelligence
12 and actually just being out and about and speaking to
13 people.

14 Q. Let me ask you a few questions about those different
15 strands across the spectrum, as I think you described
16 them. Some are self-explanatory: media, being out and
17 about and speaking to people, staff reporting concerns
18 to you. What about intelligence? You mentioned
19 intelligence. What do you mean by intelligence in this
20 context?

21 A. You know, in that context, you know, community
22 intelligence, it just -- you know, it can come through
23 about -- you know, one of the common things that used to
24 come through could be drug dealing, you know, and in
25 a community, or antisocial behaviour. And those local

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1 issues that have quite a pervasive impact on those that,
2 you know, live, work and operate round about it.

3 So some of that -- if we take drug dealing as
4 an example -- would come through, you know, our
5 intelligence systems to suggest that either people are
6 affected by it, that it's as blatant as they think,
7 you know, drugs are being dealt.

8 So it's, you know, that in itself would be
9 a recognisable impact for me, especially if we started
10 to get, you know, complaints about it, then that would
11 come probably through as an intelligence entries.

12 Q. So media, out and about, staff reporting concerns,
13 intelligence, and you also mentioned elected members.
14 We'll probably discuss the elected members in quite
15 a lot of detail, but perhaps give us an overview at this
16 junction. Who are these elected members?

17 A. Again they're a broad selection right across, you know,
18 a range of political parties that sit, you know, in each
19 local area. So the police, and certainly my role within
20 Kirkcaldy, I had regular contact with all the elected
21 members and ultimately, you know, as a policing service,
22 you know, I would report to elected members via scrutiny
23 on a quarterly basis.

24 So they would -- the scrutiny that sat on -- sitting
25 at Kirkcaldy would assess our policing performance

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1 against the priorities that I mentioned right at the
2 start of my evidence.

3 So the elected members would write or would contact
4 me, as the local area commander, to say one of their
5 constituents has an issue or a problem that they would
6 seek police support for, or maybe question as to how
7 something had been dealt with because it had been raised
8 with them. So they would route that through me, and
9 clearly I would, you know, try and either solve or glean
10 information to put back to them.

11 So the elected members have got a real sense of
12 community and their individual community, and members of
13 the public would clearly approach them with issues and
14 more often than not they would either come to me or the
15 community inspector to let us know.

16 Q. You describe them as elected members. They're elected
17 to what? What's the name of the body or the group that
18 they're elected to?

19 A. They're obviously elected to their ward area, so a kind
20 of -- you know, they are multi-member ward areas. So
21 they're elected in -- as -- to represent that ward area.

22 Q. Elected by constituents --

23 A. Yeah.

24 Q. -- from that ward?

25 A. Yeah.

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1 Q. So they're separate from the police, as it were?

2 A. Yes. Sorry, yeah.

3 Q. They're not elected to a group that is a part of
4 Police Scotland in any way?

5 A. No. No, no.

6 Q. They're elected by their constituents for the particular
7 ward in which they sit.

8 You've explained to us what is meant by community
9 impact and how you go about monitoring community impact
10 through the various strands that we have discussed, and
11 in a very general sense -- because we will explore this
12 in your evidence -- where you realise as a result of
13 monitoring that you have carried out that there has been
14 an impact on a particular community as a result of
15 an incident, how do you go about addressing and
16 responding to that impact?

17 A. I suppose there are various ways and it would depend on
18 what the impact is. You know, the whole point of the
19 community impact assessment would be, you know, what may
20 happen, what has happened and what can happen, and we
21 structure that assessment on a community impact
22 assessment template. It's a national template, it gives
23 you, I suppose, a structured and coherent way to make
24 sure we can record, you know, that assessment, and it's
25 an evolving process. So to begin with, and because it's

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1 evolving, it would depend on the amount of information
2 that you've got. As the situation develops, you clearly
3 gather more information, and then you would clearly look
4 at mitigations. So ultimately you're looking at: where
5 do we think the risks are? And then: what would the
6 mitigations be that we would look to -- we would look to
7 put into place?

8 So it could simply be communication, and how we
9 would do that. So again, depending on what you
10 identified as the risk and the potential community
11 impact would then -- you know, would dictate how much
12 information you would need to communicate and who you
13 would need to communicate with.

