

1 Friday, 20 May 2022

2 (10.00 am)

3 LORD BRACADALE: Good morning.

4 Ms Grahame.

5 PC CRAIG WALKER (continued)

6 Questions from MS GRAHAME (continued)

7 MS GRAHAME: Thank you.

8 Good morning, Constable Walker.

9 A. Good morning.

10 Q. I would like to correct something first of all that
11 I said yesterday, to see if it makes any difference to
12 you. I said that the first thing that was said by
13 PC Paton contained some bad language, but I have
14 reviewed the PIRC statement given by PC Paton and he
15 said -- or shouted loudly "Get down on the ground", and
16 then said "Get down on the fucking ground", so to
17 suggest that the first thing he said included some bad
18 language wasn't correct on my part and it appears that
19 the first thing he said was "Get down on the ground" and
20 then later said "Get down on the fucking ground".

21 A. Yes.

22 Q. Does that actually make any difference to what you said
23 yesterday? You said that some phrases trip off the
24 tongue and --

25 A. Yes, like I said, when you're doing the fend off

1 position, that is the -- the standard is "Get back",
2 "Stay back", whatever. People have the things that they
3 say, so yes, it probably makes more sense the fact he
4 said it first and when he has not been following that
5 command he has then said it a bit more forcefully, in
6 different language.

7 Q. Thank you. Thanks very much.

8 I would like to go back to what we were discussing
9 yesterday. We had got to the stage where you had told
10 us you were at the side of your van, at the driver's
11 side, and you looked to your right and you saw
12 Nicole Short running away and Sheku Bayoh chasing her.

13 A. Yes.

14 Q. And we were coming on to that stage. What I would like
15 to begin with is to, first of all, just simply play the
16 footage again from the CCTV, let us remind ourselves
17 what we could see on that. You will also remember there
18 will be a reconstruction tile on that screen and I think
19 Ms Wildgoose or Ms Drury(?) will be bringing that up now
20 and if we could just pause that for a second, you will
21 see just to remind you the real time there is 7.20.24.
22 Your van has just arrived in Hayfield Road. You can see
23 the lights coming round there.

24 A. Yes.

25 Q. We see it on the reconstruction tile, or we have had

1 a discussion about the position of that van, and what
2 I would like to do now is we will play that but just to
3 remind you personally, you have your Inquiry statement
4 in front of you and yesterday when we got to this stage
5 we were looking at paragraph 47.

6 A. Yes.

7 Q. So you can have that in front of you as well. Then for
8 anyone else there is the spreadsheet that they can
9 follow which details what we see on the footage. So are
10 you quite comfortable that you've got everything you
11 might need?

12 A. Yes.

13 Q. Thank you. So I think we will play that footage,
14 please, Ms Drury.

15 (Video played)

16 Thank you. We will pause that there. I would like
17 to ask you about the series of events and maybe break
18 that down. Would you like to see that footage again --

19 A. No, that's fine.

20 Q. -- before we go back through it. Thank you. So we can
21 see that if we go back, please, to 7.20.46, or around
22 about there, please.

23 (Video played)

24 Thank you, that's fine. So at 7.20.46 there seems
25 to be a person who is standing at the rear of the larger

1 van, your van, who moves and walks towards or behind the
2 smaller police van in the direction of the roundabout at
3 Hendry Road.

4 A. Mm-hm.

5 Q. So this is before the Airwaves message about "Officer
6 injured"?

7 A. Yes.

8 Q. You told us yesterday you were at one point behind your
9 van, on the driver's side, with you closest to
10 Hendry Road and PC Paton to your left.

11 A. Yes.

12 Q. That's fine, I was confused yesterday as well. So at
13 the stage you look to your right and we have PC Short
14 and Sheku Bayoh on the road. By that stage has PC Paton
15 pressed his emergency button?

16 A. I would be unaware of that.

17 Q. You didn't feel your phone vibrating?

18 A. No.

19 Q. So you're not able to help us when or where PC Paton was
20 when he pressed the button?

21 A. No.

22 Q. All right, thank you. When you are looking to your
23 right, would you be able to assist us by explaining
24 where on Hayfield Road Nicole Short was, PC Short, and
25 Sheku Bayoh were?

1 A. Running from -- like I said, the back of the van towards
2 Hendry Road but making their way also towards the south
3 side of Hayfield Road, and by the point I seen them --
4 or certainly the point where I seen PC Short looking
5 like she was falling I would say that they were close to
6 the centre lines in the middle of the roadway.

7 Q. And when you mention the van, you mean your van?

8 A. Yes, our van, yes.

9 Q. And when -- just to get an idea of the timescale, when
10 PC Paton made that transmission, "Officer injured",
11 where were you at that moment?

12 A. Which point did he make that transmission?

13 Q. Would you like to look at the spreadsheet? So he says
14 at 7.21.02 -- it is on page 4. Did you hear it on the
15 footage, page 4 of the spreadsheet. 7.21.02,
16 PC Alan Paton:

17 "Officers injured, PC Short, male."

18 A. Where was I at that point?

19 Q. Yes. Do you remember?

20 A. That would have been after the event so that's probably
21 when I'm on the ground with Mr Bayoh trying to effect
22 arrest at that point.

23 Q. So by that moment you're actually involved in what's
24 going on rather than --

25 A. Yes, because there's -- aye, I would say so, because

1 there's -- I mean as soon as the injury happened was
2 when I was making my way towards to take him to the
3 ground.

4 Q. All right, thank you. That's helpful.

5 Can we look just briefly at paragraph 47 before I go
6 on to the other images, please. That's your statement
7 on the screen and we're going to look at paragraph 47.
8 Thank you. So here you say you turned back to PC Paton
9 briefly and you said yesterday you wanted to correct
10 that to say PC Short.

11 A. Yes.

12 Q. You turned back to PC Short briefly:

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

24 So I would like to ask you some questions about this
25 paragraph.

- 1 A. Yes.
- 2 Q. The prone position is on her front?
- 3 A. Yes.
- 4 Q. And she was close to the south pavement, so that's the
5 other side of the road from -- on Hayfield Road --
- 6 A. Yes, from (inaudible overspeaking), yes.
- 7 Q. -- from where you were. When you say she was prone, can
8 you describe what position she was in? Was she flat
9 out, or was she in a different position?
- 10 A. Flat out, as though somebody had fallen and went
11 (inaudible) basically.
- 12 Q. Right, and you're pushing your arms towards you. Were
13 her arms in front of her, or was that --
- 14 A. I mean, like, I say, it's as if someone has fallen, put
15 their hands down and just sort of lying sort of flat on
16 the road was how she was, flat on her front.
- 17 Q. Right. And where were her arms when she was flat out on
18 the road?
- 19 A. I'm not sure.
- 20 Q. And I wonder if we can -- maybe it will be easier if we
21 get an image on the screen at this stage. So we have
22 some images, maybe from the 2b set, 16, 17 and 18. I'm
23 going to show you -- these are some of the images we
24 looked at yesterday but different ones.
- 25 A. Mm-hm.

- 1 Q. So this is 16 and then can we look at 17, please, and
2 that's looking from the roundabout up Hayfield Road?
- 3 A. Yes.
- 4 Q. And then 18, please, and that's an image of the island
5 in Hayfield Road near to the roundabout?
- 6 A. (Nods).
- 7 Q. Can we go back to 16, please. Would you be happy to use
8 this image to explain where you saw -- or would it be
9 easier for you to use one that we used yesterday where
10 your van is positioned?
- 11 A. No, I think that's a better bird's eye view.
- 12 Q. Is this better for you?
- 13 A. Yes.
- 14 Q. Right. So could you explain to us, please, where you
15 saw PC Short falling to the ground.
- 16 A. Somewhere in the region of here.
- 17 Q. Right.
- 18 A. That's where I seen her sort of getting pushed and then
19 she would be down, the time she landed, probably close
20 to about there. (indicating).
- 21 Q. Right, so that's on Hayfield Road to the west of the
22 roundabout with Hendry Road -- no, to the east --
- 23 A. To the east, yes, we're upside down now.
- 24 Q. Yes, we're upside down. To the east of the roundabout,
25 and opposite what appears to be a reasonably small grey

1 car, or silver. And her head -- where was her head?

2 A. She would be -- her head towards the houses.

3 Q. Head towards the houses, legs towards the trees --

4 A. The trees.

5 Q. -- and the grass. And where was Sheku Bayoh?

6 A. Standing on that side of her, right behind her.

7 Q. So he was right behind her, nearer to the roundabout?

8 A. Yes.

9 Q. And right behind her -- how close would you say he was?

10 A. Standing alongside her.

11 Q. Right side. What direction was he facing in?

12 A. Back towards me.

13 Q. Towards you at the van?

14 A. Yes.

15 Q. And were you still sort of crouched at the van at that
16 time?

17 A. No, I was standing.

18 Q. You had stood up by this time. We will remain with this
19 image on the screen, but just to go back to the
20 paragraph in your statement, you have said that:

21 "Sheku Bayoh was standing at right angles to her and
22 facing towards me. I had a clear and unobstructed view
23 of him."

24 How -- what was the distance between you at the van,
25 standing at the van and Sheku Bayoh?

1 A. I think at that point it was 100 feet I think I put in
2 my original statement. I actually think I checked on
3 Google Maps at the time, so it was about 100 feet away.

4 Q. Right. And you saw him with his right leg in a high,
5 raised position?

6 A. Yes.

7 Q. And you said he had his arms raised up at right angles
8 to his body and brought his foot down.

9 Before I ask you -- I'm going to ask you to
10 demonstrate that for us, like yesterday, but before I do
11 that, can I ask you to look at a vest. You have said
12 that the stamp was to the lower back of PC Short and
13 that it was in her kidney area, and I wonder if you can
14 maybe show on the vest, which is a police -- it is body
15 armour with a high visibility vest over it and we may
16 hear that that's actually what she was wearing.

17 A. Right, okay.

18 Q. Not the actual one, but that's the same as the one she
19 was wearing.

20 A. Okay.

21 Q. Can you explain to me -- you said lower back, kidney
22 area, can you show us what area you're talking about?

23 A. That would be in the vicinity here.

24 Q. Could you hold that vest up so we can see it?

25 A. Yes, so (indicating).

- 1 Q. That area down at the bottom?
- 2 A. Yes.
- 3 Q. Beneath the police logo. Thank you.
- 4 A. Yes, so (indicating).
- 5 Q. That area, thank you. So that's on what would have been
6 her right-hand side?
- 7 A. Yes.
- 8 Q. Thank you. Now could I ask you to come out again. Now,
9 I must say there's no audio in that area because the
10 microphone is on your desk, so I will ask you to do
11 things, but you don't have to reply because we won't be
12 able to record that.
- 13 A. Right, all right.
- 14 Q. So if you would mind coming out and standing at the
15 plastic tape, as you did yesterday, and remember the
16 recording is up there. So if you could stand and, first
17 of all, I would like you to demonstrate how he had his
18 arms raised up at right angles to his body.
- 19 A. (Inaudible - too far from microphone).
- 20 Q. Up like that. So bent at the elbows and if you could
21 now demonstrate his right leg in a high, raised
22 position. Thank you. And then he brought his right
23 foot down in a full force stamp and I would like you to
24 demonstrate the force that he used, if you can.
- 25 A. (Inaudible - too far from microphone).

1 Q. Thank you very much. Would you return to your seat and
2 I will ask you some questions.

3 You have said it was a full force stamp; was it one
4 stamp that you saw?

5 A. Yes.

6 Q. Thank you. Right, we're looking at the image here. As
7 you were watching the events take place in Hayfield Road
8 with PC Short, what was -- where was PC Tomlinson?

9 A. I have no idea where he was, but he arrived at Mr Bayoh
10 from the trees direction. My focus was on Mr Bayoh and
11 I was just aware of PC Tomlinson coming in from my
12 right-hand side and engaging with Mr Bayoh at that
13 point.

14 Q. And when you say the trees, could you point out the area
15 you mean?

16 A. Yes, the trees so it would be down here (indicating).
17 He came in from that side. I'm not saying he came in
18 from the tree area but he just came into my vision from
19 the right-hand side.

20 Q. And talking about your vision, you said yesterday you
21 had some droplets of PAVA spray in your eyes and how
22 were your eyes feeling at this point?

23 A. They were totally clear by that point because it was
24 only two or three little drops -- it was enough for me
25 to react to it, but not enough to incapacitate me for

- 1 a great deal of time.
- 2 Q. So by the time you watched this, your eyes were
3 functioning?
- 4 A. Yes.
- 5 Q. I would like you to tell us what you saw when
6 PC Tomlinson came from the tree area.
- 7 A. He engaged with the male, went in close and Mr Bayoh
8 turned his attention towards him and there appeared to
9 be some altercation between the two of them. I couldn't
10 see exactly what was going on, but both their arms were
11 in the air and there was exchanges.
- 12 Q. So when you say "Engaged", is that what you mean, their
13 arms were in the air?
- 14 A. Yes, they were ... I'm not saying fighting with each
15 other, but they were in an exchange of some sort,
16 pushing, shoving, striking, whatever. I'm not 100%
17 sure. It was just arms I was aware of.
- 18 Q. Did Sheku Bayoh move from the position that you've got
19 indicated there around the number 2 circle?
- 20 A. I believe he might have done. He might have started
21 making his way back or stepping back from PC Tomlinson
22 towards the houses.
- 23 Q. Right. And when he moved back, what distance was he
24 from you?
- 25 A. By that point I was starting to run towards him, so

1 I was making my way towards him at this point watching
2 what was going on.

3 Q. When PC Tomlinson engaged with Sheku Bayoh on
4 Hayfield Road, what direction was he facing in at that
5 stage?

6 A. When who was facing, sorry?

7 Q. Well, what direction was Sheku Bayoh facing? When
8 PC Tomlinson came out from the tree area did Sheku Bayoh
9 turn?

10 A. His attention at that point was on PC Short and as soon
11 as PC Tomlinson sort of engaged with him, he turned and
12 faced -- so he would be facing towards the trees at
13 number 3, and PC Tomlinson's facing towards the houses
14 and they were face-to-face with each other.

15 Q. So they were face-to-face with each other?

16 A. Yes.

17 Q. And you didn't see exactly what happened there at that
18 point. Tell us what you did when you realised that
19 PC Tomlinson and Sheku Bayoh had engaged in some way?

20 A. Well, by that point I was already -- like I say, I had
21 taken PC Paton's baton from him and I had already
22 started to run towards where they were, with the
23 intention of restraining him and getting involved in the
24 restraint, and I made a couple of decisions whilst we
25 were -- whilst I was running along there that eventually

1 resulted in me shoulder-charging Mr Bayoh to the ground.

2 Q. What were the decisions you were making?

3 A. Initially the -- because I had witnessed the stamp and
4 I had Alan Paton's baton I was going to go in with a
5 heavy baton strike but I opted against that as I got
6 closer just because PC Tomlinson was nearby and I just
7 decided that the baton wasn't the best option and that
8 to get him on the ground to get some sort of control
9 over him would have been the best option, so I dropped
10 the baton and proceeded with the shoulder charge.

11 Q. What was your concern if you used the baton when
12 Sheku Bayoh and PC Tomlinson were engaged?

13 A. There's obviously the risk of hitting PC Tomlinson
14 because he was on his right-hand side and I'm
15 right-handed, so the baton strike would have come in on
16 the side that PC Tomlinson was on and just in
17 general ... I wasn't convinced if the baton would make
18 any difference, given the fact that the PAVA and that
19 hadn't worked at that point and -- I mean personally,
20 this is my personal choice, getting somebody onto the
21 ground and getting handcuffs is better than trying to
22 have a stand up fight with batons. The ultimate goal
23 and for officer safety is to get somebody to the ground
24 and get handcuffs on them, if they're being violent.

25 Q. Can I ask you to look for a moment -- we will come back

1 to this footage, but can we look for a moment again at
2 your statement, paragraph 51. So you say you -- we will
3 get this on the screen. Thank you. Towards the end of
4 that paragraph you say:

5 " ... I made the instantaneous decision to discard
6 the baton and take Mr Bayoh to the ground by bodily
7 force."

8 Now, in your self-penned statement that you handed
9 to PIRC -- that's PIRC 00265, can we look at that for
10 a moment, page 4, paragraph 3. This is the statement
11 that you handed to PIRC on 4 June 2015 and it's
12 paragraph 3. Again, we don't see a very clear division
13 between the paragraphs, but actually I wanted to --
14 I will read out the section that I'm interested in:

15 "I therefore decided not to strike with the baton
16 and have instead continued running at the male and
17 charged him, striking his chest area with my forearms.
18 This caused the male to fall to the ground backwards.
19 I have [also fallen] at this time landing to the side of
20 the male dropping the baton. I immediately reached over
21 the male in an attempt to gain control of him."

22 You can see that two-thirds of the way down the page
23 or maybe three-quarters, you will see at the end it
24 says:

25 "... continued running at the male and charged him

1 striking his chest area with my forearms."

2 Do you see that?

3 A. Yes.

4 Q. And then can we look at PIRC 264, please, so this is the
5 actual statement that you gave to PIRC on 4 June 2015,
6 and we're looking at page 7, please, and paragraph 2,
7 and there you say in line 3:

8 "So I just brought my left arm across my body and
9 shoulder-charged him with my left shoulder, with a fair
10 bit of force."

11 So in front of the Chair we have your descriptions
12 of this and it's -- you took him to the ground by bodily
13 force, you charged him striking his chest area with your
14 forearms, and you shoulder-charged him with [your] left
15 shoulder, and I just wondered if you could maybe
16 demonstrate to the Chair what you actually did because
17 I'm wondering about charging him to his chest area with
18 your forearms and shoulder-charging; they sound slightly
19 different.

20 A. Basically running towards him, I just dropped my arm
21 down and went through him like -- to take him to the
22 ground, just to continue the momentum.

23 Q. Could you stand up and just show the Chair what you're
24 doing with your arm there?

25 A. Yes, so just running towards him and just dropped the

- 1 shoulder.
- 2 Q. Right, so you're pulling your right arm across your own
- 3 chest --
- 4 A. Yes, to go in shoulder-first.
- 5 Q. And then leading with your right shoulder?
- 6 A. Yes.
- 7 Q. Thank you. When you did that, what part of
- 8 Sheku Bayoh's body did you connect with, with your right
- 9 shoulder?
- 10 A. It would be his right side upper torso. As I was
- 11 running towards him I was aware that PC Short was on the
- 12 ground so I could remember just before contacting with
- 13 Mr Bayoh I had actually jumped up, so I was off the
- 14 ground as I made contact with him, and obviously just as
- 15 a natural reaction before I hit him I closed my eyes, so
- 16 I'm not 100% sure, but yes, it has been the upper part
- 17 of his body with my shoulder.
- 18 Q. So when you started running towards PC Tomlinson and
- 19 Sheku Bayoh, where was Nicole Short at that point? Did
- 20 she remain on the ground?
- 21 A. Yes, she was at his feet at that point.
- 22 Q. She was still on the ground?
- 23 A. Yes.
- 24 Q. When you made contact with your right shoulder, where
- 25 was she?

1 A. She was off to that side, my right side, because, like
2 I say, Mr Bayoh and PC Tomlinson had started to move
3 towards the other side, but I don't know if there was
4 movement or whatever, but something just gave me the
5 urge, the instinct to jump, to clear something that was
6 in my way, and I was off the ground at the point when
7 I made contact with Mr Bayoh.

8 Q. You were both feet off the ground at that point?

9 A. Yes.

10 Q. Did you -- when you say you jumped, did you jump over
11 PC Short?

12 A. I'm not sure, I'm not sure.

13 Q. Right. When you were approaching Sheku Bayoh and
14 PC Tomlinson, were you trying to avoid PC Short who was
15 on the ground?

16 A. I was aware of the fact that I wasn't going to be
17 running over her, but like I say, unless there was some
18 sort of movement -- but yes, something gave me the
19 instinct to avoid whatever was on the ground. I really
20 didn't know what it was at that point.

21 Q. And immediately before you made contact with your right
22 shoulder, Sheku Bayoh and PC Tomlinson had been
23 face-to-face?

24 A. Yes.

25 Q. And having made contact I think you said in your Inquiry

1 statement that he fell on his back?

2 A. Yes.

3 Q. Was that flat on his back?

4 A. Yes.

5 Q. Can we go back to the image that we were looking at

6 a moment ago, if that's possible, and you have told us

7 where PC Short and PC Tomlinson and Sheku Bayoh were.

8 After you made contact with your right shoulder can you

9 point to the area where Sheku Bayoh fell onto the

10 ground?

11 A. Yes, I think he landed somewhere about there

12 (indicating). Roughly.

13 Q. So is that -- did he land on the roadway or on the

14 pavement, or was he straddling both?

15 A. He was straddling both but it's a lowered kerb at that

16 point.

17 Q. So it's quite flat?

18 A. Yes, aye.

19 Q. Where was PC Tomlinson?

20 A. Behind me, probably still standing where he was when he

21 was engaging with Mr Bayoh. I have no idea.

22 Q. Okay. And you have said in paragraph -- we will just

23 remain at the image, but in paragraph 53 of your Inquiry

24 statement, you say after tackling Mr Bayoh to the ground

25 you landed on the pavement next to him:

1 "I was on my knees while he was on his back and
2 I made an attempt to get over the top of his shoulders
3 and hands to get him under my control."

4 Could you explain that manoeuvre to the Chair,
5 please?

6 A. Yes, basically so Mr Bayoh's on his back, he has reached
7 across -- the whole point was to try and reach across,
8 get a hold of his hands and just pin them down, and then
9 from that point, get cuffs on him.

10 Q. Is that pinning him down to his chest?

11 A. Just any way possible, just to get hold of both of his
12 arms so that we could arrest him at that point. It was
13 just -- there were no plan at that point, it was just a
14 case of get a hold of his arms and try and get him
15 handcuffed.

16 Q. And where were his arms when he landed on his back?

17 A. By his side.

18 Q. Both arms down by his side?

19 A. Yes.

20 Q. And were you able to secure his arms?

21 A. When I went to grab a hold of him that's when we
22 started -- there was an exchange of punches on the
23 ground. He started to lash out and punch towards me.
24 Then there's been a couple -- I threw a couple of
25 punches back again. I managed to get hold of one arm

1 and then as -- it was an ongoing situation from there
2 just trying to get him under enough control to get
3 handcuffs on him.

4 Q. You have said in your statement you were on your knees?

5 A. Yes.

6 Q. Which side of Sheku Bayoh were you on?

7 A. So if he was on his back, I was on his right side.

8 Q. You were on his right?

9 A. His right.

10 Q. And where were your knees? Which part of the body -- of
11 his body were they close to or --

12 A. Probably this part (indicates).

13 Q. His --

14 A. Yes, lower torso.

15 Q. Lower torso. And what sort of force and pressure were
16 you using at that time in trying to secure his hands, or
17 his arms? Were you struggling?

18 A. Yes, I was struggling with him. As I say, I was trying
19 to get hold of his hands, he was lashing out and he was
20 punching two or three times at me.

21 Q. Okay. Where did his punches connect?

22 A. I think it was mainly my stab vest and that.

23 Q. Is that the black body-armour type vest that we have
24 seen?

25 A. Yes.

1 Q. So to your body?

2 A. Yes.

3 Q. And where did your punches connect?

4 A. The three punches that I threw was to his face, to his
5 right side -- left side of his face.

6 Q. The left side of his face?

7 A. Yes.

8 Q. Was that with your right hand?

9 A. Yes.

10 Q. And then in your Inquiry statement -- we will stay on
11 that picture -- you say:

12 "He raised his shoulders and tried to punch me with
13 his right-hand. As I lent over I then struck him
14 a couple of times with a clenched fist somewhere around
15 his left cheek bone area."

16 On his face?

17 A. Yes.

18 Q. "He continued to struggle and lashed out with his arms
19 and continued to try and punch me again."

20 Do you remember how many times he connected, the
21 punches connected with you?

22 A. No.

23 Q. No.

24 "The punches I'm describing were not full force
25 punches, rather they were pulled punches delivered

1 tactically in an attempt to make Sheku Bayoh bring his
2 hands away from his body or side and up to his face."

3 Is that you describing your punches?

4 A. My punches, yes.

5 Q. Can you explain to the Chair, when you describe them as
6 "pulled punches delivered tactically", what do you mean
7 by that?

8 A. Not full force punches, not looking to hit him hard
9 enough to kind of break any bones or knock him out or
10 anything like that, it's just -- it's a tactic that was
11 mentioned a few years ago in OST that if you could get
12 somebody -- if you could make contact with somebody's
13 face the automatic reaction is to bring your hands up
14 and that presents the hands with the wrist area so you
15 can apply cuffs.

16 Q. Which is what you're trying to achieve?

17 A. Which I'm trying to -- I'm just trying to get his hands
18 so I can get him under control.

19 Q. You then go on to say:

20 "This will allow me to apply handcuffs to his wrists
21 and I used this technique due to the difficulty we were
22 having in applying the cuffs."

23 So at that stage you have not managed to get the
24 cuffs on --

25 A. I have not managed to get his hands, never mind the

1 cuffs.

2 Q. And you say:

3 "As Sheku Bayoh was actively resisting with extreme
4 force and was himself throwing punches at this point,
5 I felt this tactic was a reasonable use of force in the
6 circumstances."

7 A. Yes.

8 Q. And so you feel that the force that you used at this
9 point was reasonable?

10 A. Yes, justifiable and proportionate.

11 Q. And you feel the shoulder-charge and bringing him to the
12 ground at that stage was reasonable?

13 A. Yes.

14 Q. And the -- would you -- in terms of the behaviour that
15 you have been describing from Sheku Bayoh, is it this
16 stamp in the road that is the most extreme behaviour
17 that you have described?

18 A. The fact that he -- I mean the fact that he has chased
19 PC Short in the first place was scary enough but yes,
20 the fact that he has then knocked her to the ground and
21 then turned his attention towards her, I've witnessed
22 the stamp and then when PC Tomlinson has then tried to
23 engage with him he appears to have then started to
24 resist that officer as well, so he's certainly shown
25 violent behaviour at that point.

1 Q. When you were on the ground, on your knees, trying to
2 get Sheku Bayoh's hands, where was PC Tomlinson?
3 A. No idea.
4 Q. Do you know what he was doing at that stage?
5 A. No.
6 Q. No. So is it just you and Sheku Bayoh at that point?
7 A. Just me, yes.
8 Q. And how long was it just the two of you?
9 A. It's hard to put timescales on things like that, but the
10 next person who arrived would be PC Paton again, so yes,
11 I was struggling with his arms for ... I really couldn't
12 put a time on it.
13 Q. So the next person you're aware of is actually PC Paton?
14 A. Yes.
15 Q. You weren't aware of PC Tomlinson at that stage?
16 A. No.
17 Q. Okay. Now, you have talked about Sheku Bayoh being on
18 his back?
19 A. Mm-hm.
20 Q. How long did he remain on his back?
21 A. Until I managed to get a hold of his right arm. I then
22 moved his right arm across his body and pinned it down
23 against his left arm so that I had both his hands
24 restrained at that point and then he went from being on
25 his back to on his side.

- 1 Q. Would that be his left-hand side?
- 2 A. Yes.
- 3 Q. Did you remain on his right?
- 4 A. Yes.
- 5 Q. Was he on his front at any time?
- 6 A. He might have been not on his side -- it depends what
7 you mean by on his front. This is what we had the
8 discussion about before when I was doing this. He might
9 have been face-down but not on his front, so he has went
10 across from -- over to here (indicating), so he is
11 face-down but he was never fully on his front, his arm
12 was always underneath him.
- 13 Q. Right. I wonder if you could demonstrate that for me
14 please. I appreciate that will have -- you will have to
15 come out and you won't be able to speak, but it may be
16 of assistance. This is important.
- 17 A. Yes.
- 18 Q. Thank you. If you simply demonstrate what you mean.
- 19 A. (Inaudible - too far from microphone).
- 20 Q. Just demonstrate and I will get you to speak later when
21 you're at the microphone. So correct me -- you're
22 imagining he is on the ground, you've got your right arm
23 pulled over to your left and your right knee is off the
24 ground?
- 25 A. (Inaudible - too far from microphone).

1 Q. Turned around. So would the right knee be on the ground
2 or would the right knee be on the left leg?

3 A. (Inaudible - too far from microphone).

4 Q. I will ask you questions -- all right. Come back to the
5 microphone, please, and I will go through that when it
6 can be recorded.

7 (Pause)

8 So just so that this can all be recorded because we
9 don't have audio in that space --

10 A. Yes.

11 Q. -- you were standing, imagining that your left shoulder
12 was on the ground.

13 A. Yes.

14 Q. And you had your right arm pulled over to your left arm?

15 A. Yes.

16 Q. And I was unclear about the position of the legs at that
17 point. I think this is quite important so could you
18 describe to me how you were -- how you were positioning
19 or demonstrating the position of the legs?

20 A. I have no idea what position his legs were in. I was,
21 like I say, at the torso looking up towards his hands.
22 I have no idea where his legs were.

23 Q. Right, so that's not something you can help us
24 demonstrate?

25 A. No, no.

- 1 Q. But as far as you were concerned, his shoulders were
2 turned, his right shoulder was off the ground --
- 3 A. Yes.
- 4 Q. -- his left shoulder was on the ground?
- 5 A. Mm-hm.
- 6 Q. And he had -- you had his right-hand towards his left
7 hand?
- 8 A. Yes, to try and control both of them together on the
9 ground.
- 10 Q. But you couldn't see where his legs were or what they
11 were doing?
- 12 A. No, because I wasn't concentrating on that part at the
13 time.
- 14 Q. Did you remain on your knees at that point?
- 15 A. Yes, I had my knees tucked in behind his back so he
16 couldn't turn back and break free.
- 17 Q. Right. What pressure were you applying to retain his
18 right-hand towards his left hand?
- 19 A. Enough to keep them on the ground.
- 20 Q. Is it -- at any stage did you lie on Sheku Bayoh?
- 21 A. I think as part of having to reach across him I had
22 to -- the upper part of my body was on his shoulder.
- 23 Q. You're pointing to your right shoulder. Do you mean his
24 right --
- 25 A. His right shoulder, yes.

- 1 Q. Right. So your upper body -- what's your upper body,
2 just from the waist up?
- 3 A. Yes, because I was on my knees at that point reaching
4 across him.
- 5 Q. And that weight was placed on his right shoulder?
- 6 A. Shoulder and his hands, because obviously I'm reaching
7 across to put my hands on his hands and I'm reaching
8 across him so I could reach that far.
- 9 Q. And that was at the point that he was on the ground on
10 his left shoulder, lying -- the top half of his body
11 lying to the side?
- 12 A. Yes.
- 13 Q. Thank you. Then in paragraph 54 you say that you
14 managed to take hold of his right wrist which forced his
15 arm across his body:
- 16 "I put pressure from my chest area onto his right
17 shoulder, pushing him onto his left side. My body was
18 in a crouched position over him with my knees on the
19 pavement against his back so he couldn't turn back
20 towards me to lash out."
- 21 And is that what you have described?
- 22 A. Yes.
- 23 Q. So the crouched position, can you come out and
24 demonstrate that crouched position, please.
- 25 A. (Inaudible - too far from microphone).

1 Q. Thank you, and if you come back, thank you, and we will
2 talk it through the microphone.

3 LORD BRACADALE: It might be better if he came further out.

4 MS GRAHAME: Yes, other people can't see behind the tables.

5 LORD BRACADALE: You can stand, if you like, to gather round
6 this area because it is more open. If you just come in
7 front of the desk here.

8 MS GRAHAME: Thank you. Again, if you come back to the
9 microphone, thank you.

10 So at that stage you have -- you are leaning on your
11 knees on the ground at Sheku Bayoh's back, that's what
12 you were demonstrating.

13 A. Yes.

14 Q. And you are leaning over with -- you put your hands on
15 the ground in front of you --

16 A. Yes.

17 Q. -- as you leaned over. Were your hands on the ground
18 holding onto the hands of Sheku Bayoh?

19 A. Yes, my hands would be on top of his hands, keeping his
20 hands onto the ground.

21 Q. And your body was leaning over his upper body?

22 A. Yes.

23 Q. And where were your feet?

24 A. At that point when I'm on my knees they would be
25 underneath me.

1 Q. Were they in line with Sheku Bayoh's feet or were they
2 at an angle?

3 A. No, I was reaching across him so, aye, I would be at
4 90 degrees to his body.

5 Q. So they would be at an angle?

6 A. Yes.

7 Q. You will know, constable, that there are other
8 statements that have been given to the Inquiry and
9 a number of people suggest that Sheku Bayoh was on his
10 front and prone. Are you able to explain why there
11 seems to be a difference?

12 A. Like I was saying, there's a difference between on his
13 front and prone. I'm not denying the fact that we had
14 him over, so he wasn't flat on his back, but he was
15 never in the prone position because his hand was always
16 underneath him, that's why he ended up handcuffed to the
17 front because we weren't able to handcuff him to the
18 rear, but again, like I have covered in here, that's the
19 nature of witness statements: everybody sees a situation
20 differently and they will report it differently.

21 Q. So what's your understanding of "prone", just to be
22 clear, so that the Chair knows this?

23 A. Prone position for me would be -- or certainly how it is
24 described at OST is with when you've got somebody flat
25 on their front with their hands handcuffed behind them,

1 when the full body weight is on the chest and abdomen
2 area.

3 Q. So someone who would be prone is flat on their front,
4 their arms are either side and perhaps handcuffed to the
5 rear?

6 A. Yes. I think the definition for prone is to be flat on
7 your front and I think if your arms are underneath you,
8 you're not flat on the front, but that's just my
9 understanding.

10 Q. Right. So your position is he was not prone at any
11 time?

12 A. Yes.

13 Q. Because he always had his left arm --

14 A. Underneath him.

15 Q. -- underneath him, on the ground.

16 A. Yes.

17 Q. Can we go back to the image that we have on the screen.
18 So you have described how you were struggling and trying
19 to secure Mr Bayoh's hands. Did you manage to get
20 handcuffs on him at that point?

21 A. At one point I managed to get -- well, the next stage
22 that I could remember was I got a cuff on his right arm
23 and then when I went to try and secure it onto his left
24 hand he broke free because obviously I want to release
25 the pressure to apply the cuffs and he managed to break

1 free.

2 Q. Where are your cuffs?

3 A. They are the opposite side to my radio, up here
4 (indicating).

5 Q. So your right shoulder?

6 A. Yes.

7 Q. How -- and you are right-handed?

8 A. Yes.

9 Q. So having removed the cuffs from your shoulder, how did
10 you retain Mr Bayoh's hands together?

11 A. I must have went down to one hand at one point to be
12 able to remove the cuffs.

13 Q. Were you still on your own at that stage or was
14 PC Paton --

15 A. PC Paton was there at that point when the cuffs were
16 applied, I think.

17 Q. Where was PC Paton in relation to you? You have
18 described your position --

19 A. He was on my left-hand side.

20 Q. He was on your left?

21 A. Yes.

22 Q. Was he closer to Sheku Bayoh's head?

23 A. Yes.

24 Q. And what was he doing?

25 A. He was assisting in the restraint. He had got

1 a baton -- I'm not sure if he just picked up his own
2 baton, but when he arrived, he had a baton in his
3 possession and he passed it through Mr Bayoh's left arm
4 and was trying to assist -- because like I say,
5 initially we were trying to get him handcuffed to the
6 back so he was trying to assist in getting the hand out
7 from underneath, so we could get both hands to the back
8 to apply handcuffs.

9 Q. Right. I thought you were holding Mr Bayoh's hands to
10 the front?

11 A. Yes, over his body.

12 Q. Yes. But you just said there that you were trying to
13 handcuff him to the back?

14 A. Yes, that was -- once we had him we were trying to
15 get -- once we had his hands under control, we were
16 trying to get his hands out from under him so we could
17 handcuff him to the back.

18 Q. I see. And when you say his hand out from under him, do
19 you mean his left hand?

20 A. His left hand that he was lying on, yes.

21 Q. So you were trying to move his left hand out from under
22 him; how were you doing that?

23 A. I can't mind if I had the cuff on the right-hand at that
24 point or no, but then it was a case of just try to pull
25 the arm out from underneath him and get it round to his

- 1 back.
- 2 Q. So you were pulling his left hand out under his body?
- 3 A. Yes, and we couldn't get it.
- 4 Q. At that point, was he moved into a prone position?
- 5 A. No, he was still on his side.
- 6 Q. How were you going to manage to pull his left hand out
- 7 from under him to get it to the back without moving him
- 8 on to a prone position?
- 9 A. Well, if we'd managed to get his arm out from underneath
- 10 him then he would have ended up in a prone position, but
- 11 we need to get the arm out from under him first before
- 12 we roll him over, because then he would just lie on the
- 13 arm.
- 14 Q. Would it not be easier to move him into a prone position
- 15 and then have his left arm pulled out from under him?
- 16 A. Well, we need to control his arms as we're doing that.
- 17 Yes, it's ... I mean what you're suggesting is letting
- 18 go of his arms and rolling him over, at which point he's
- 19 got both arms free again to start lashing out and
- 20 punching.
- 21 Q. Well, you've got -- you have -- you've securely caught
- 22 his right-hand and --
- 23 A. I wouldn't say securely caught it but, yes, he's --
- 24 Q. You've got the handcuffs on?
- 25 A. I'm stopping -- no.