14 So it would vary, depending on what your -- who the
15 target audience was, depending on where your risk was
16 identified. It could be -- it could just be community
17 reassurance patrols, you know, we've identified that,
18 you know, a certain community may feel vulnerable
19 because of the incident that's happened and would --
20 you know, a visible reassuring presence would be
21 required. So it would be a proactive deployment of
22 officers to that particular area, if there was
23 a particular area.

24 So there's lots of different staged ways that we can
25 do it. Always behind the scenes is this continual

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1 gathering of information, evidence, intelligence, what's
2 coming in from the enquiry itself, what's coming in from
3 members of the public, letters, correspondence, back to
4 the elected members. You know, anything that people
5 feel they want to discuss, we're including in that
6 assessment because it gives us a method to assess how
7 people are feeling about it. And we'll then look at:
8 okay, if it's because they don't understand or they
9 don't have enough information, then we would look at: is
10 it an information feed that we would need to consider?

11 So it very much is an evolving process, and it
12 continues and continues until you get to the point that
13 you're satisfied that you've either mitigated it to the
14 point that the risk no longer exists, at which point,
15 you know, that community impact, certainly for
16 a particular incident, you might be able to pause it at
17 that point.

18 Q. Thank you.

19 I believe in fact you were involved in preparing
20 a community impact assessment in the wake of
21 Sheku Bayoh's death, and later in your evidence --
22 probably tomorrow -- we'll look at that in some detail,
23 but that's a very helpful overview of how you go about
24 responding to the identified impact within a particular
25 community.

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1 Returning to paragraph 7 of your statement, you
2 mentioned the additional responsibility to monitor
3 community impact, which we've discussed.

4 A. Yeah.

5 Q. And your statement continues:

6 " ... as well as the impact on staff."

7 I would like to ask you about that. What do you
8 mean by the impact on staff?

9 A. Erm, that's the impact on, you know, staff directly
10 involved and then staff that are not involved but are
11 equally impacted. So I think it would be fair to say
12 all staff at Kirkcaldy were absolutely impacted, those
13 that had, you know, had a first-hand involvement and
14 those that were off duty. I would probably stretch that
15 to it went way further than Kirkcaldy, but certainly
16 from my role as local area commander I'm overseeing
17 Kirkcaldy and Glenrothes. And I'm not just thinking of
18 the staff that were working, that were on duty on,
19 you know, 3 May that morning. I'm thinking of: how is
20 this going to impact on staff that, you know, I'm going
21 to oversee and task them to go and deliver policing
22 services to our communities and to continue to respond
23 to 999 and, you know, attend to people's needs?

24 So I'm very conscious of the fact that they are
25 going to be impacted by the events, notwithstanding that

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1 they haven't been directly involved to date.

2 So the impact on staff was going to have to be all
3 encompassing.

4 Q. What did you anticipate that impact would look like?

5 A. I'm not sure if I did anticipate it. I think I've got
6 enough service to know that, like I say, those that
7 weren't directly involved would be concerned about what
8 they'd heard and also concerned about what they didn't
9 know, which in this case, you know, was significant,
10 because they clearly wanted to understand what had
11 happened to their colleagues, what had happened in the
12 incident itself, and then -- as I'm sure we'll discuss
13 throughout -- my evidence is that at times that wasn't
14 possible.

15 Q. How do you monitor impact on staff?

16 A. Again, it's very similar to how you monitor impact on
17 communities. It's speaking to them, they've got
18 representation through unions, our officers and staff,
19 so you give them opportunities to -- and an avenue to be
20 able to raise concerns. More often than not they'll
21 voice concerns, they'll raise it through line
22 management. That will come through, in many cases, to
23 me as the local area commander. So it's very much
24 what -- you know, not so much in media and intelligence
25 in terms of the communities, but certainly for the staff

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1 it's, it's listening to the concerns that they've got,
2 and more often than not they did voice them.

3 Q. Where concerns are voiced, how do you go about
4 responding to those concerns, in a very broad and
5 general way?

6 A. Not in this case?

7 Q. In general.

8 A. In general. It depends what it was. Sometimes people
9 raise concerns in a general sense because they feel
10 that, you know, they maybe don't know enough about
11 something or a particular subject or training matter;
12 they'll raise concerns because they maybe would request
13 more training on a certain aspect or they don't have
14 something that they feel would be helpful for their
15 role.

16 So, you know, you'll hear things from the individual
17 and you'll hear things quite regularly through the
18 Federation reps because, you know, they feed it in to
19 say -- it might not just be in Kirkcaldy, it might be
20 wider than that, and is there something that we can do
21 to support them or assist them or make their job easier.
22 So ...