- 1 Q. No, you don't have it on. But you've got his
2 right-hand?
- 3 A. Aye, that's --
- 4 Q. You've got both hands together at one point.
- 5 A. Yes.
- 6 Q. And you want to secure his left hand and get it out from
7 under him. Is the easiest way of doing that not just
8 simply rolling him onto his front and bringing the left
9 hand out?
- 10 A. Rolling him -- rolling him over onto his front would
11 result in him landing on top of the arm that we're
12 trying to get out, and we would need to release the grip
13 that we've got on him, so having secured him, or got
14 partial control on him, we're not going to let go of
15 that and allow him to strike out.
- 16 Q. So how were you going to get the left hand out from
17 under him, even though it's at the front, how were you
18 going to move his left arm from his shoulder so that you
19 could get it round behind his back?
- 20 A. That's when you come in and work as two, so I would keep
21 a hold of his right arm and PC Paton would take a hold
22 of his left arm and we would get both arms round the
23 back and get cuffs applied. We'd take an arm each.
- 24 Q. I'm just thinking about my own shoulder. If I was lying
25 on my shoulder on my left, I had my arm out, and I want

- 1 to move my arm behind my back, I have to move the
2 shoulder and move the arm underneath the left side of
3 the body.
- 4 A. Mm-hm.
- 5 Q. So I'm just trying to work out how -- what technique you
6 and PC Paton were going to use that would allow you to
7 move a hand, a left hand that's on the ground in front
8 of a person to the back of the person without moving it
9 under that part, the left-hand side of their body. What
10 technique were you using that would allow you to do that
11 without at the same time either lifting the person so
12 that the arm was released and the shoulder released, or
13 pushing them onto their front so that their arm would be
14 released and the shoulder released? Is there
15 a technique that allows you to do that?
- 16 A. I mean, you can just pull somebody's arm out from under
17 them and control (inaudible), aye.
- 18 Q. Is that what you did?
- 19 A. That's what we attempted, but we weren't able to do so
20 and eventually we just thought it safer just to handcuff
21 him to the front.
- 22 Q. Right. So you tried to pull his left arm out from under
23 him as he remained lying on his left-hand side?
- 24 A. Yes.
- 25 Q. And what technique did PC Paton use to attempt that?

- 1 A. He passed a baton through his arm.
- 2 Q. Which arm?
- 3 A. His left arm, his left upper arm, and I think he tried
4 to use the baton to try and lever the hand out from
5 underneath him as well.
- 6 Q. Is that a recognised technique that you're taught at
7 OST?
- 8 A. Yes.
- 9 Q. But that wasn't successful, you said?
- 10 A. No, no.
- 11 Q. Were you able to assist with that technique from your
12 position?
- 13 A. I mean, you're trying to assist but at the same time
14 trying to keep control, it's -- every situation is
15 different. It's how somebody lies and how they're
16 fighting with you, so you can only deal with what's in
17 front of you, but yes, I mean, ultimately we were trying
18 to work together to get him handcuffed to the rear.
- 19 Q. But you remained in charge of the right arm at that
20 stage, did you?
- 21 A. Yes, just trying to -- well, trying to keep anything
22 under control, yes.
- 23 Q. How long were you trying to do that, trying to get the
24 left arm out from under him?
- 25 A. Like I say, it's impossible to put timings on that sort

1 of situation.

2 Q. Where's PC Tomlinson?

3 A. Still no idea.

4 Q. All right. So you weren't aware of PC Tomlinson at any
5 point up until then?

6 A. No.

7 Q. When did you first realise that PC Tomlinson was there?

8 A. Probably once we had him under full restraint, we rolled
9 him over onto his back and I realised at that point that
10 leg restraints and that had been applied.

11 Q. So you're still facing the top half of Sheku Bayoh?

12 A. Yes.

13 Q. You don't know what's going on behind?

14 A. No.

15 Q. Do you know other people have arrived?

16 A. The next person I'm aware of arriving is PC Alan Smith.

17 Q. Right, so you're not aware of PC Tomlinson at all?

18 A. No.

19 Q. But you're aware of PC Alan Smith arriving?

20 A. Yes.

21 Q. What was he doing?

22 A. He has approached Mr Bayoh from the opposite side of me.

23 Q. So it would be Mr Bayoh's left-hand side?

24 A. Yes, which is the direction he was facing at that point,
25 and he came across and administered a warning that if

1 Mr Bayoh didn't stop resisting, that he would spray him
2 with CS spray.

3 Q. What was the warning?

4 A. Pretty much what I said, "If you don't stop resisting,
5 you will be sprayed".

6 Q. Did someone reply to that comment?

7 A. Yes, I did.

8 Q. What did you say?

9 A. That it doesn't work and that we would just end up, like
10 I said earlier, with CS spray we would just end up
11 contaminating everybody other than Mr Bayoh, so I told
12 him not to bother.

13 Q. What did PC Smith do?

14 A. Put his baton away -- sorry, not his baton, his CS spray
15 back in its holder at that point.

16 Q. And what did he then do after he had put that away?

17 A. I'm not sure of his exact involvement, what he was
18 involved in. As I say, it was -- it happened that
19 quick, in quick succession. You know, we got him to the
20 ground, there was a struggle, we tried to get cuffs on,
21 tried to get cuffs to the back, failed, got cuffs to the
22 front, got him under control and then by that point
23 I realised that the whole station was there and that he
24 had leg restraints on him.

25 Q. When you got the cuffs on him to the front, was it you

- 1 that applied both cuffs?
- 2 A. Yes.
- 3 Q. And once that happened, you have said you took charge of
- 4 the -- you got control of him, did you say? Is that the
- 5 words you just used?
- 6 A. Yes, when you've got handcuffs on him you've got better
- 7 control of him, yes.
- 8 Q. So what did you do at that point?
- 9 A. Once I was happy that he was cuffed and secured, as
- 10 I say, that's when I sort of stopped reaching across him
- 11 onto his hands, sort of sat up and was aware that
- 12 everybody else was -- had arrived.
- 13 Q. Tell us who was there?
- 14 A. The first person I was really aware of was the DS,
- 15 Samantha Mann.
- 16 Q. Samantha Davidson?
- 17 A. Sorry, Davidson, yes.
- 18 Q. Where was she?
- 19 A. She was at -- on the roadway at the feet of Mr Bayoh.
- 20 Q. Right. Could you point sort of the -- I appreciate that
- 21 the circles are bigger than people would be in the
- 22 scene, but when you say on the roadway, where do you
- 23 mean?
- 24 A. So sort of just down there to the feet.
- 25 Q. Right. So at number 1, would you say that circle would

1 encompass yourself, PC Paton at Sheku Bayoh's head, and
2 Sheku Bayoh himself?

3 A. Yes.

4 Q. And Samantha Davidson arrived in Hayfield Road and was
5 to the -- towards Sheku Bayoh's feet?

6 A. Mm-hm.

7 Q. Who else was there?

8 A. That I was aware of or ..?

9 Q. Yes, you said you became aware the whole station was
10 there?

11 A. No, I was just aware of there being vast numbers -- more
12 people than just me and Alan.

13 Q. Well, do you remember anyone else being there?

14 A. I mean throughout the course of the whole event I spoke
15 to DS Davidson and Sergeant Maxwell and I was aware that
16 DC Connell was also there but other than that ...

17 Q. Okay.

18 A. Nobody specific.

19 Q. What I would like to do now then is go back to the
20 footage. I'm going to play a slightly later part of the
21 footage, and we will just watch that through first of
22 all and then we will come back to it and I will ask some
23 questions, so maybe we could start at 7.20.23, or around
24 about that, that's absolutely fine. You will see on the
25 footage now that we have gone back to -- this is where

1 Snapchat footage overlaid onto the other footage and we
2 can see the area of the restraint. Looking at that, are
3 you able to identify who the officers are that we can
4 see?

5 A. I could say with certainty who three of them are.

6 Q. Could you tell us then -- could you point to who you can
7 see and who you can identify?

8 A. That would be PC Alan Smith, PC Alan Paton and then
9 that's myself lying on the ground (indicating).

10 Q. So you don't know who the officer is who is standing up
11 at the feet?

12 A. I can't see him clearly enough, no.

13 Q. And there's an officer beside a lamp post or a light who
14 is standing up on the other side; do you recognise him?

15 A. It's not clear, but at a guess I would say it's maybe
16 James McDonough, PC James McDonough, but it's not clear
17 enough to say.

18 Q. Right. So you see PC Smith at the top, he is number 1?

19 A. Yes.

20 Q. And I think you said he was on the left side not -- was
21 he at the top of the left side?

22 A. Yes, aye.

23 Q. And then PC Paton was here at -- you said he was at
24 the head of Sheku Bayoh?

25 A. Yes, when he first arrived. I mean this is obviously

1 a couple of seconds into the restraint, so there has
2 been some sort of dynamic movement but, yes, they are
3 still in the same order.

4 Q. So he has moved around?

5 A. Possibly, yes.

6 Q. And then you're, you said, lying on Sheku Bayoh at
7 number 3?

8 A. Yes, that's me lying at number 3. I wouldn't say I was
9 lying on him at that point.

10 Q. You were lying on him --

11 A. No, you said that; I wouldn't say that.

12 Q. All right, sorry. But you were there at number 3?

13 A. Yes.

14 Q. Right. Can we carry on playing this for a few seconds,
15 please.

16 (Video played)

17 And then stop it there. So the person who was at
18 the feet, who was standing, has now crouched down
19 towards the feet. Do you -- did you recognise him?

20 A. No.

21 Q. No. And the person who was standing, you didn't get any
22 further idea who that was, right.

23 Can we look, please, at an image that we will look
24 at, which is number 22, which is in the 2c section of
25 the other images.

- 1 Now, this is an image that's been prepared by
2 Advanced Laser Imaging. You have not seen this before.
3 It has been prepared from the Ashley Wyse Snapchat
4 footage and you will see that people are all in
5 different colours. You can see the red, the green, the
6 brown sort of colour.
- 7 A. Mm-hm.
- 8 Q. Tell me if I'm wrong, but what you're saying is that --
9 would you be number green? Sorry, colour green.
- 10 A. The dark green with the two legs or the light green?
- 11 Q. You're the dark green. Well, first of all, let's look
12 at the dark blue colour. So this is a person who is
13 crouching at the feet.
- 14 A. Mm-hm.
- 15 Q. Do you see that person? Do you know who that was?
- 16 A. No, that's the person I couldn't identify.
- 17 Q. You can't identify. And is the brown person you thought
18 might be PC McDonough but you weren't sure?
- 19 A. Yes.
- 20 Q. And then there's somebody crouched down what would be on
21 Sheku Bayoh's left-hand side, maybe a sort of purple
22 colour. Do you know who that was?
- 23 A. No.
- 24 Q. And then the red person, do know who that was?
- 25 A. That, I would say, would be Alan. Wait a minute ... if

1 that's taken from the Snapchat footage then, aye, that's
2 when sort of people have moved around a bit so that
3 would be PC Smith, yes.

4 Q. You said there had been some movement?

5 A. Yes.

6 Q. So that's PC Smith is red?

7 A. Yes.

8 Q. People haven't been allocated individual colours, it's
9 just -- so you think that's PC Smith. So he is on his
10 knees, sort of crouched down at the -- there. And then
11 the lighter green colour, someone kneeling, who was
12 that?

13 A. Alan Paton.

14 Q. PC Paton. And then as you have correctly identified,
15 there's dark green legs and you said you were lying on
16 the ground, I think that's what it says on the
17 transcript?

18 A. Yes.

19 Q. So which ones are your legs?

20 A. I think it's impossible to tell. I think the imaging
21 people said that as well, that there wasn't enough
22 detail to work out --

23 Q. They said they couldn't tell, but can you tell?

24 A. From the way that I would be lying, it would have to be
25 those legs, I'm guessing.

1 Q. The ones closer to me?

2 A. Yes.

3 Q. And the further away legs closer to Hayfield roundabout,
4 the roundabout at Hendry Road, they would be
5 Sheku Bayoh's legs?

6 A. Yes.

7 Q. So the closer legs are yours and the further away legs,
8 looking at it, would be Sheku Bayoh's?

9 A. Yes.

10 Q. Thanks. Can we have a look, please, at some enhanced
11 footage from the Snapchat. It's SBPI 110, and this is
12 a short clip of footage. You will see it twice, so the
13 first time you see it, it will be the Ashley Wyse
14 Snapchat footage that you saw layered over on the real
15 time clock. We will watch through that and then you
16 will watch it again, and this time it will be -- the
17 second time it is 400% bigger, so it has been zoomed,
18 and the speed is 25% slower.

19 A. Right.

20 Q. And we can watch this more than once if that's easier,
21 but let's watch it through once entirely and then we
22 will see where we get to. Thanks.

23 (Video played)

24 Right. I appreciate that's the first time you have
25 been able to see that, so I think it might be useful to

1 go through it again, just to let you see it a second
2 time. You will see it is a short passage, so let's
3 watch that again. The first one, as I say, you will see
4 is the Snapchat footage extracted from the combined ...

5 (Video played)

6 Can we go back to the beginning, please, and we will
7 pause it during the first section, if that's all right.

8 Right. Where were you?

9 A. It's highlighted, there.

10 Q. You're lying on the ground, you said?

11 A. Yes.

12 Q. Where's your head?

13 A. Somewhere behind PC Paton.

14 Q. That's PC Paton who was --

15 A. There (indicating).

16 Q. He was the lighter green-coloured person, so he's got
17 his back to us here in this footage?

18 A. Yes.

19 Q. And your head's near him. What position were you in at
20 this stage?

21 A. I can't recall. It would be mid-way through the
22 struggle. I don't -- I can't recall.

23 Q. And you were in a lying position, you said.

24 A. From there, yes.

25 Q. Where are your feet?

- 1 A. Down by the pavement, down here (indicating).
- 2 Q. And can we then move on to the next section, please.
- 3 Those red circles can be removed, please, and when we
- 4 come on to the next image I'm going to pause it there,
- 5 please, so you can see there that there are separate
- 6 feet. Do you want me to rewind it? When I say myself,
- 7 Ms Drury. Do you want Ms Drury to rewind it? Can you
- 8 see that there are separate feet there visible on the
- 9 footage.
- 10 A. Mm-hm.
- 11 Q. And I would like you to keep focusing on the feet. Do
- 12 you see that the furthest away foot appears to be
- 13 pointing down, toe-down?
- 14 A. What do you mean by furthest away?
- 15 Q. The one that's on the road, furthest away from me.
- 16 There's one closer to me and there's one furthest away
- 17 from me. Do you see that?
- 18 A. Mm-hm.
- 19 Q. Right. If you can keep focusing there, and we will play
- 20 a couple of seconds just so you can watch it.
- 21 (Video played)
- 22 Stop, please. Did you see the toes appeared to be
- 23 pointing downward towards the roadway or the pavement?
- 24 A. The feet that are moving?
- 25 Q. Do you want to see it again?

1 A. Mm-hm.

2 Q. I mean, I'm not -- you may not agree with me, you may
3 not be able to see this, PC Walker so...

4 A. No, I think they're my feet that are moving.

5 Q. I was going to ask you --

6 A. Yes, I think they're mine, yes.

7 Q. Right, so can we rewind that slightly, Ms Drury, please,
8 and we will look at it again and keep going.

9 (Video played)

10 Right, pause it. So did you see the feet moving?

11 A. Yes.

12 Q. And did you see at least one foot was pointing down,
13 toes pointing down to the roadway?

14 A. Mm-hm.

15 Q. Whose were they?

16 A. I would have to say that they were my feet that were
17 moving about at that point.

18 Q. So your feet were actually pointing down towards the
19 roadway?

20 A. Yes, probably trying to get some traction with the
21 ground because I went from a kneeling position to, like,
22 as though my feet have slipped out from underneath me.

23 Q. So you've got moved from a kneeling position to a lying
24 position?

25 A. Yes.

1 Q. And then I would like you to watch -- you see the
2 gentleman -- the officer who is at the rear -- the feet
3 area? He is leaning down as we have paused this.

4 A. Yes.

5 Q. I want you to watch what he does to the leg that he is
6 touching, so we will watch this a couple of times.

7 (Video played)

8 Did you see him lifting that there?

9 A. Yes.

10 Q. And we will watch that again.

11 (Video played)

12 Do you see him lifting that leg up? Do you want to
13 see it again?

14 A. No, I could see it.

15 Q. So he is lifting that leg upwards?

16 A. Mm-hm.

17 Q. The knee is on the ground and he is lifting the leg --
18 he is bending the leg at the knee, knee on the ground,
19 lifting it up. Is that Sheku Bayoh's leg?

20 A. That would -- I'm assuming so, yes. It would need to
21 be.

22 Q. Nobody lifted your leg up in that position?

23 A. No, no.

24 Q. So at some point, an officer in the area of
25 Sheku Bayoh's feet has bent his leg at the knee, the

- 1 knee being on the ground, and he has bent it up the way?
- 2 A. Yes.
- 3 Q. So at that point at least, Sheku Bayoh's knee is on the
- 4 ground, flat on the ground?
- 5 A. Yes.
- 6 Q. So he is not on his left-hand side at that stage?
- 7 A. His shoulders could be.
- 8 Q. So you think his knee is on the ground at the time that
- 9 his shoulders are only on the left-hand side?
- 10 A. That's possible. It's in -- it's not clear to see from
- 11 there, but it's certainly possible, yes.
- 12 Q. So is that a twisting position that you're imagining
- 13 between his shoulders -- right shoulder up in the air --
- 14 A. Yes.
- 15 Q. -- he is on his left-hand side, but his knees are
- 16 face-down on to the ground.
- 17 A. Yes, he is twisted round at the hips, so his feet are --
- 18 Q. So his knees are face-down on the ground but his right
- 19 shoulder is up?
- 20 A. That's -- yeah, I mean that's -- how I could assume
- 21 that's happened, I can't speak as to how it has happened
- 22 but that's certainly a possibility for him to be on his
- 23 side and for his knees to be bent upwards.
- 24 Q. Right, thank you. Now, what I would like to do --
- 25 yesterday you were very helpful, we went through the

1 images and you put yourself in different positions and
2 what we would like to do now is Mr DeGiovanni from
3 Advanced Laser Imaging has prepared images showing
4 those. Right, yes.

5 MS GRAHAME: I would like, if possible, to have a short
6 break to allow Mr DeGiovanni to come in and then we will
7 allow you to see those images and comment on them?

8 LORD BRACADALE: It's 11.20 so we might as well just have
9 the morning break and then you can move on after that.
10 Would be convenient?

11 MS GRAHAME: That would be.

12 LORD BRACADALE: We will have a break now for 15/20 minutes
13 and then we will resume.

14 (11.20 am)

15 (Short Break)

16 (11.45 am)

17 LORD BRACADALE: Ms Grahame.

18 MS GRAHAME: Thank you. Constable Walker, you were very
19 helpful yesterday in explaining -- we looked at images
20 and you showed us positions from the minute you arrived,
21 and Mr DeGiovanni from Advanced Laser Imaging has been
22 preparing further 3D reconstruction images and from the
23 information you gave us yesterday in evidence, and
24 I wonder -- I've got five images to show you, and
25 I wonder if I could ask you to look at these. You will

1 see that instead of the red circles, he has placed
2 people, images into the scene, and I would just like to
3 go over these with you, just briefly and check that
4 you're happy that they are a reasonable indication of
5 what you said to us yesterday, so this first image which
6 is on the screen, you will see the van, we heard your
7 evidence yesterday about the van and the position, but
8 this was -- and this is an indication of where PC Paton
9 was, and Mr Bayoh on Hayfield Road, and then you
10 standing at the front of the van. Does that seem
11 reasonable to you as a snapshot?

12 A. As a snapshot, yes.

13 Q. A snapshot, yes. You don't want to make any changes
14 with that? You're happy with that?

15 A. If anything, I would say the distance between PC Paton
16 and Mr Bayoh is a bit too much. I would probably say
17 Mr Bayoh was closer to him at that point.

18 Q. Right, okay, so a little bit closer -- tell us when?

19 A. A wee bit further. Probably about there.

20 Q. About there. And you're happy with that representation?

21 A. Yes.

22 Q. Is there anything else you want to change about that,
23 the position of yourself or Mr Bayoh or PC Paton?

24 A. I would say I was closer to the front of the van.

25 Q. Closer?

1 A. Yeah, because I sort of come round -- almost touching
2 the van as I came round the front of it.

3 Q. Okay. That sort of area or is that --

4 A. Yes, that would be --

5 Q. Are you happy with that, because it can be moved again?

6 A. No, as I say, as a snapshot, as I'm coming round that
7 would be --

8 Q. As a snapshot. All right, excellent. Thank you very
9 much.

10 We will move on to image 2. So again, this is
11 a snapshot. This is, as we understand it, more akin to
12 where PC Paton was when he used his spray, so he is in
13 that corner of the pavement at Hayfield Road. This
14 happens to my computer all the time, so I'm sure it will
15 come back. I hope it will come back. It was going so
16 well, Mr DeGiovanni.

17 (Pause).

18 So this is the second image that we have and this is
19 an indication, or a representation of the position that
20 PC Paton was in at the point he was about to use his
21 spray, so ... does that seem a reasonable indication on
22 the screen of the position that people were in at that
23 moment?

24 A. I would say possibly they weren't maybe as far down the
25 pavement as that at that point when the actual spray was

- 1 deployed, so the distance between them was probably
2 maybe accurate, but if both of them were to get moved
3 slightly further --
- 4 Q. Further back along Hayfield Road?
- 5 A. Yes.
- 6 Q. Closer to --
- 7 A. No, no, the other direction.
- 8 Q. Oh, the other direction.
- 9 A. Yes, and then move the same distance. Yes.
- 10 Q. And are you reasonably happy with that?
- 11 A. Yes, I would say so.
- 12 Q. We have a facility that allows us to see a line of sight
13 from one of these characters, such as from yourself,
14 PC Walker. Does that -- that would be an indication of
15 your sort of line of sight. Does that seem reasonably
16 accurate to you, or would you prefer to move your
17 position as well?
- 18 A. No, I mean -- as a snapshot that's, aye, there or
19 thereabouts, yes.
- 20 Q. That's great, thank you very much. So this will be
21 image 3 loading up. So you gave evidence yesterday
22 about when you used your spray and you talked about
23 being at the front of your van and Mr Bayoh coming
24 towards you, and again, as a snapshot, as you look at
25 the positions of the characters here, do you feel that's

- 1 a reasonable indication?
- 2 A. Yes.
- 3 Q. Are you happy, or do you want to move anybody?
- 4 A. I mean, as an indication as to where we ended up,
5 that's -- I'm not 100% sure if that's the point at which
6 I deployed the PAVA, but I probably -- couldn't be
7 certain exactly where I was relative to the van when
8 that happened, because my focus was obviously Mr Bayoh,
9 but yeah, we did end up close to that position at some
10 point, yes.
- 11 Q. Thank you, that's excellent. Then we will go to the
12 next one, please.
- 13 (Pause).
- 14 Now, yesterday you spoke about after you had been
15 affected by the PAVA spray, you had walked around to the
16 driver's side of the van and at some point PC Paton was
17 on your left.
- 18 A. Mm-hm.
- 19 Q. Now, you may want to adjust some of these positions.
20 Can we start with you, PC Walker?
- 21 A. Yes, I'm facing the wrong direction on that one.
- 22 Q. Yes, so I think yesterday you said you had your back to
23 the driver's side of your van?
- 24 A. Yes.
- 25 Q. So let's move you round. But I do recall I think you

1 said you were near the rear wheel, is that correct?

2 A. Yes, aye, I think so.

3 Q. And --

4 A. Still further round, I had my back to the van --

5 Q. You had your back to the van?

6 A. -- back against the van.

7 Q. Okay.

8 A. And maybe slightly closer to the van as well.

9 Q. Closer to the van.

10 A. Yes.

11 Q. Is that a more reasonable indication?

12 A. To the best of my recollection, yes.

13 Q. I think you said -- did you say you were crouched at

14 that point, or is that correct in the position --

15 A. It depends at which point you're going to be referring

16 to. At some point I went to crouched at front of the

17 van, to blinking, to clearing my eyesight to be coming

18 to be standing at that point.

19 Q. So are you happy with that image as it is?

20 A. Yes.

21 Q. And then can you help adjust PC Paton?

22 A. He would -- I think he was facing more towards the van

23 and crouched over -- bent over at the waist.

24 Q. Bent over at the waist, all right. So his head, was

25 that quite close to the van or was it touching the van?

1 A. He was further away from the van than I was. He would
2 be at my sort of 10 or 11 o'clock position.

3 Q. So you're standing with your back -- or you're there
4 with your back to the driver's side of the van?

5 A. Mm-hm.

6 Q. But he was facing towards the driver's side of the van.

7 A. That could be wrong actually, if I'm thinking about it,
8 because he drew his baton and he handed it like that, so
9 he must have been facing the way he was originally,
10 sorry.

11 Q. I think yesterday you did say that he had drawn the
12 baton --

13 A. Aye, he drew it and handed it.

14 Q. -- and handed it, so maybe on reflection he was also
15 with his back to the van. Was he closer to the front
16 tyre or the door, or do you remember?

17 A. I don't know. Roughly about there.

18 Q. Are you happy with that image as it is now?

19 A. Yes.

20 Q. Thank you. Let's move on to the last one.

21 DEAN OF FACULTY: My Lord, I wonder if I might briefly make
22 an observation. Obviously, I'm not objecting to any of
23 this, it is doubtless very helpful. The one thing that
24 hasn't been taken account of any of this is what
25 PC Walker said about the position of the van and as the

1 van seems to be quite an important point of orientation,
2 we can see from the Snapchat footage that the rear tyre
3 of the van is on the dotted line, it's not in this
4 picture, and I'm just wondering if account can be taken
5 of that when we're looking at this because otherwise,
6 given how much focus is on the positioning of the van,
7 everything is thrown out.

8 LORD BRACADALE: Ms Grahame?

9 MS GRAHAME: Yes. I think I said at the outset, when I was
10 discussing it with Constable Walker, that we had heard
11 his evidence yesterday about the position of the van and
12 we will take account of that in relation to these
13 images.

14 LORD BRACADALE: Yes, very well. The point is noted, Dean
15 of Faculty. Thank you.

16 DEAN OF FACULTY: Obligated, my Lord.

17 MS GRAHAME: So this is the final image that I have for you
18 today, Constable Walker, and again it's been created
19 relying on the red circles that you have provided us
20 with. So what we have here is you will see a blue
21 person on the ground with the name "PC Short".

22 A. Mm-hm.

23 Q. Is that a reasonable indication of the position that you
24 described earlier this morning, or would you wish to
25 move that?

- 1 A. I think the -- Mr Bayoh and PC Short would be more
2 towards the bottom line, so she started to take -- when
3 she was being -- or appeared to have having been pushed
4 she was on the white line, so she would have fell
5 further down from that.
- 6 Q. Right, so we will move that southerly, towards the other
7 pavement more.
- 8 A. Yes. Yeah, probably.
- 9 Q. About there? Are you comfortable with that as
10 her position --
- 11 A. Yes.
- 12 Q. -- on the screen. And you will see that Mr Bayoh's
13 position is given to her right, standing --
- 14 A. Mm-hm.
- 15 Q. -- facing along Hayfield Road towards where you're
16 standing.
- 17 A. Yes.
- 18 Q. Are you comfortable with the position of Mr Bayoh there?
- 19 A. To make it match my recollection, he would need to be
20 turned counter-clockwise slightly.
- 21 Q. Right.
- 22 A. Yes.
- 23 Q. Right, and are you comfortable with that angle?
- 24 A. We moved my position in the other slide, so would that
25 not be a bit closer to the rear of the van?

1 Q. Yes, I'm going to ask you if you want to move yourself
2 so ... And subject to the Dean of Faculty's comments
3 about the van position -- so when you say you were at
4 the rear of the van, do you still mean the driver's
5 side, towards the rear wheel?

6 A. Yes, yes.

7 Q. So really where you had been positioned in the previous
8 slide.

9 A. Mm-hm.

10 Q. The previous image.

11 (Pause)

12 Right. Do you want to change the position of
13 yourself, Constable Walker? You're now at the rear
14 wheel of the driver's side. Do you want to change your
15 position, or are you content that you were facing
16 towards Mr Bayoh and PC Short?

17 A. My head was facing that way. I wouldn't say my whole
18 body was, but, aye, it's fine as a representation so --

19 Q. So your body remained -- your back was towards the van?

20 A. (Inaudible overspeaking) both directions, yes.

21 Q. So I don't think there's that level of detail
22 available --

23 A. Detail.

24 Q. -- in the images. Are you -- subject to that alteration
25 and the comments regarding the van itself, are you

1 comfortable that the position that Mr Bayoh and PC Short
2 are in on this image is a reasonable indication of where
3 they were when you saw them?

4 A. Yes.

5 Q. Thank you. Thank you very much.

6 There's a couple of things you said this morning
7 that I would like to confirm with you before we move on
8 from this section. You have described how you were
9 kneeling during the restraint and you also described how
10 you were lying on the ground and I'm wondering if you
11 can explain how you came from the kneeling position
12 to -- you demonstrated it, kneeling, leaning over, and
13 then how you came from that position to move into the
14 lying on the ground position?

15 A. I was probably in loads of different positions whilst we
16 were doing that restraint. I've probably moved round --
17 everybody has moved round at that point, that was
18 probably as a result of trying to get Mr Bayoh's hand
19 out from underneath him, but, yes, we have probably
20 changed from that position again after that but that
21 was --

22 Q. But your weight would still be on your knees as you
23 moved?

24 A. Yes, yes, aye, you can see that. Even when I'm lying
25 there, three-quarters of my body is on the pavement.

1 Q. And then in your PIRC statement you had referred to
2 shoulder charging with your left shoulder, but
3 I understood that the demonstration that you gave us and
4 the indication in the chair was with your right
5 shoulder. Can I just be clear which shoulder you used
6 to shoulder charge Mr Bayoh?

7 A. In my initial PIRC statement I said left shoulder?

8 Q. Yes, in the PIRC statement -- not the self-penned one,
9 it was the -- sorry, I don't have the number. I can
10 find it. I will read it out. I think we've got it on
11 the list, so it's 264, PIRC 264. We're looking at
12 page 6 -- 7, sorry, 7, and it's the second paragraph.
13 Right, 7, second paragraph, and you will see in the
14 middle of that paragraph it says:

15 "So I just brought my left arm across my body and
16 shoulder charged him with my left shoulder with a fair
17 bit of force."

18 I think I had read that out before I spoke to you
19 about that.

20 A. Mm-hm.

21 Q. You see that's left shoulder, but when you demonstrated
22 it to me I think you indicated your right and I just
23 want to be clear which shoulder you used.

24 A. I would go with obviously the statement that was
25 supplied at the time because it would be fresher in my

1 memory, but certainly if you were to ask me -- I'm
2 right-handed, so I would normally always go in with my
3 right shoulder so that's probably why I demonstrated it
4 like that, but that statement's fresher so -- or this
5 was fresher at the time so ...

6 Q. So which version would you prefer -- should the Chair
7 prefer: the fresher version, or the fact that you
8 normally lead with your right?

9 A. I would obviously go with the statement that was
10 produced at the time. Probably the same movement but
11 mirrored.

12 Q. Okay, so the same movement but leading with your left?

13 A. Yeah.

14 Q. Okay, thank you.

15 I would like to ask you something about -- we have
16 not heard evidence from PC Good yet, but the Chair has
17 access to a statement she gave to PIRC on 4 June 2015,
18 about the restraint, and I would like to read out part
19 of that and ask you if you would like to comment on it.
20 She describes during the restraint that -- in relation
21 to Mr Bayoh:

22 "His arms and legs were kicking out, flaying, trying
23 to force himself up using his arms like a press up.
24 Several officers were trying to restrain him by pushing
25 him to the ground."

1 Now, as I say, we have not heard from PC Good, but
2 a press up to me is where someone is pushing their hands
3 on the ground.

4 A. Mm-hm.

5 Q. So they're face down and they're using their hands on
6 the ground to press up and push their back up.

7 A. Mm-hm.

8 Q. And I just wondered did you have any comment on that
9 description about Mr Bayoh trying to do a press up?

10 A. No, like I said he was never round onto his front or
11 would be able to put both hands flat on the ground and
12 from -- obviously from a knowledge of the incident now,
13 PC Good would have approached from the hospital end, off
14 Hayfield Road, so I don't think she would have had
15 a clear view of what was happening with his upper body
16 but that's something that you will need to confirm with
17 her.

18 Q. Yes, we have not heard from her yet. Thank you.

19 A. Yes.

20 Q. Right, I would like to move away from the events of
21 Hayfield Road and ask you some other questions. I would
22 like to ask you about leg restraints, if I may, and can
23 we look at a use of force SOP, PS10933, and I would like
24 to look at paragraph 20.5 please.

25 Now, you have mentioned that leg restraints were

1 used, but, as I understand it, you didn't really see
2 what was happening at that end?

3 A. No, I had nothing to do with the leg restraints.

4 Q. Okay. Well, can I just ask you to comment on the use of
5 force SOP please, paragraph 20.5:

6 "Ideally the leg restraints need at least two
7 police officers/staff working together to correctly
8 apply them. The subject should be handcuffed to the
9 rear and placed in the prone (lying face down) position
10 before the leg restraints are applied."

11 So were you aware of any officers asking you to
12 place Mr Bayoh in the prone position in order that they
13 could apply the leg restraints?

14 A. No.

15 Q. All right. When did you notice -- sorry, I should have
16 asked this. When did you notice that Mr Bayoh had
17 stopped struggling and become unconscious? I can show
18 you the spreadsheet, so if you look at page 7 of the
19 spreadsheet, you will see that there's an entry -- an
20 Airwaves transmission by PC Alan Smith at 7.25.17. Have
21 you got page 7?

22 A. Yes, I do.

23 Q. And he says:

24 "Roger. This male now certainly appears to be
25 unconscious. Breathing, not responsive. Get an

1 ambulance for him."

2 When was it you noticed that he was unconscious, so
3 he had stopped struggling and become unconscious?

4 A. It would be about the same time because the three of us,
5 Alan Smith, Alan Paton and myself, sort of all raised at
6 the same time that the male appeared to sort of become
7 unconscious at that point and unresponsive.

8 Q. And at that moment when you noticed that, what position
9 was Sheku Bayoh in?

10 A. He was on -- at that point he would be on his back.

11 Q. Okay. And then staying with this use of force SOP,
12 which is on the screen, I wonder if we can look at
13 paragraph 4.6 and this is further up. It should be
14 headed -- it relates to profiled offender behaviour.
15 There you will see it is headed up "Profiled offender
16 behaviour" and it says:

17 "Profiling a person's behaviour may assist in
18 determining an officer's reasonable response. Profiled
19 offender behaviour can be sub-categorised."

20 And then we have level 1, "Compliance":

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

25 And can I confirm with you nothing you have

1 described in relation to Mr Bayoh at Hayfield Road would
2 have come within this level, there wasn't compliance
3 with your instructions?

4 A. Yes, correct.

5 Q. And then level 2, "Verbal resistance and/or gestures":

6 "This includes shouting, swearing and verbal
7 challenges to requests and/or instructions given. It
8 normally includes non-verbal gestures and posturing
9 (body language) and can consist of warning and danger
10 signs of potential attack."

11 We looked at those warning and danger signs
12 yesterday, but again nothing in that description of
13 level 2 would apply to the way things were at
14 Hayfield Road?

15 A. At what stage?

16 Q. At the beginning. Mr Bayoh wasn't shouting, he wasn't
17 swearing, he wasn't making verbal challenges to your
18 requests and in terms of non-verbal gestures and
19 posturing there was no warning or danger signs.

20 (Pause)

21 Please say if you disagree with that.

22 A. It's not that I disagree, it's that you've got to be
23 careful how you're applying this because it was
24 a dynamic -- his attitude and behaviour changed
25 throughout, so it's not just a case he's a level 2 and

1 he stays a level 2.