23 Q. So with both communities and staff where there has been
24 a measurable impact, your response would depend very
25 much on the circumstances and the concerns that are

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1 being fed back to you?

2 A. Yeah. That's fair, yeah.

3 Q. Can we turn to paragraph 8 of your statement, please.

4 Taking you back to the events of 3 May 2015:

5 "I have been asked about the initial phone call from
6 Chief Superintendent Garry McEwan at 0930 hours on
7 3 May 2015. As per my statement, I was informed of
8 an ongoing incident in the Kirkcaldy area whereby
9 a local man was deceased having been involved in
10 an altercation with police officers. Due to the
11 potential impact and high profile nature of the enquiry,
12 I was asked if I could resume duty. I am asked how
13 I was appointed to my role relating to the death of
14 Sheku Bayoh. Because it was a Sunday I was off duty and
15 due back to work on the Monday. The request to return
16 to duty was in effect to resume my role as Local Area
17 Commander and take the lead on managing the community
18 impact, lead on our local policing resource deployment
19 and ensure resilience to deliver services to the public
20 in the area. If my memory serves me correctly, at the
21 point I received the call, it had been declared
22 a critical incident - I think that was conveyed in the
23 telephone call from the Chief Superintendent.
24 I recognised that by it being declared a critical
25 incident that it was assessed as likely to have

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1 a significant impact on the local community, clearly the
2 family of the deceased and the police officers and staff
3 involved. I don't specifically recall any other details
4 provided by Garry McEwan during that call other than
5 what is noted in my statements."

6 So you were contacted at home when off duty at about
7 9.30 in the morning, and asked to resume duty because of
8 the potential impact and high profile nature of the
9 enquiry?

10 A. Yes.

11 Q. In terms of the potential impact, you've explained to us
12 earlier in your evidence, and we see it set out in
13 paragraph 8 here, that the incident had been declared
14 a critical incident and so you were anticipating
15 a significant impact in the local community?

16 A. I was, yes.

17 Q. You refer to the nature of the enquiry being high
18 profile. By high profile, do you simply mean that it
19 was likely to attract media attention?

20 A. Sorry, did I say that in there, do I? Apologies.

21 Q. Yes, let me find it.

22 A. Yeah, I do.

23 Q. It's the third or fourth line down:

24 "Due to the potential impact and high profile nature
25 of the enquiry I was asked if I could resume duty."

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1 I'm just wondering if you could explain what you
2 meant by, "High profile nature of the enquiry"?

3 A. Probably just as described, because it was described as
4 a critical incident, because it involved a death
5 involving police contact, I knew it was going to be high
6 profile.

7 Q. High profile in the media sense?

8 A. Yes, and just in the community as well.

9 Q. You explain in that paragraph that you were asked to
10 take the lead on managing the community impact, lead on
11 local policing resource deployment and ensure resilience
12 to deliver services to the public in the area.

13 You've already explained what managing the community
14 impact would involve. What would your role as leading
15 on local policing resource deployment entail?

16 A. So, in effect, that morning the entire team that had
17 been working that day had effectively been removed from
18 operational duties, clearly to facilitate the PIM
19 procedure which took place. So my role as local area
20 commander is to ensure we have the right number of
21 resources in the right place at the right time, the
22 right skills and training to deliver those services.

23 I knew the impact on the resourcing because of the
24 incident, because of the impact on that team of staff
25 and the fact that they would in effect certainly not be

Transcript of the Sheku Bayoh Inquiry

1 deployable that day and, you know, I'm experienced
2 enough to know that I didn't think they'd be back the
3 following day either.

4 So it's looking at how we were going to forecast to
5 make sure we have enough resilience within our teams to
6 be able to continue to respond to calls for service.

7 Q. We have heard evidence that the entire team, team 4,
8 I think they were called, attended at Hayfield Road, and
9 that following the incident made their way back to the
10 canteen, the PIM suite, at Kirkcaldy Police Office.
11 That was an entire team that had been taken away from
12 frontline --

13 A. Yeah. Certainly the team that were on that day, yeah.

14 Q. That was a team that wouldn't have been available to
15 respond to, say, a 999 call in the area or anything of
16 that sort?