2 Q. No, no. I'm just saying at the beginning there was
3 nothing -- there was no shouting or swearing when you
4 arrived at Hayfield Road, in fact at any time I don't
5 think you have said there was any shouting or
6 swearing --

7 A. No.

8 Q. -- by Mr Bayoh.

9 A. That's correct, yes.

10 Q. Right. And then level 3, "Passive resistance":

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

14 And when would you say that Mr Bayoh started to
15 demonstrate level 3, passive resistance?

16 A. It would be when PC Paton approached him and asked him
17 to stay where he was, "Stop", and gave the clear lawful
18 orders.

19 Q. And then level 4, "Active resistance":

20 "This is more of a physical form of resistance, in
21 that the subject is actively doing something to prevent
22 or obstruct an officer from carrying out their duty.
23 This type of resistance, although physical by nature,
24 falls short of an assault upon another. It can include
25 holding on to an object/person either physically or

1 mechanically; struggling to break free from an officer's
2 grasp; trying to dispose of evidence."

3 When would Sheku Bayoh have demonstrated this level
4 of active resistance?

5 A. When he was walking towards PC Paton, refusing to stop
6 and closing down the reaction gap for him.

7 Q. And then level 5, "Assaultive resistance":

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

13 When would he have demonstrated this level of
14 resistance, assaultive resistance?

15 A. When he started to chase PC Short.

16 Q. Then level 6, if we could move on to that,

17 "Serious/aggravated assaultive resistance":

18 "The highest level of resistance encountered, which
19 generally involves the intended use of weapons as part
20 of the attack where the perceived threat is that of
21 serious injury or is life threatening. It can also
22 include situations without the presence of weapons where
23 the perceived threat is that of serious injury, or is
24 life threatening.

25 "The above provides a rising scale of resistance.

1 An offender may display a combination of these types of
2 behaviour and may start at any level. They may escalate
3 through the levels; similarly, they may de-escalate
4 their levels of resistance and any force used by
5 an officer or staff must be proportionate and
6 appropriate to the perceived resistance in combination
7 with the impact factors present at that time."

8 So when we look at level 6, serious aggravated
9 assaultive resistance, when would Mr Bayoh have achieved
10 that level?

11 A. When he struck PC Short and knocked her to the ground.

12 Q. Right, so he reaches this level 6 when he strikes her,
13 knocks her to the ground and then you have described
14 a stomp --

15 A. The stamp after that, yes.

16 Q. The stamp, sorry.

17 Then can we look at 4.7 please:

18 "Officers' reasonable response (force options).

19 "By combining the elements of profiled offender
20 behaviour and impact factors it affords the
21 officer/staff the ability to quickly assess the threat
22 and to make an informed decision to adopt appropriate
23 tactics from a range of force options in order to deal
24 with the situation in a controlled, justifiable and
25 accountable manner. These responses (force options) can

1 be sub-categorised ...

2 "Level 1 - officer presence. This is a broad term
3 encompassing the physical and psychological aspects of
4 an officer, especially in uniform or other specialist
5 equipment, having a visual impact and effect on the mind
6 or will of another merely by attending to or arriving at
7 the situation. Adopting a professional approach and
8 conduct can enhance this."

9 So this level 1 of officer response, is that turning
10 up --

11 A. Yes.

12 Q. -- in your uniform --

13 A. (Inaudible overspeaking) van and blue lights.

14 Q. Looking impressive, with equipment and your van and
15 things, right.

16 Then level 2 please, "Tactical communications." So
17 this is a step up from just turning up with all your
18 equipment?

19 A. Mm-hm.

20 Q. "By definition, tactical communication means the ability
21 to give out and take in information in a way which gives
22 the officer a tactical advantage. It incorporates
23 verbal and non-verbal communication skills and is the
24 ability of an individual to effectively use all forms of
25 communication, within reason, to resolve an identified

1 area of conflict. This level could include giving
2 specific direction, commands and/or instructions to an
3 offender, even in a forceful vocal manner."

4 And so tactical communications, it says verbal and
5 non-verbal communication skills.

6 A. Mm-hm.

7 Q. Now, yesterday you were talking about communicating by
8 a hand gesture, so not even any words said, but the hand
9 gesture which you said would communicate that you want
10 the person to stop.

11 A. Yes.

12 Q. Is that the type of thing that's also included in this?

13 A. Yes, I would say so.

14 Q. Right. And then level 3, "Control skills":

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

21 So level 3, "control skills", is this the first part
22 where force is actually incorporated into your level --
23 your response?

24 A. Yes, I would say so.

25 Q. Right, and it could include the lowest level of force

1 being something like touching the person in some way?

2 A. Mm-hm.

3 Q. Or it could be more than that. It talks about hold and
4 restraint techniques. Is that the techniques you
5 mentioned yesterday that you're taught in OST training?

6 A. Yes. I mean that varies from "come along holds", where
7 you've got a hold of somebody's hand to escort them
8 along, to if they become resistant at that point and to
9 ground pins, et cetera, but yes, we cover all of that.

10 Q. Thank you. Then level 4, "Defensive tactics":

11 "These tactics are generally perceived to be
12 strikes, whether delivered by means of empty hand
13 techniques or baton strikes, but also include the more
14 robust defensive handcuffing techniques and the use of
15 CS incapacitant spray."

16 So this seems to be a level up from level 3 and it's
17 called "defensive tactics", and how do you see this as
18 differing?

19 A. That's when a case of somebody's fighting back against
20 the initial restraint, so you feel somebody resisting
21 against you, you put them into a ground pin, you get
22 handcuffs on, that's it, or if you get somebody into
23 a ground pin and then they try and break free, or they
24 start a higher level then there's the come along hold
25 and that's when you have to start to use your PPE

1 equipment and strike-out -- strike back.

2 Q. And what's a ground pin?

3 A. It's just an OST technique where you get somebody lying

4 on the ground and you use your hand to pin in against

5 the shoulder and pin up to the ground and then you could

6 go from that to applying handcuffs.

7 Q. So it's an empty hand technique that allows you then to

8 apply handcuffs to somebody?

9 A. Yes.

10 Q. Thank you. And this level 4, defensive tactics, would

11 also include the CS spray?

12 A. Yes.

13 Q. And then there's mention of specialist operations and

14 police dogs and firearms officers and tasers in that

15 section as well.

16 A. Yes.

17 Q. And then level 5, "Deadly or lethal force":

18 "This is a level of force that has the potential to

19 cause serious injury or even death when it is applied.

20 It may in certain circumstances ...(Reading to the

21 words)... chosen option, there must be a high degree of

22 jeopardy involved; ie the subject has the means,

23 ability/opportunity and is displaying intent to cause

24 serious injury or kill. All elements of jeopardy must

25 be present immediately at the time that lethal force is

1 applied. Officers using empty hand strikes, baton
2 strikes, as well as authorised firearms officers use of
3 conventional firearms could potentially deliver lethal
4 force."

5 So the empty hand strikes, or baton strikes, or the
6 firearms officers could deliver lethal force. So this
7 seems to be the highest level.

8 A. Yes.

9 Q. So there's six levels of resistance and five levels of
10 response by officers, so they're not immediately --
11 they're not mirror images of -- it's not a simple
12 tick box exercise where you lead one to the other.

13 A. Yes.

14 Q. Right. Can you tell us when you -- when you used your
15 spray, what level of force were you using? If you want
16 we will move down --

17 A. No, that would have been the defensive.

18 Q. The defensive?

19 A. Yes.

20 Q. And then when you shoulder charged Mr Bayoh, what level
21 of force were you using?

22 A. Defensive, I would say at that point.

23 Q. Still defensive. And then when you were restraining
24 him, what level of force were you using in response?

25 A. It went from defensive when he was lashing out, to when

1 we've got control of him, to putting the handcuffs and
2 that on, to whatever level 3 is, I think.

3 Q. It went to level 3?

4 A. To the control skills, yes.

5 Q. So as far as you were concerned you were never using
6 level 5?

7 A. No.

8 Q. Do you want to see that on the screen again please, just
9 so that we can look at it.

10 A. No, I would say I never went to the level of force where
11 there's potential to cause serious injury or death.

12 Q. So you don't think --

13 A. Just by shoulder charging, no.

14 Q. When you were -- during the restraint I was asking
15 about.

16 A. No, I would say that was defensive. He was punching at
17 me, I was punching at him, it was trying to get control
18 of him and then once we had control of him it went into
19 the level 3.

20 Q. Thank you. Right, I would like to ask about the --
21 after the restraint and the moment where they're calling
22 for an ambulance, so can we look at paragraph 76 of your
23 statement please. You were asked to look at
24 a photograph when you did your statement and I wonder if
25 we can see that on the screen please, this is PIRC

1 03374, and you will see this is a photograph or an image
2 that's been captured and there's a number of officers
3 identified there. We may hear in due course from
4 Samantha Davidson that she is the one who wrote the
5 names on.

6 A. Right, okay.

7 Q. And would you look at this and you will see that,
8 slightly right of centre of that photograph, it says
9 "PC Walker". Do you agree that that is you?

10 A. Yes.

11 Q. Do you recognise any of the other officers in the
12 photograph?

13 A. I would agree with DS Davidson --

14 Q. Would you mind pointing to them while you speak.

15 A. Yes, so DS Davidson, Alan Paton, Alan Smith, and
16 confident to say that that's -- actually --

17 Q. It says -- the line to that person says "PC A
18 Tomlinson". It's at the bottom of the page.

19 A. My initial thought was that was Daniel Gibson.

20 Q. Right, so you're not sure about that one?

21 A. So I'm not sure about that one, no.

22 Q. Then in the distance there's someone called DC Connell
23 with a blue jacket on.

24 A. Mm-hm.

25 Q. Did you recognise him?

1 A. He's not clear enough in that but ...

2 Q. No. Okay, thank you very much.

3 After the restraint -- can I ask you about the
4 spreadsheet please. There's an entry at 7.24.28, so
5 it's page 7 of the spreadsheet and it's towards the top.
6 7.24.28. It is the second entry involving Acting Police
7 Sergeant Scott Maxwell. So this is at the end of
8 phase 4 and just before there's a request to get an
9 ambulance for Mr Bayoh, and Acting Police Sergeant
10 Scott Maxwell says:

11 "Although there's no visible injuries to PC Short
12 she has been stomped to the body a few times et cetera
13 and struck to the head. Can see if the ambulance can
14 attend ASAP".

15 I'm wondering if you can help me. We may hear that
16 Acting Police Sergeant Maxwell wasn't present in
17 Hayfield Road at the time you have described the stamp
18 on PC Short.

19 A. Mm-hm.

20 Q. Who provided that information to him? I'm wondering was
21 that you, or someone else?

22 A. No, that wasn't me at that point.

23 Q. It wasn't. And then can we look at another Airwave
24 transmission by Acting Police Sergeant Maxwell and it's
25 on the next page, page 8. And it's 7.26.52. and it

1 starts 'just for the log' do you see that one?

2 A. Yes.

3 Q. "Just for the log, the initial on attendance, this
4 male's attacked PC Short ...(Reading to the words)...
5 there may be a suggestion that he has been batoned to
6 the head area. 4/1 over."

7 So the suggestion from the transmission is that the
8 first thing that happened was Sheku Bayoh attacked
9 PC Short and then was sprayed, but can I confirm with
10 you that your evidence is that he was sprayed prior to
11 that happening with PC Short?

12 A. Yes, that's correct, he was sprayed with PAVA then --
13 sorry, sprayed with CS, then PAVA and then the assault
14 on PC Short took place.

15 Q. So the information that Scott Maxwell has given over the
16 Airwaves transmission there is not correct?

17 A. It's probably to the best of his knowledge, given the
18 fact that he has just turned up and been picking up bits
19 and pieces.

20 Q. He has picked that up from someone else; he has not got
21 that from you?

22 A. No.

23 Q. So he has picked it up from someone else and transmitted
24 it but that version is not a correct version?

25 A. No, it's not as per how --

1 Q. Not as per your evidence?

2 A. Not per my recollection.

3 Q. Thank you. Can I ask you about paragraph 70, please, of
4 your --

5 A. Sorry, what paragraph?

6 Q. Paragraph 70, please, and we will get that on the
7 screen.

8 You have said you were:

9 "... the first officer to perform chest compressions
10 on Mr Bayoh when it became apparent that he was
11 unresponsive and not breathing. I placed interlocked
12 hands on the centre of the chest and started
13 compressions in line with the training I have had.
14 After two or three compressions I heard the sound of
15 a rib breaking in the chest area. In my training I was
16 told if you were doing it right, you might break a rib."

17 So you were the first officer to help do the CPR?

18 A. Yes.

19 Q. And at that point Mr Bayoh was on his back?

20 A. Yes.

21 Q. And you were applying those compressions to his chest
22 area?

23 A. Yes.

24 Q. And you have said that you heard a rib fracture in that
25 area during that time?

- 1 A. Yes.
- 2 Q. Were you able to discern at that stage the area where
3 the rib fracture was?
- 4 A. No.
- 5 Q. Where on his chest were you applying compressions.
6 Could you --
- 7 A. Just in line with the nipples is where you're supposed
8 to do that, on the sternum.
- 9 Q. Thank you. I would like to ask you, in your self-penned
10 statement that you prepared -- have it before you if you
11 wish -- I don't see any mention of the rib fracture in
12 that statement, but in your PIRC statement, which you
13 gave on 4 June, it is mentioned.
- 14 A. Mm-hm.
- 15 Q. And I just wonder if you can help the Chair understand
16 why there's that difference?
- 17 A. Probably because the PIRC asked obviously a lot more
18 questions, so I probably just said I started -- in my
19 own statement that I started CPR and they have probably
20 probed that a bit further as to, well, kind of what
21 happened and all the rest of it. That would be my only
22 explanation.
- 23 Q. When did you become aware that there was a rib fracture?
- 24 A. That would be when the results of the post mortem become
25 public knowledge and was published in the press and

1 there was mention of his multiple injuries, including
2 a rib fracture.

3 Q. Do you remember when that was?

4 A. I don't know.

5 Q. So the information came to you from an entry in the
6 media or the press?

7 A. Yes.

8 Q. Was it a newspaper or was it some other form of media?

9 A. It would be the news; it would either be online or on
10 the TV or ...

11 Q. But that's something that you noticed?

12 A. Yes.

13 Q. Do you remember if that was before you gave your
14 statement to PIRC on 4 June 2015 or after?

15 A. I think it would be after, but I don't know. I don't
16 know about the dates.

17 Q. You're not sure about that?

18 A. No.

19 Q. Right.

20 A. But certainly it didn't influence the statement that
21 I provided.

22 Q. Okay. Can I ask you to look at paragraph 77, please.

23 It's still on the same page. Then you say there:

24 "I have been asked whether any senior officer spoke
25 to me or PC Paton prior to leaving the scene. I can

1 only recall speaking to DS Davidson who instructed we
2 return to the office and we would regroup there.
3 DS Samantha Davidson also told us to take her police van
4 back to the office."

5 So you were to take her police van back to the
6 office, is that right?

7 A. No, no, a typo; it was to take our police van back to
8 the office.

9 Q. Right, okay. So you were still in the same van that you
10 had arrived in and you went back to Kirkcaldy Police
11 Office in your own van?

12 A. Yes, in the same Ford Transit van (inaudible).

13 Q. Thanks. So that -- we can make that correction for you.

14 A. Thank you.

15 Q. In relation to officers speaking to you prior to leaving
16 the scene, the Chair may hear evidence from inspector
17 Kay, Stephen Kay, and he will maybe tell us that he
18 spoke to Acting Police Sergeant Maxwell and told him not
19 to allow the officers to discuss the ins and outs of the
20 case, and we may hear from Acting Police
21 Sergeant Maxwell that he spoke to you and PC Paton in
22 the custody van, so that's your van.

23 A. Mm-hm.

24 Q. And at that point you said you wouldn't be speaking to
25 anyone or giving a statement until you had spoken to

- 1 your federation rep. Do you remember Acting Police
2 Sergeant Maxwell telling you at the custody van, or
3 before you left the scene, that officers shouldn't be
4 discussing the ins and outs of what had happened?
- 5 A. No, I've got no recollection of that.
- 6 Q. All right. And then can I ask you when you got back to
7 Kirkcaldy Police Office, who was in charge at that
8 stage?
- 9 A. Upon still arriving back at the station it would still
10 be PS Maxwell as far as we was concerned.
- 11 Q. Thank you. Do you remember getting any instructions
12 when you went back to Kirkcaldy Police Office not to
13 discuss the incident? In your PIRC statement, 264, you
14 said specifically "DI Robson didn't tell us not to
15 discuss the incident", but I'm wondering about any other
16 instructions you may remember.
- 17 A. I can't remember much of what happened when we got back
18 to the canteen. It was -- I mean we had to -- there
19 were people came in and out, gave us updates -- not
20 updates, but let us know what was happening or
21 whether -- they were going to go into meetings to find
22 out what was going to be happening, but I can't recall
23 any specific message that was passed, I can't recall the
24 contents of it.
- 25 Q. How were you feeling at that time when you got back to

1 the police office?

2 A. Concerned for the wellbeing of the gentleman. Obviously
3 nobody wants to be involved in an incident like this.

4 Concerned at the nature of the call and what we had been
5 involved in, and then obviously just wondering what was
6 going to be happening, what is the process now for --
7 obviously initially we were concerned it was going to be
8 a death in custody and then -- none of us were really
9 aware of what the process would be after that, what do
10 we need to do and, as I say, people were coming in
11 saying "We're going away to meetings to find out what's
12 going to happen, we will get back to you", so it just
13 turned into a bit of a waiting game.

14 Q. Had you ever been involved in anything like this before?

15 A. No.

16 Q. And you didn't understand what procedure would be
17 followed?

18 A. Yes.

19 Q. When do you feel you received sufficient information to
20 help you understand what the procedure would be?

21 A. Not that day at any point.

22 Q. So when?

23 A. I lost track of the days afterwards, but I would say the
24 first time I had a true -- I think -- I mean what needs
25 to be appreciated is the next day when I came in

1 I basically left the office and went on sick leave, so
2 I didn't have a lot of contact with the office and that
3 at that time, so it was a case of -- I was waiting on
4 somebody coming to take my statement from me and it
5 wasn't until I got a phone call asking me to attend at
6 the police station -- sorry, the police college -- to
7 provide a statement ...

8 Q. How long were you on sick leave?

9 A. I would say 6 months from the incident.

10 Q. And you were expecting a call from someone to ask you
11 for a statement?

12 A. Yes. I mean I was coming in and out of the station as
13 they were requiring me to come in for updates and for
14 TRIM and things like that but, yeah, it was basically --
15 I will try and remember the exact -- the way it worked,
16 but when we left that day it was "You will get a -- PIRC
17 will be in contact with you via Conrad Trickett and then
18 they will arrange a statement to be noted from you", and
19 then it was just every time you went in it was -- nobody
20 would really share what was happening and it was
21 a waiting game until eventually the first definitive
22 answer I got was "Please attend the police college
23 (inaudible) and we'll get a statement noted from you",
24 by the PIRC.

25 Q. Do you remember if Trickett got in touch with you?

- 1 A. He never did, no.
- 2 Q. He never did. How did you then find out that PIRC
3 wanted to take a statement from you?
- 4 A. I received a telephone call from the Federation lawyer
5 who was working on -- had been appointed to me by
6 the Police Federation, asking if I was free.
- 7 Q. Who was that?
- 8 A. It was someone from Peter Robson's office.
- 9 Q. Right. And so you have said that Constable Trickett
10 never got in touch with you.
- 11 Can I ask you about a couple of things. We have
12 mentioned DI Robson, first of all.
- 13 A. Mm-hm.
- 14 Q. And there may be evidence available to the Chair that he
15 says he spoke to the officers in the canteen after you
16 went back to Kirkcaldy Police Office and requested that
17 they not actively discuss the incident at this time,
18 "Just relax, watch TV and have a cup of tea or coffee".
19 In your PIRC statement you said "Robson did not tell us
20 not to discuss the incident". Can I be clear: are you
21 saying he did not say that or you just don't remember?
- 22 A. Aye, I don't recall being told that.
- 23 Q. You don't recall?
- 24 A. Yes.
- 25 Q. And then if there's a suggestion that Inspector Kay

1 spoke to officers in the canteen and said that to
2 protect the integrity of the Inquiry and officer welfare
3 he told officers of the pitfalls of discussing the
4 incident and highlighting the anticipated media
5 attention, that he said you were not under suspicion for
6 any offences and you were to utilise the canteen area as
7 respite and he would bar other officers access to the
8 canteen to offer privacy.

9 Do you remember him telling the officers, including
10 yourself, that information?

11 A. That we were -- we had exclusive use of the canteen,
12 yes, but again, I can't remember the exact ins and outs
13 of what he said.

14 Q. Okay. And if there's evidence available to the Chair
15 that Conrad Trickett, who was I understand the
16 post-incident manager --

17 A. Mm-hm.

18 Q. -- said there was no need -- he told officers there was
19 no need to talk about the incident amongst themselves,
20 made clear they shouldn't speak to each other about the
21 incident or their involvement in it and he arrived at
22 Kirkcaldy Police Office as post-incident manager and
23 spoke at the first meeting, so it would be some time
24 around 11.30 that morning. Do you remember him sharing
25 that information with you?

- 1 A. Yes, I do.
- 2 Q. You do.
- 3 A. Yes.
- 4 Q. And what I have said, is that what he told you?
- 5 A. I can't remember exactly, but yeah, it was -- they were
6 introducing it as a post-incident management, which was
7 something that I had never partaken in before and
8 that -- along the lines of that we shouldn't really be
9 talking to each other about the incident and he was here
10 to make sure that if there was anything it would be
11 noted down, and he had a book that was basically keeping
12 a track of anything that was -- it was my understanding
13 that he would be keeping a track of anything that was
14 said or not said or ...
- 15 Q. Did he remain with you for the rest of the day?
- 16 A. Yes.
- 17 Q. And as far as you know, he had a book to note things
18 down?
- 19 A. That is -- aye.
- 20 Q. Right, so up until around -- if we take it for the
21 moment it was around 11.30, or some time shortly after
22 that that he arrived, did you discuss the incident
23 before he arrived?
- 24 A. There was discussion about the incident, as in like the
25 injuries to Nicole and kind of why PAVA didn't work

1 because I was under the impression that PAVA worked on
2 most people, but as to the actual what happened and who
3 done what, there was no discussion in relation to that.

4 Q. And after Conrad Trickett spoke to you in the morning,
5 was there any conversation after that period?

6 A. No.

7 Q. About what had happened?

8 A. No, there was -- I mean there was no real conversation
9 about the actual incident, it was just stuff that was
10 associated to the incident, if that makes sense, it
11 wasn't --

12 Q. What do you mean?

13 A. Like I say, again, I thought PAVA worked on everybody,
14 I thought that was the case, and why didn't it work in
15 this, so it is kind of connected to that slightly but it
16 wasn't "Oh, I sprayed him with the PAVA and this was his
17 reaction and this is what happened and did you see him
18 doing that? Did you see this happening?"

19 Q. Did you tell people what you had done?

20 A. Yes, that the spray didn't work on him and at that point
21 I was concerned. Again, that's -- this is the overlap
22 between the welfare issue when you're sitting down and
23 dealing with the trauma that you have just been through
24 as a team and trying to still be professional and
25 not ...

- 1 Q. So you told people that you had sprayed him with your
2 PAVA?
- 3 A. Mm-hm.
- 4 Q. And did PC Paton tell people that he had sprayed him
5 with his CS spray?
- 6 A. I don't know if it's a case he told people because
7 everybody was aware that he was under the effects of his
8 CS spray.
- 9 Q. Still at that point in the canteen?
- 10 A. Yes, aye, because the CS spray, if you move about, it's
11 on your clothing, it can go back up into a cloud again
12 so aye, and he still had red and sore eyes. In relation
13 to my PAVA, I mean, that was brought back to the office
14 and it was lying on the canteen table so everybody knew
15 that the PAVA had been discharged, it was on the table,
16 along with my handcuffs and my radio.
- 17 Q. Did PC Tomlinson tell people what he had done?
- 18 A. Yes, aye.
- 19 Q. And what about the other officers, PC Smith?
- 20 A. No, there wasn't a lot of discussion. As I say, the
21 only reason that I think PC Tomlinson -- he became quite
22 upset because of the baton strike that he had put in and
23 that was, as I say, trying to get the balance between
24 welfare ...
- 25 Q. Where was he upset? Was that just in the canteen or

1 before then?

2 A. That was before then, when we first arrived back we were
3 in the writing room in Kirkcaldy Police Station.

4 Q. And why was he upset?

5 A. Just because of the circumstances that he had put in
6 the baton strike and then potentially the male was -- or
7 appeared to be dying or dead.

8 Q. And did he remain upset in the canteen?

9 A. No, not throughout the day. He managed to -- got the
10 initial concern I think out of the way and then we were
11 looking -- we will just see what's going to happen,
12 we'll ken -- we'll see what the next step is, we will
13 see what the process is and we will just take it from
14 there.

15 Q. Okay. You talked about the officers in the canteen and
16 you have talked about the discussions you have had. Did
17 you leave the canteen during that day?

18 A. Yes.

19 Q. And what sort of areas did you go?

20 A. I went in the back yard to make a telephone call, which
21 is just outside the canteen. I went to the custody area
22 to get cups, so that people could get refreshments, and
23 in order to hand over my equipment I had to go back
24 upstairs to the change -- the locker rooms to retrieve
25 my equipment at the end of the day to hand it over.

1 Q. Did you speak to other officers when you were out of the
2 canteen?

3 A. In the canteen -- sorry, in the custody area, yes,
4 somebody asked about the welfare for Nicole, if we had
5 had an update as to how she was.

6 Q. Do you remember who that was?

7 A. That would be Constable Geddes.

8 Q. Brian Geddes?

9 A. Brian Geddes, yes.

10 Q. And so you had a conversation with him?

11 A. Yes, because he is part of our team, but he was seconded
12 that day to work in the custody to backfill for short
13 staff, so yes, he is obviously part of the team. If he
14 had been working that day he could have been at that
15 call and he was concerned for his colleague so he was
16 just asking for -- what Nicole's injuries were and if it
17 she was okay.

18 Q. Explain why you were in the custody area?

19 A. To get cups.

20 Q. Cups for your coffee?

21 A. Yes, polystyrene cups for -- I was also custody trained
22 at that time so I knew where the cups were.

23 Q. Why weren't there cups in the canteen?

24 A. The canteen is a place for eating. There is -- it's not
25 well stocked.

- 1 Q. Are there staff there serving food?
- 2 A. No, no, no, no.
- 3 Q. It's not that type --
- 4 A. It's a kitchen as opposed to a canteen, but aye, there's
- 5 days where you would need to share the shift fork. It
- 6 wasn't well stocked.
- 7 Q. Okay. You mentioned there's a back yard just outside
- 8 the canteen.
- 9 A. Yes.
- 10 Q. Is there a doorway between the canteen and the back
- 11 yard?
- 12 A. Yes, there would be two sets of doors.
- 13 Q. Two doors?
- 14 A. Yes.
- 15 Q. One in, one out, or just different areas?
- 16 A. No, different areas. So you come out of the canteen,
- 17 that takes you into the main corridor, and then at the
- 18 bottom of the corridor you go out to the main yard.
- 19 Q. People coming in from the back yard: can they get into
- 20 the canteen from that area then, from that door?
- 21 A. They would come in that door, but they would then need
- 22 to go through the canteen doors to enter and that's
- 23 where there were signs up saying no staff allowed in
- 24 there.
- 25 Q. So who put the signs up?

1 A. I don't know who done it, but it was organised I think
2 by Inspector Kay, but I don't know who ultimately got
3 round to --

4 Q. When did they get put up?

5 A. Pass. Time-wise, pass.

6 Q. Up until the signs went up, were people just walking
7 into the canteen freely?

8 A. I wouldn't say walking into the canteen -- it's
9 a through road into custody. So I think at one point
10 one of the custody officers came in that door and walked
11 through to get into the custody area, but aye, it was
12 shortly after that it was -- nobody was allowed to come
13 in.

14 Q. Could I ask you to look at paragraph 84 of your
15 statement, please. You say you were waiting on a senior
16 person to decide on a course of action and let me just
17 see ... so it's line 3, start with line 2:

18 "The impression [at the end of line 2] I was left
19 with when we were asked to wait in the canteen was that
20 we were awaiting on someone senior to decide on the
21 course of action and tell us what was expected of us.
22 This didn't happen at all until 4 pm when we were told
23 that our clothing and equipment was being seized for
24 forensic examination. Up until that point we were not
25 asked to give statements, fill in any paperwork or asked

1 not to discuss what happened."

2 Now, it then goes on to say:

3 "The canteen area was being treated as a welfare
4 area for the officers involved. We all mingled together
5 and left items of uniform lying about."

6 In light of what we have said about Conrad Trickett,
7 the post-incident manager, and your recollection of him
8 speaking, do you want to amend that part of your
9 statement at paragraph 84, that:

10 "We were awaiting on someone senior to decide on the
11 course of action and to tell us what was expected of us.
12 This didn't happen at all until 4 pm."

13 A. Yes.

14 Q. But Conrad Trickett had spoken to you -- he was the
15 post-incident manager -- prior to 4 pm, hadn't he?

16 A. Mm-hm.

17 Q. So when you say it didn't happen, do you want to amend
18 that or explain it in a little bit more detail?

19 (Pause).

20 Who told you the equipment was being seized?

21 A. I think someone came into the canteen to tell us that
22 would be happening.

23 Q. Do you remember who that was?

24 A. No.

25 Q. Was that at 4 o'clock, as you say in this statement?

- 1 A. It might have been just before then.
- 2 Q. Right. So between Trickett speaking to you and this
3 thing around about 4 o'clock, do you remember which
4 senior officers spoke to you during the course of the
5 day, if any?
- 6 A. I could remember -- it was that long ago now.
7 Colin Robson, Stephen Kay and there was -- I think there
8 was another female super whose name I can't remember,
9 but she came through to tell us that she was going to
10 a gold meeting and she would get back to us with some
11 information as to what was happening next.
- 12 Q. All right. Do you remember what those senior officers
13 said to you? What did Kay say to you?
- 14 A. I honestly can't remember.
- 15 Q. You can't remember. Let's move on then. Still in
16 paragraph 84, you talk about you mingled together and
17 left items of uniform lying about. Can I also ask you
18 to look at two other paragraphs, 91 and 93. We will
19 start with 91:
- 20 "When I returned to Kirkcaldy Police Office my stab
21 vest and equipment was placed on the floor within the
22 canteen. I continued to wear my uniform until it was
23 seized at the end of the day."
- 24 And then 93:
- 25 "When I initially returned to Kirkcaldy Police

1 Office, none of my equipment was initially recovered.
2 At the end of the day my clothing, and all PPE including
3 baton was taken by me to a designated office and
4 forensically seized by other officers. I do not know
5 who I gave this equipment to. I would describe them as
6 two officers in full forensic suits. I believe all
7 other officers' equipment was also seized at the end of
8 the shift."

9 So there was a process whereby all the officers'
10 equipment was seized at the end of the shift.

11 A. Yes.

12 Q. But up until then it was in the canteen with everyone,
13 and you have described at paragraph 84 you left items of
14 uniform lying about. We can go back up to 84 --

15 A. Yes, that's --

16 Q. -- to let you see that. That's the last sentence there.

17 A. Mm-hm.

18 Q. And was that the same for everyone?

19 A. Yes.

20 Q. Right. When you said you left items of uniform lying
21 about, did that include your hi-vis vest and your stab
22 vest, the sort of black body armour and the hi-vis?

23 A. I believe it would have been, but I'm also aware that in
24 a previous statement I have said I left it upstairs when
25 I first arrived, so ...

- 1 Q. So what's your best recollection now?
- 2 A. My best recollection would be -- and it makes more sense
3 because we went upstairs first of all, was it probably
4 would have been left upstairs at that point and then we
5 went downstairs to the canteen.
- 6 Q. So yours was left upstairs?
- 7 A. I would be happy to go with the initial statement which
8 says it was upstairs because that also fits in with the
9 chain of events that day where we went back upstairs
10 first of all.
- 11 Q. And is that your recollection now that you left it
12 upstairs when you arrived back?
- 13 A. I have no recollection of where it was, just the fact
14 that we were in the canteen and I had my uniform on
15 minus my stab vest and I just -- I almost assumed that
16 because I was in the canteen without my vest, my vest
17 would have been besides everybody else's.
- 18 Q. So everyone else's vests were lying about?
- 19 A. Aye, equipment was wherever people had taken it off that
20 day.
- 21 Q. Right. And you said you wore your uniform; is that
22 essentially what you're wearing now?
- 23 A. Yes, yes.
- 24 Q. Without the body armour and the hi-vis?
- 25 A. Yes.

- 1 Q. And is that what you were wearing in the cell -- the
2 custody area?
- 3 A. Yes.
- 4 Q. And can I ask, were other -- apart from the comments of
5 other people coming in, senior officers, were there any
6 other members of staff who were coming in and out of the
7 canteen that day? Do you remember?
- 8 A. Like I say, I think initially one person who was
9 attending for his work walked through the canteen and
10 sort of realised that there was maybe something ongoing
11 and quickly exited the canteen towards the custody area.
- 12 Q. He is the person you remember?
- 13 A. Yes.
- 14 Q. Apart from that, you don't remember anyone else?
- 15 A. Who wasn't involved in us coming or going? No,
16 I wouldn't think, no.
- 17 Q. Okay. Can I ask you when PC Short came back to
18 Kirkcaldy Police Office?
- 19 A. Mm-hm. Oh, the time, sorry?
- 20 Q. What time, sorry?
- 21 A. No, again, I wasn't keeping track of the time that day.
22 I have no idea what time it was she came back.
- 23 Q. Do you have a sense of how long it was after you
24 returned that she came back?
- 25 A. It was -- I mean, we had been back, been upstairs, back

1 down to the canteen, so it was a while after us, but
2 no -- it wouldn't be as far as, like, four hours or
3 anything like that, it was after us.

4 Q. What was she wearing when she came back?

5 A. I can't remember. I could just remember her sitting on
6 the sofa in her blacks, the same as everybody else.

7 MS GRAHAME: Right. Could you just give me a moment please,
8 constable.

9 (Pause).

10 Thank you very much. I'm not completed yet, but I'm
11 conscious of the time.

12 LORD BRACADALE: We will stop for lunch then and sit again
13 at 2 o'clock.

14 (1.00 pm)

15 (The luncheon adjournment)

16 (2.00 pm)

17 LORD BRACADALE: Ms Grahame.

18 MS GRAHAME: Thank you. Constable Walker, I omitted to ask
19 you one question earlier today and I just want to ask
20 you if you want to comment on this. There may be
21 evidence available to the Chair in due course -- we have
22 not heard this yet, but it may become available, to
23 suggest that Sheku Bayoh did not stomp on PC Short on
24 her lower back. You have given a description of what
25 you saw.

1 A. Yes.

2 Q. Do you wish to comment on that evidence?

3 A. No, that was my recollection.

4 Q. Thank you.

5 A. I'm happy with that.

6 Q. Thank you. I would like to move back to where we were
7 just before we broke for lunch. I was going to come on
8 to the question of statements and status.

9 A. Yes.

10 Q. And when I talk about status, I mean your status as
11 either a witness or as a suspect having to contemplate
12 possible criminal charges.

13 A. Yes.

14 Q. Could I look at paragraph 94 please of your Inquiry
15 statement. This says:

16 "Whilst at Kirkcaldy Police Office I was not
17 formally given my status. I was aware that some
18 supervisory officers came by the canteen and offered
19 support and stated that we had nothing to worry about in
20 relation to the incident, that we were not detained as
21 suspects and would be treated as witnesses. I took this
22 to be merely words of encouragement and support not a
23 formal briefing or declaration. I have no recollection
24 of ever being spoken to by the PIRC or briefed by the
25 PIRC at any point. I have no recollection of receiving

1 any advice regarding my status."

2 Looking at that paragraph, can I ask you what did
3 you mean when you said you were not formally given your
4 status?

5 A. I mean, I think at that point in relation to the whole
6 being in the canteen we knew at that point that it would
7 become a PIRC investigation because of a death in
8 custody, and if I'm being honest, I was actually waiting
9 on -- or expected or had an anticipation of the PIRC
10 arriving in the canteen to formally take over "This is
11 what's happening", you know, "This is the SOP that we're
12 going to be working through, this is what the next steps
13 are going to be", and, as I say, that never seemed to
14 happen that day.

15 Q. So you would have -- when you say "formally", you would
16 have expected the PIRC or someone from the PIRC to come
17 in and speak to the officers in the canteen?