17 A. Yeah.

18 Q. Was that the sort of gap that you were looking to --

19 A. Yeah. So that, to fill the gap that was left by them,
20 and also knowing that the significance of the event
21 would require locus protection points, it may require
22 resources to be -- in terms of that community
23 reassurance patrols. It was going to draw in a lot of
24 staff, this enquiry, so it was started to look at: how
25 resilient are we to continue to be able to respond, to

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1 be able to give people their days off, to -- you know,
2 everybody -- there was other incidents still happening
3 at the same time, and it's just to make sure -- that was
4 going to be one of my roles is: how are we going to
5 deploy staff and continue to deploy them?

6 Q. There was a question of replacing, for want of a better
7 word, the officers who were now in the canteen, team 4,
8 not just for the duration of that shift but you said
9 from experience likely into the following day, also
10 ensuring that you had other resources to stand by loci
11 and respond to other things that were going on in the
12 community, and that task fell to you as well?

13 A. In a wide sense, ultimately, you know, I got help from
14 other parts of the division, of Police Scotland to start
15 looking at: how do we draw on national resources to come
16 in and help Kirkcaldy and Fife, because we were pulling
17 resources in from other areas? So ultimately, yeah,
18 I task that out and rely on other colleagues to come in
19 and support me there as well.

20 Q. Again in a fairly general sense at this stage, how would
21 you go about drawing on those other national resources?
22 Where do you look? Do you look to adjacent police
23 offices or further afield? Does it depend on --

24 A. Yeah.

25 Q. -- what capacity they have? How would you go about

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1 bringing in the resources that you need?

2 A. We are blessed, thankfully, with a resource deployment
3 unit that look at all, you know, where resources are of
4 a day and they clearly forecast months, years ahead at
5 times. So thankfully, you know, I was able to call upon
6 resource deployment colleagues who will look at how our
7 resources are positioned right across the country, call
8 people out, adjust shifts. You know, that's fairly
9 routine in policing, if I'm going to be honest. But
10 clearly because of the number of staff that were
11 involved, this was clearly more significant than just
12 day-to-day sickness absence, facilitating people going
13 to court. You know, so we've always got abstractions to
14 certain events, but this was going to be more
15 significant. So ultimately, you know, what came out of,
16 you know, some of the Gold Groups when you start to see
17 it is resourcing, and then we start looking at appealing
18 and putting requests in to our resource deployment unit
19 central function that looks at all the resources right
20 across Scotland, we'll start pulling resources towards
21 us and then starting to look at, you know, the team 4
22 as, you know, were day shift that day but they're
23 supposed to be night shift in four days' time, so we
24 need to start -- who's going to potentially, if they're
25 not back, fill that.

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1 So we'll look at what national resources we've got,
2 and we've got a co-ordination unit, thankfully, that
3 came in to help me that day.

4 Q. You deal with the immediate need in terms of replacing
5 team 4, also contingency planning into the future if
6 they weren't back on night shift --

7 A. Yeah, absolutely.

8 Q. -- in a few days' time, as well as the additional
9 resources that required to be brought in to support the
10 investigation?

11 A. Yeah.

12 Q. You mentioned or you used the word "resilience" in your
13 evidence. Why is resilience in policing important in
14 this context?

15 A. Because it's important in terms of an organisational
16 resilience. It's, you know, even disaggregate that
17 slightly into, you know, personal resilience, you know,
18 and team resilience, station resilience, as to how --
19 have we got the ability to cope? You know, and not just
20 cope because, you know, we've -- it's almost that: are
21 still people, you know, going to be able to facilitate
22 and thrive within what we're asking them to do. So
23 resilience in numbers, but resilience in capacity and
24 capability to keep responding, because we're a 24/7
25 service. And so I suppose resilience in, yeah, capacity

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1 and capability to make sure we've got what we need, and
2 knowing that everything still has to be serviced.

3 Q. You say in paragraph 8, and have said in your evidence,
4 that by being declared a critical incident it had been
5 assessed as an incident that was likely to have
6 a significant impact on the local community, and you
7 used the words "high profile" elsewhere, four lines down
8 from the top, due to the potential impact and high
9 profile nature of the enquiry, you were asked to become
10 involved.

11 When we spoke earlier about the impact and high
12 profile nature of the enquiry, you made reference to
13 this being a death following police contact. Were there
14 any other features of the case as known to you on the
15 morning of 3 May that made you think that it would be
16 high profile and that there would be a significant
17 community impact?