18 A. Yes, as a form of -- as an official briefing that they
19 would be taking over the investigation and this is
20 what's going to happen.

21 Q. But that didn't happen that day?

22 A. No.

23 Q. And then paragraph 102, if we can have a look at that on
24 your statement.

25 "I was never requested to complete a statement by

1 anyone."

2 Now, we have discussed conversations that you have
3 had with Conrad Trickett and such-like, and I think when
4 I looked at your statement previously there was
5 a suggestion that you were thinking something would be
6 done before 4 o'clock and your equipment -- you were
7 told your equipment was seized, but do you -- were you
8 ever asked to give operational statements during that
9 day by any of the senior officers such as
10 Conrad Trickett?

11 A. No, not that I can recall.

12 Q. And was any correspondence or anything along those lines
13 of requests for statements from PIRC ever shared with
14 you by anyone?

15 A. No.

16 Q. No.

17 A. As in like written or correspondence?

18 Q. Any email correspondence sent to you --

19 A. No, nothing like that.

20 Q. -- or anything along those lines?

21 A. No. The canteen it doesn't have computers, so we
22 wouldn't have access to email, nothing was passed to us,
23 like printed out either.

24 Q. Right. And are you aware of any request with PIRC --
25 involving PIRC and the MIT, major incident team, on 7 or

- 1 8 May that year regarding giving a statement?
- 2 I understand you were asked to go and see a DI Wilson at
- 3 some point?
- 4 A. I don't know -- I certainly can't recall the name but we
- 5 were asked to go and speak to the MIT team and we were
- 6 asked by them if we wished to provide a statement, but
- 7 we were under the impression that that was not the PIRC
- 8 Inquiry, that was not the PIRC that was requesting
- 9 a statement. We were basically advised that the -- that
- 10 that was the MIT team were running a parallel
- 11 investigation or something along these lines, but it was
- 12 not made clear that it was a PIRC request at that point.
- 13 Q. So that's not something you were aware of?
- 14 A. No.
- 15 Q. And when you say "We", who do you mean "We"? Who are
- 16 you referring to?
- 17 A. Myself and other officers.
- 18 Q. Were all of the other officers who had attended
- 19 Hayfield Road called together to that meeting?
- 20 A. It wasn't even called to a meeting, we came in for
- 21 a discussion of TRIM and they basically said "The MIT
- 22 team is upstairs wanting to have a word with you",
- 23 then -- but, aye, "it's a tick box exercise and you
- 24 don't need to provide a statement."
- 25 Q. Who told you that?

- 1 A. Inspector Alan Seath.
- 2 Q. Sorry, I didn't hear that?
- 3 A. Inspector Alan Seath.
- 4 Q. Seath, thank you. And you have mentioned TRIM a couple
5 of times and I realised I have not actually asked you to
6 explain that acronym. Do you mind telling us what --
- 7 A. I can't mind exactly what it stands for but as I say,
8 basically after a traumatic incident it's a debriefing,
9 a form of counselling session through trained officers
10 who just basically establish if you are maybe needing
11 a wee bit further help to deal with an incident you have
12 just been dealing with.
- 13 Q. Thank you. But in relation to this discussion with the
14 MIT, Seath had told you didn't have to provide
15 a statement and so you declined to provide a statement
16 at that time?
- 17 A. Yes, because that was my understanding at that time,
18 that we were to go and we were to decline it and then
19 because we would hear -- the PIRC would note a statement
20 in due time, in due course.
- 21 Q. Thank you. Can I ask you to look at paragraph 96 of
22 your statement and this relates to notebooks and you
23 were asked about your understanding of obligations and
24 completing paperwork:
25 "... including my notebook, a use of force form,

1 a use of spray form insofar as they related to the
2 events at Hayfield Road. My understanding is that in
3 relation to the use of force/CS spray form, these are to
4 be completed prior to terminating duty by officers, or
5 if unable, by the supervising officers. In relation to
6 my notebook, my understanding is that this is at the
7 discretion of the officer."

8 Can I just go through that paragraph. The use of
9 force and the CS spray forms; they're two separate
10 forms, are they?

11 A. I think they might have been combined now but I'm not
12 100% sure. They were changing quite regularly at that
13 point and being amended.

14 Q. Do you remember what the position was in 2015?

15 A. They were on the computer system but I can't remember
16 which form was what, if they were combined or not.

17 Q. So you had access to them on the computer system?

18 A. Yes, we would have to go into the computers and search
19 for them.

20 Q. That's how you would access them, I should say.

21 A. Yes.

22 Q. And they are completed prior to terminating duty by
23 officers, use of force or use of spray forms?

24 A. Yes.

25 Q. You didn't do that on that day though, did you, before

- 1 you left?
- 2 A. No.
- 3 Q. And then you say if you're unable, by the supervising
4 officers. Now, who would your supervising officer be?
- 5 A. On that day, I couldn't tell you, I couldn't tell you.
6 I mean it's like I said, on that day we were waiting on
7 somebody coming in to take the lead as to what we were
8 doing and what was happening and what was expected of
9 us, so in relation to filling in forms and all the rest
10 of it, that was just something that we weren't
11 considering. Everybody on the team was (inaudible).
- 12 Q. Can you explain -- we have heard about senior officers,
13 we have heard about different ranks; what's the
14 difference between that and a supervising officer?
- 15 A. I'm not sure, to be honest. Aye, just somebody of sort
16 of senior rank would be a supervising officer.
- 17 Q. It's just it's words you use and I'm just -- this is
18 your statement. I'm just wondering if -- what were you
19 meaning by that description?
- 20 A. Like, if we couldn't do it then the sergeant could do
21 it, if the sergeant couldn't do it then the inspector
22 could do it, so anybody that is in the chain of command.
- 23 Q. So more senior officers to you?
- 24 A. Yes, yes.
- 25 Q. And that would be Acting Police Sergeant Maxwell?

- 1 A. He was in the canteen beside us so he wouldn't be in
2 a position to do that.
- 3 Q. So he wouldn't be one of those supervising officers at
4 the time?
- 5 A. Again, I don't know. I don't know what the process was
6 in the canteen. That was -- we were all kind of
7 struggling with that.
- 8 Q. All right, all right. In relation to the notebook, you
9 have said your understanding was that it was at the
10 discretion of the officer. What do you mean by that?
- 11 A. Just in general notebooks are for keeping the officer's
12 notes, if you need to write something down, you write it
13 down. It's best practice to write it down and you
14 should write stuff down but it's not a must, for want of
15 a ...
- 16 Q. So in your view, there's no obligation on you to
17 complete that?
- 18 A. It's good practice because you may need to rely on your
19 notebook in the future.
- 20 Q. Right. People will have seen officers or maybe even on
21 TV shows turning up and being asked to explain and they
22 pull their notebook out --
- 23 A. Yes, refer to my notebook for notes I have made at the
24 time.
- 25 Q. Were you ever advised by anyone to complete your

- 1 notebook?
- 2 A. No.
- 3 Q. In the canteen or --
- 4 A. No, I was never told to do so.
- 5 Q. Now, in paragraph 100 of your statement you say -- if we
6 can have that on the screen, please. You say that you
7 recall you were asked by PC Tomlinson if he should
8 complete his notebook:
- 9 "I advised him that I would not be completing my
10 notebook until advised that we should. I was not aware
11 of the processes following a serious injury/death in
12 custody as to what should be completed and by who."
- 13 So you weren't aware of the processes that should be
14 followed at that stage?
- 15 A. Yes, I had no idea.
- 16 Q. And do you think that you were influential in relation
17 to PC Tomlinson by giving him that --
- 18 A. I didn't give him advice as to what he should do, but
19 I advised that I wouldn't be filling mine in until
20 somebody gave us some sort of guidance on it.
- 21 Q. So you simply told him you wouldn't be completing his
22 notebook, but you didn't advise him not to complete his?
- 23 A. No, I just told him what I would be doing.
- 24 Q. In terms of the difference in level of experience, you
25 have told us that you had ten years' service at that

1 time. What stage was PC Tomlinson at?

2 A. He was younger in service but I couldn't give you an
3 exact number.

4 LORD BRACADALE: Can I just be clear, I have understood you
5 to say you had a total of 17 years, or is that now?

6 A. That's now.

7 LORD BRACADALE: That's now, thank you.

8 MS GRAHAME: Thank you. Can we look at your PIRC statement
9 please, 264, now. Could we look at page 11, please, and
10 paragraph 5. This starts:

11 "I returned to the canteen and about half an hour
12 later I went home. While I was in the canteen with my
13 team, the advice from Amanda given was to say nothing to
14 anyone at that time. That was my intention anyway until
15 we found out more about what kind of inquiry was going
16 to take place and what the man had died of. I also made
17 it known that I would not be completing my notebook
18 either and I suggested that others don't do theirs.
19 Some of the team, I'm not sure who, spoke about doing
20 their notebooks but I wasn't doing that. No other
21 officers outwith the team gave any instructions on their
22 notebooks."

23 So you have said in this statement "I suggested that
24 others don't do theirs". Do you see that now? This is
25 your statement that was given to PIRC on 4 June 2015.

- 1 Should we prefer this version because it was closer to
2 the time?
- 3 A. Yes, but I think the suggestion was that I -- I mean
4 I wasn't advising to him not to do his, it was a case of
5 kind of wait and see what is going to be asked of you as
6 to what the next step is. If you have to fill it in,
7 you have to fill it in. It wasn't a: don't fill it in;
8 if you're asked to fill it in, do it, but wait and see
9 what's asked of us first or what the process is.
- 10 Q. And then can I ask you about Amanda Givan. She -- you
11 say the advice from Amanda Givan was to say nothing to
12 anyone at that time. Do you remember what she said in
13 the canteen.
- 14 A. No.
- 15 Q. No. Okay. Do you remember if she said anything about
16 your status or seeking confirmation of your status?
- 17 A. No. I mean she was waiting in the canteen with us.
18 I think she was in the same sort of situation as the
19 rest of us, but she was waiting to find out what was
20 going to be happening next and it was just it turned
21 into a waiting area.
- 22 Q. Okay, thank you. Can we look at an SOP on the notebooks
23 please, PS 10937. I've got a note here, page 4. Could
24 we move up the page slightly. Here it is, 3.4:
25 "Entries in notebooks and PDAs should be made at the

1 time or as soon as possible thereafter. The date and
2 time of every entry must be recorded in the margin of
3 a notebook. On no account should you make notes
4 elsewhere and later copy them into your notebook."

5 So this is the notebooks SOP, standard operating
6 procedure, and it seems to say entries should be made at
7 the time or as soon as possible thereafter. Were you
8 aware of this SOP?

9 A. Yes.

10 Q. It doesn't seem to indicate in there that it is a matter
11 for discretion that notebooks are completed; it seems to
12 be recommending that the entries are made as soon as
13 possible.

14 A. Yes, entries that you're going to make should be made as
15 soon as possible.

16 Q. Can I ask you now to look at the investigation of deaths
17 SOP, PS 11110, and this is page 6. Sorry, I think we
18 might have passed it. There it is. If we can go down
19 please.

20 It is 4.7:

21 "The role of the initial attending officers is
22 critical in all suspicious deaths."

23 And it indicates that:

24 "The information and circumstances which officers
25 will be presented with at the outset of the Inquiry are

1 essential for allowing early decisions to be made."

2 And then 4.8:

3 "It is therefore of critical importance that the
4 initial officers in attendance record all relevant
5 details in their official police notebooks or PDAs and
6 ensure that such information is passed to the appointed
7 SIO without delay."

8 Were you aware of that part of the SOP?

9 A. That doesn't apply because we're not the initial
10 attending officers at a suspicious death.

11 Q. Right, okay, so you didn't think that applied?

12 A. No.

13 Q. Can I ask who the SIO was in any event?

14 A. On the day?

15 Q. In relation to yours on 3 May?

16 A. No idea.

17 Q. You don't know? Can I ask you about the use of force
18 and the use of spray forms. I understand from your
19 statement that you need access to a computer to be able
20 to complete those; is that correct?

21 A. Yes.

22 Q. And were there any computers in the canteen?

23 A. No.

24 Q. Can I ask you about paragraph 97 of your statement
25 please. It's at the bottom. Did you want to complete

1 these forms that day? If you had had access to the
2 computer, would you have wanted to complete those forms?

3 A. I would have waited on somebody, like I say, taking the
4 lead. We were in a state of shock at what had happened
5 and we -- genuinely we were just waiting on somebody
6 coming in to take the lead, for want of a better term to
7 hold us by the hand and take us through the process. We
8 had no idea what was going on, what was required, what
9 we had to do.

10 Q. Okay. So looking at paragraph 97, when you talk about
11 the use of spray forms:

12 "... at no time were any of us afforded access to
13 a computer. Additionally I was unsure and remain unsure
14 as to whether I was legally required to complete these
15 forms in the case of a death in police custody,
16 particularly in respect of receiving legal advice on
17 whether to document any aspect of the events."

18 So again, is this an example of one of the areas of
19 uncertainty and lack of assurity that you had on the
20 day?

21 A. Yes, aye.

22 Q. And can I ask you to look at PIRC 01344, please. This
23 is a memorandum, a memorandum regarding operational
24 discharge of CS incapacitant spray. Now, I know you had
25 your PAVA spray?

1 A. Yes.

2 Q. And it is dated 1 April 2013 from the Assistant Chief
3 Constable, Local Policing West, to divisional
4 commanders, heads of department. Do you see that?

5 A. Yes.

6 Q. Have you seen this before?

7 A. The memo?

8 Q. Yes.

9 A. I can't recall reading that specific memo, but we get
10 a lot of them.

11 Q. Right. So let's -- I'm going to go through this, if
12 that's okay. So you see that from 1 April 2013, there's
13 a legal requirement for the Police Service of Scotland,
14 the SPA and the PIRC, to ensure compliance with the
15 provisions and it gives certain statutory provisions in
16 the Human Rights Convention:

17 "This means that on every occasion where CS
18 incapacitant spray is discharged operationally, there is
19 a legal requirement to record the incident and report
20 onwards to PIRC within 24 hours."

21 And then there is mention of a particular form
22 that's been prepared and is available on the intranet
23 for that purposes and then it says:

24 "When complete, the form should be emailed to ..."

25 And we have redacted out some details:

1 "... marked for the attention of Officer Safety
2 Training, Local Policing West, who will be responsible
3 for its onward transmission to the Police Investigations
4 and Review Commissioner."

5 And:

6 "The completion of this form is separate to the
7 existing use of force form ..."

8 That is on the system as well:

9 "... which must still be submitted."

10 So would it appear that at least in April 2013 there
11 is two forms?

12 A. That would suggest so at that point, yes.

13 Q. So there's the use of force form, and then a separate
14 one for use of spray, use of CS spray?

15 A. Yes.

16 Q. So were you aware of this change in the legislation that
17 required these forms to be completed?

18 A. I was aware that the forms had to be completed.

19 I wasn't sure of the legal mechanism behind it, but

20 I was aware that the forms needed to be completed.

21 Q. Thank you. Can I ask you to look at PS 10933, the use
22 of force SOP, please, and I'm going to look at
23 paragraph 6.2 and it should start:

24 "Use of force is defined as use of the baton to
25 strike an individual or individuals, or the operational

1 discharge of CS incapacitant spray."

2 So the use of force would be triggered where a baton
3 is used or a spray is sprayed?

4 A. Yes.

5 Q. Those are both considered to be use of force by
6 an officer. Then can we look at 6.4:

7 "Additionally, on every occasion where CS
8 incapacitant spray is discharged operationally there is
9 a legal requirement to record the incident and report it
10 to the PIRC within 24 hours."

11 And then moving on to 6.5, it incorporates reference
12 to the form and says:

13 "Forms must be submitted as soon as reasonably
14 practical after the incident but no later than the end
15 of the discharging officer's tour of duty, and if the
16 officer is unavailable then a supervisor must arrange
17 its completion."

18 So again, were you aware of the contents of this
19 SOP?

20 A. Again, I think that's referring back to the same form,
21 so it's just a case of the forms would need to be
22 completed.

23 Q. Okay. Can I ask you about any other discussions that
24 you had with Amanda Givan. So I will refer you -- your
25 paragraph 82 in your statement mentions this and it

1 says:

2 "We were joined by Police Federation representative
3 Amanda Givan at some time that morning and later by
4 Chief Inspector Conrad Trickett. Several other
5 supervising officers passed through and spoke with us at
6 points throughout the day but did not remain."

7 When Amanda Givan was with you that morning in the
8 canteen, did she give you any advice about completing
9 forms or completing paperwork?

10 A. No.

11 Q. No. Right. Now, I know you were up-to-date with all
12 your training in May of 2015; is that correct?

13 A. Yes.

14 Q. I would like to ask you some questions about race. You
15 have answered -- there's about seven paragraphs in here
16 where you comment on race and you were asked specific
17 questions about whether you had taken it into account or
18 not.

19 Can you tell us what training you have received on
20 race, in equality and diversity?

21 A. Equality and diversity would be -- the first week or two
22 when I went to the police college was dedicated solely
23 to diversity training and then I think there's ongoing
24 modules, but the majority of it was at the police
25 college.

- 1 Q. And the ongoing modules, are they refresher training
2 that you continue to get?
- 3 A. Yes, I mean occasionally you get sort of memos coming
4 out when it is coming up to religious festivals and
5 things like that, to be -- like, extra activity around
6 about mosques and that at certain times of the year, you
7 do get supplied just sort of reminders and refreshers.
- 8 Q. And then in February 2014, so that's the year prior to
9 this, I think your training log records indicate you
10 received an equality and diversity values and ethics
11 briefing, was that correct?
- 12 A. I can't recall.
- 13 Q. But you were getting up-to-date equality and diversity
14 training at that time?
- 15 A. Yes, yes.
- 16 Q. And of the training that you had had, what sort of
17 topics did that cover? Do you recall?
- 18 A. So what it would ... I can't recall the exact, but it's
19 just being aware of other people's cultures and
20 religions and, like, needs that might be required and
21 sudden deaths that we're dealing with, again religious
22 and cultural beliefs in relation to post mortems and
23 just to be sensitive when dealing with things like that
24 just to take into consideration that there might be
25 religious and cultural needs.

1 Q. And did that include dealing with members of the black
2 community?

3 A. Yes.

4 Q. And tell us, if you were to respond to a call tomorrow,
5 for example, that a black man was in possession of
6 a knife, thinking about the racial awareness training
7 that you have had, would you do anything differently
8 tomorrow than you did in 2015?