18 A. Yeah, it's clearly not in there but I knew because the
19 Chief Super had mentioned that the deceased was black,
20 the death in custody and death following police contact.
21 Those on their own are significant incidents in terms of
22 that criticality, and I won't speak for the Chief Super
23 as to why he declared it as a critical incident but,
24 because of that, then the whole nature of it, you know,
25 lended me to believe that these matters were

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1 significant.

2 Q. You've explained that you were recalled to duty, having
3 not been on duty, on 3 May and the phone call from the
4 Chief Superintendent at 9.30 in the morning. At what
5 time did you arrive at Kirkcaldy Police Office?

6 A. I think between 10.30 and 11, approximately.

7 Q. Scroll down to paragraph 9, please.

8 (Pause)

9 Apologies, I think I might have the wrong paragraph
10 number.

11 Can you explain what happened on arrival at
12 Kirkcaldy Police Office?

13 A. I think when I arrived -- you know, I worked in
14 Kirkcaldy, my office was there, I had an office in
15 Kirkcaldy -- I made my way into my office, the -- I knew
16 because I'd met Garry McEwan, we had a brief
17 conversation, because I'd only had that conversation
18 over the telephone at that point, and within a matter --
19 I think a matter of 30 minutes that first Gold Group had
20 been convened and I was attending that. So it was --
21 I don't remember it being a significant passage of time
22 between arriving and then that first Gold Group
23 starting.

24 Q. We've heard the first Gold Group was at 11.30?

25 A. That'd be about right, yeah, that'd be right.

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1 Q. And would that fit with your recollection that you
2 arrived about 10.30/11 --

3 A. Yes.

4 Q. -- or thereabouts.

5 You mentioned speaking to Garry McEwan on arrival;
6 was that a formal briefing or an informal conversation?

7 A. Yeah, it was an informal conversation following on from
8 that initial telephone call.

9 Q. What was the purpose of that conversation?

10 A. I think it was actually just -- it was probably
11 repeating the same information, I don't remember being
12 given any new information at that point, it was simply
13 a case of the gold, and I think he told me that the gold
14 meeting was taking place at 11.30 and that clearly
15 I would be required to attend, and it would be round
16 about that community impact, that local resilience in
17 terms of officer deployment, that was going to be my
18 role. So I think it was just almost a reiteration of
19 what I'd already been told.

20 Q. In terms of what you were told on the phone by
21 Garry McEwan or on your arrival at Kirkcaldy Police
22 Office, do you recall today what you were told about the
23 circumstances of what had happened at Hayfield Road?

24 A. During the conversation with the Chief Superintendent?

25 Q. Yes.

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1 A. Not now, sorry, no.

2 Q. So you were made aware that there was going to be
3 a Gold Group meeting and that you were to attend and
4 your involvement was going to be around community
5 issues.

6 We've heard a little about the Gold Group meetings
7 and about the structure that's put in place, and we've
8 heard evidence that there was one gold, that I think was
9 Assistant Chief Constable Nicholson?

10 A. That's right.

11 Q. There was one silver, and that was Chief Superintendent
12 McEwan. We know that Detective Superintendent Campbell,
13 who was SIO, was bronze and he told us that there were
14 in fact a number of bronze commanders.

15 Were you a bronze commander within that structure of
16 Gold Group meetings?

17 A. Yeah, there can be multiple bronze, you know, leads and
18 it's usually portfolio function based. So only one
19 gold, one silver, and there would be a number of bronze
20 leads. I would be, I suppose, in current terminology,
21 or if it even was the correct and it would almost be for
22 community impact or, you know, or local area lead. It
23 would be something along those lines. But bronze for
24 community impact, community ... yeah.

25 Q. For the same sort of portfolio issues, as you put it,

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1 that fell within your remit as the area divisional
2 commander?

3 A. Area commander, yeah.

4 Q. Area commander.

5 So you were made aware, on arrival at Kirkcaldy
6 Police Office, that there was going to be a Gold Group
7 meeting and that you would be taking on that role, and
8 we should understand that you were one of the bronze
9 commanders for a particular portfolio that your work
10 involved?

11 A. Yeah.

12 MS THOMSON: I'm mindful of the time, sir.

13 LORD BRACADALE: If that's a convenient point, we'll stop.

14 We'll continue with your evidence at 10 o'clock tomorrow
15 morning, Superintendent.

16 (4.15 pm)

17 (The hearing adjourned until 10 am
18 on Thursday, 16 March 2023)

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