9 A. No.

10 Q. Do you ever take someone's physical characteristics or
11 skin colour or religion and make assumptions about them,
12 categorise them that they will be a particular type of
13 person? Do you ever make assumptions, for example, that
14 a black person is maybe more likely to be a terrorist?

15 A. No.

16 Q. What -- on the training you have had, what did you
17 learn, if anything, about unconscious bias?

18 A. It's basically along the lines, like that example that
19 you have given, assuming that somebody that's black is
20 a terrorist but without actively thinking it but just
21 being almost instinctively and reacting to them that
22 way, you know. I suppose an example would be --
23 you know, immediately becoming fearful of a group of
24 black teenagers standing as a group and then walking
25 away from them on the other side of the road without

1 actually making that conscious decision would be my
2 understanding. You know, it's something that you do
3 subconsciously without actually ...

4 Q. And in the training, were you able to identify any areas
5 of unconscious bias in your own beliefs and perceptions?

6 A. No.

7 Q. Were you ever asked to do that as part of the training
8 that you have received?

9 A. No. I mean obviously as part of the training it is to
10 make you look at your own actions and to evaluate your
11 own actions, yes, but --

12 Q. You don't recall ever being asked to think about your
13 own unconscious biases, or to identify any that you may
14 have?

15 A. No.

16 Q. No. So if the -- the learning points from the training
17 that you have had about bias, how have you implemented
18 those or incorporated those into your everyday work as
19 a police officer?

20 A. As I say, the main one for me is the cultural awareness,
21 when you're coming to deal with things like sudden
22 deaths and, you know, that there's -- I mean that's the
23 one that jumps to mind is the need for, like,
24 post mortems and stuff, where the Fiscal is going to get
25 involved there could be post mortems and that might be

1 against cultural beliefs and the fact that some
2 religions require the body to be buried within 24 hours
3 or 48 hours, and it's just sensitivities that you need
4 to be aware of, and then obviously for the custody
5 training side of it, the fact that some religions
6 obviously require hands to be washed before eating food
7 and that -- you know, because if you're going to give
8 somebody food, then you've got to give them the
9 opportunity to wash their hands first and that's a sort
10 of religious belief, it's not just the case is, you
11 know, assuming that somebody is just being an awkward
12 custody because they're wanting to do this, wanting to
13 do that, there's actually a legitimate reason behind it.

14 Q. And as well as those, how did they inform your practice
15 as an officer on a day-to-day basis? Presumably not
16 every day you're dealing with post mortems, or that type
17 of thing. So were there things that you changed about
18 your day-to-day work in light of the training that you
19 have received?

20 A. I wouldn't say that I have needed to change my way
21 because I have always tried to deal with people fairly
22 and honestly and equally.

23 Q. Okay. Have you ever come across any examples of racial
24 discrimination at Kirkcaldy Police Office?

25 A. No.

- 1 Q. Have you ever come across any racist jokes or comments?
- 2 A. No.
- 3 Q. If you did come across anything like that, how would you
4 respond?
- 5 A. Challenge them. That's not acceptable.
- 6 Q. And is that the way that senior officers would respond?
- 7 A. I don't know. You would need to -- that's something you
8 would need to take up with them.
- 9 Q. And when you say "Challenge them", what do you mean by
10 that?
- 11 A. Just tell them that that sort of behaviour's not
12 acceptable.
- 13 Q. Have you ever seen your colleagues exhibit that type of
14 behaviour, to make racist comments or racist jokes?
- 15 A. No.
- 16 Q. At the time of Mr Bayoh's death, so May 2015, what
17 awareness did you have at that time about public
18 concerns about the use of force by police officers,
19 particularly against black men?
- 20 A. A lot of it was getting reported in the news from
21 America, that the Black Lives Matter campaign was really
22 forming and that there was a lot of news coverage of
23 deaths of black males at the hands of the police.
- 24 Q. And was that something that you were aware of --
- 25 A. Yes.

1 Q. -- you keep up-to-date with the news? Yes. From your
2 own experience to what extent was that an issue of
3 concern for the officers in Police Scotland and in
4 particular in Kirkcaldy? Was there any discussions
5 about that?

6 A. No.

7 Q. Or sharing of information?

8 A. No.

9 Q. Are you aware of other high profile cases in the UK, so
10 wider than Scotland, down south, for example, in which
11 a person has died in police custody where -- well,
12 there's been restraint and/or there's issues of a person
13 being restrained face-down that had given rise to sort
14 of public discussion and public concern?

15 A. At that time, no.

16 Q. No. Not in 2015?

17 A. No.

18 Q. You will be aware of that now presumably, are you?

19 A. Yes.

20 Q. Is there -- from your own experience, constable, is
21 there much information-sharing amongst police forces --
22 I'm thinking about maybe information that they have down
23 south in relation to restraint and concerns in that
24 regard. Is there much information-sharing with the
25 Police Force up here, such as yourself? Do you get

- 1 information that's come from England?
- 2 A. No, I mean that would go back into a higher up level and
3 then would be disseminated down so I don't know,
4 I couldn't speak to the intelligence-sharing.
- 5 Q. So that would be more senior officers --
- 6 A. Yes.
- 7 Q. -- or maybe the officer safety training department?
- 8 A. Yes, aye.
- 9 Q. So at the time of Mr Bayoh's death, what measures, if
10 any, were actually in place that would allow someone in
11 your position as a constable in Kirkcaldy Police Office
12 to receive information about restraints, or learning
13 lessons that had arisen out of high profile cases down
14 in England?
- 15 A. In relation to OST, that would be a yearly refresher, or
16 if there was -- that would be the main one, OST
17 refresher training courses.
- 18 Q. And at those OST yearly refresher courses, do they have
19 an opportunity to discuss lessons that have been learned
20 from other cases down in England, for example?
- 21 A. I don't think it was actually discussed, it was just
22 they would amend the techniques and that that were used
23 and then they would teach us the new techniques or make
24 us aware of if you are doing this technique be mindful
25 of this but they wouldn't certainly give case studies or

- 1 anything like that.
- 2 Q. So you're not receiving sort of case studies for
3 discussion at those yearly refreshers?
- 4 A. No, not that I'm aware of.
- 5 Q. All right. Thinking now, how confident are you now that
6 in the training you have received in relation to
7 race-related issues and deaths in custody, that that is
8 providing you with the information that you need to
9 allow you to do your job in Kirkcaldy?
- 10 A. I have been able to continue doing my job for the last
11 seven years since the incident without issue so yes, I'm
12 fairly confident.
- 13 Q. Okay, thank you. What's your own understanding and
14 awareness of the black community in Kirkcaldy? Do you
15 have an awareness of a black community in Kirkcaldy?
- 16 A. I mean, I have not worked in Kirkcaldy now for a few
17 years so ...
- 18 Q. At the time, in 2015, what was your awareness then?
- 19 A. I don't know. I didn't really have one. Like I say,
20 you just deal with calls on a call-by-call basis so ...
- 21 Q. Had you at that time in 2015 been involved in any
22 community relation work with the black community in
23 Kirkcaldy?
- 24 A. No.
- 25 Q. Were you aware of other officers in Kirkcaldy engaging

- 1 with work with the black community?
- 2 A. That would -- if there was, that would be down to the
3 community teams who would be engaging with them as
4 opposed to response teams.
- 5 Q. Your team was a response team?
- 6 A. A response team, yes.
- 7 Q. So the officers at Hayfield Road were a response team,
8 not a community team?
- 9 A. Yes.
- 10 Q. Was that all the officers, or were there any involved
11 who were part of a community team?
- 12 A. The officers that were there that day were all response,
13 or CID plain clothes.
- 14 Q. Thank you. So what's your experience, or what was your
15 experience in 2015 of interacting with black men or
16 black members of the community in Kirkcaldy in the
17 course of discharging your police duties? Either as
18 suspects or as victims, or other people that you need to
19 speak to, witnesses?
- 20 A. Just as a response officer out noting statements and
21 that from them. Just normal day-to-day interactions.
- 22 Q. How much contact had you had with the black community in
23 2015?
- 24 A. I can't give you exact numbers.
- 25 Q. Not exact numbers, but could you give us an impression?

- 1 A. No.
- 2 Q. Are you aware, or were you aware in 2015 of any tensions
3 between the black community and the police?
- 4 A. No.
- 5 Q. Were you aware of any negative views held by colleagues
6 of yours in Kirkcaldy Police Office in relation to black
7 people generally?
- 8 A. No.
- 9 Q. Did you have any concerns at that time about
10 the policing of black communities in relation to use of
11 force --
- 12 A. No.
- 13 Q. -- in Kirkcaldy. What sort of stereotypes are you aware
14 of about black people generally, or black men
15 specifically in the context of criminal justice? Are
16 you aware of any sort of stereotypes that exist?
- 17 A. No.
- 18 Q. No. Are you aware that black men may be perceived as
19 more likely to resist or not be compliant, or more
20 likely to be violent?
- 21 A. No, not from my experience.
- 22 Q. Are you aware that they may be perceived as having
23 superhuman strength or size?
- 24 A. No.
- 25 Q. Do you have any assumptions along those lines?

- 1 A. No, none.
- 2 Q. Looking back now to 2015, do you think you assumed that
3 Sheku Bayoh posed a greater risk because he was
4 particularly strong or going to be more violent because
5 he was black?
- 6 A. No, it was just he was physically quite broad, that's
7 been reflected by the CCTV footage, and I don't think
8 anybody would argue with the fact that he looked quite
9 a strong individual and that's, like I said, the only
10 thing that we took into consideration was his possible
11 physical power.
- 12 Q. If he had been white, would you have seen him as being
13 less of a threat?
- 14 A. No, because he still would have been the same physical
15 size.
- 16 Q. We have heard that later that day, an officer described
17 him as like the size of a house. Is that the type of
18 view that you held?
- 19 A. That's not how I would have described him, but I would
20 certainly say he -- he was broad build, broad about the
21 shoulders.
- 22 Q. Of course at that time you and PC Paton are 6 foot 4?
- 23 A. Mm-hm.
- 24 Q. And he was 5 foot 10, so he was actually shorter than
25 both of you.

- 1 A. Yes.
- 2 Q. And we talked about weights yesterday, I won't go back
3 over that. When you arrived at the scene, did you have
4 any expectations before you arrived about what you were
5 going to find, based on what you had heard over the
6 Airwaves transmissions?
- 7 A. No, I think we covered that yesterday, that -- yes, we
8 came up with possible scenarios but ultimately you have
9 just got to wait until you get there and see what you're
10 presented with.
- 11 Q. Thank you. I think I have dealt with these other
12 questions yesterday. Looking back now, what role, if
13 any, do you think that Mr Bayoh's race may have played
14 in the assumptions you made about his behaviour and the
15 choices you made as to the best course of action that
16 day?
- 17 A. I didn't make any assumptions about his behaviour.
18 Everything was intelligence-led on what we have seen
19 when we arrived.
- 20 Q. And what about the choices you made? Looking back now,
21 do you think his race played any basis in that?
- 22 A. No. The decisions were all based on the threat that was
23 posed to ourselves and the members of the public.
- 24 MS GRAHAME: Thank you. Could you give me one moment,
25 please.

1 (Pause).

2 That completes my questioning, thank you.

3 Questions from LORD BRACADALE

4 LORD BRACADALE: Thank you.

5 Constable Walker, I wonder if you could help me with
6 one or two matters.

7 You said yesterday that when the reports about the
8 events in Hayfield Road were coming in, that
9 Sergeant Maxwell was in command.

10 A. Yes.

11 LORD BRACADALE: And could we perhaps just look at the entry
12 in the spreadsheet, if you've got it, on page 2. We
13 looked at this yesterday, but I just want to revisit it
14 for a moment. At 07.17.23, Acting Police Sergeant
15 Scott Maxwell made contact with control and he said:

16 "I want all units to attend that, bearing in mind
17 officer safety."

18 Now, I think you said yesterday that as a result of
19 that command that all units should attend, you would
20 expect perhaps around eight or so officers to attend; is
21 that right?

22 A. Yes, just whoever was on shift that day, I can't
23 remember the exact number, but it would be round about
24 that because other people weren't committed.

25 LORD BRACADALE: And would you expect them to come in

- 1 a number of vehicles?
- 2 A. Yes, I would expect them to turn up in their units that
3 they're allocated in, so yes, you had two officers per
4 vehicle.
- 5 LORD BRACADALE: And when he added "Bearing in mind officer
6 safety", what did you understand that to mean?
- 7 A. It's basically another version of the "Stay safe"
8 message that they covered further on, but basically
9 "Attend there but bear in mind your own safety". "Assess
10 before you go in", basically.
- 11 LORD BRACADALE: Now, we heard earlier in the Inquiry that
12 the decision to deploy an armed response vehicle would
13 be made by the inspector in the control room; is that
14 your understanding?
- 15 A. Yes, he's got the authorisation -- he needs to authorise
16 it for it to happen.
- 17 LORD BRACADALE: And we also heard that in the event that he
18 made that decision, the inspector would take charge of
19 the entire incident and would tell the officers on the
20 ground what to do, does that accord with your
21 understanding?
- 22 A. Yes. At that point it would be declared a firearms
23 incident.
- 24 LORD BRACADALE: Yes. Could we then look again at the
25 spreadsheet and at page 3 and we can see at 7.20.13,

1 Inspector Stewart at the control room introduced himself
2 and he issued an order. He said:

3 "Inspector Stewart, area control room to the
4 (inaudible) attending. I'm monitoring this, obviously
5 from an ARV Perspective. If you get sightings of the
6 male you need to make an initial assessment yourself and
7 feed back through straight away and I will listen out on
8 the channel."

9 We heard that order being given when we listened to
10 the tape yesterday.

11 A. Yes.

12 LORD BRACADALE: Now, I think your evidence yesterday was
13 that you didn't hear that instruction, is that right?

14 A. Yes, yes. I was never aware of that being passed.

15 LORD BRACADALE: If you had heard that instruction, what
16 would you have done?

17 A. I think I kind of answered that yesterday where -- it
18 hadn't been declared an ARV incident at that point.
19 When we turned up he wasn't actively in possession of
20 the knife, brandishing it, and therefore we would have
21 just dealt with the situation that we had.

22 LORD BRACADALE: But if you had heard the instruction from
23 Inspector Stewart, what would you have done?

24 A. Probably exactly the same as we have done.

25 LORD BRACADALE: So would you have ignored the instruction

1 from Inspector Stewart?

2 A. My understanding of that would be he is monitoring it
3 for an update if we are looking to have the ARV to come
4 into the area.

5 LORD BRACADALE: Thank you.

6 Now, with the exception of the Dean of Faculty, who
7 I will come to in a moment, do any other core
8 participant legal representatives wish to make an
9 application under Rule 9? Now, I will just get my list
10 here. So I see Ms Mitchell. Anyone else? Sorry? Oh,
11 Mr Scullion. Anyone else? No.

12 And Dean of Faculty, do you intend to make an
13 application under Rule 9 too?

14 DEAN OF FACULTY: (Mic turned off).

15 LORD BRACADALE: Yes, very well. We will do that.

16 Constable Walker, I wonder if you would withdraw
17 then from the hearing room for a little and I will hear
18 from Ms Mitchell and Mr Scullion.

19 (The witness withdrew)

20 You will need to come to the table, yes. Now,
21 Ms Mitchell.

22 Application by MS MITCHELL

23 MS MITCHELL: Sir, I'm obliged to Senior Counsel to the
24 Inquiry who has already gone over a number of questions
25 that were put in our Rule 9, but there are some

1 additional matters.

2 One, first a matter of clarification on the issue of
3 PC Paton and Walker working together. He was asked
4 about how often they had worked together and he said
5 that he couldn't remember:

6 "I would say at the time we were pretty set, that
7 was me and Alan were the van crew. As to how long that
8 had been, I honestly can't remember."

9 I was just wanting to clarify what he means by "were
10 pretty set", and to see if we can get him to be a little
11 more specific, for example, how long had they worked at
12 Kirkcaldy together, whether it had been all the time
13 that they had been at Kirkcaldy, et cetera, so it's just
14 trying to narrow down his contact with Mr Paton as
15 a colleague that he worked with. Perhaps he might be
16 able to, for example, help us with weeks, months or
17 years.

18 LORD BRACADALE: Is that the only matter?

19 MS MITCHELL: No, there are further matters. Shall I simply
20 continue?

21 LORD BRACADALE: Yes, carry on.

22 MS MITCHELL: Issue 2 is the issue about PC Walker
23 describing Sheku Bayoh walking towards him after he was
24 sprayed in the face with gas by Alan Paton.

25 In the Inquiry, he has given evidence that:

1 "He walked towards him, he kept walking straight
2 towards me."

3 And said that Alan -- sorry:

4 "... Walker was trying to create space so he is
5 coming back round to the front of the van to create
6 space and he has followed me round to the front of the
7 van..."

8 And then:

9 "... at which point I have sprayed my PAVA into his
10 eyes".

11 I would wish to put to him his previous statements,
12 the two of which taken in 2015 do not suggest in any
13 sense that Sheku Bayoh followed him anywhere at all, in
14 fact, one of the statements reflects that when he turned
15 round after shouting at him he immediately sprayed him
16 and the first time that we have any indication that he
17 said he walked towards him is the statement taken by the
18 Inquiry on 7 April 2022 and then further, today -- or
19 yesterday, in fact, we heard more evidence that not
20 simply was it walking towards him, but walking round the
21 van, and that's when he then sprayed.

22 So it seems that that is a difference and given the
23 fact that the witness has already said, I think on three
24 occasions now, that he had previously -- that he would
25 rather go with his original statements than his later

1 memory, I would respectfully submit that we should test
2 that and see whether or not his memory has now come to
3 be wrong and his original memory is better.

4 In relation -- shall I simply continue, sir?

5 LORD BRACADALE: Yes, I think if you just tell me
6 everything.

7 MS MITCHELL: In relation to issue 3, I would like to ask
8 something in addition to simply asking how he physically
9 felt when he was sprayed with the CS or PAVA, or when he
10 felt it coming into his eyes, but also to ask him
11 emotionally how he felt at that time.

12 Issue 4, again, today we heard in evidence that
13 instinct made him jump over something when he was
14 charging towards him. Now, he has not mentioned that in
15 any of the previous statements he has given and I think
16 it would be helpful if the Inquiry had an opportunity to
17 understand why he has said that only in this particular
18 hearing but in none of his previous statements. The
19 next issue was that he said when he was talking about
20 how Sheku Bayoh was lying, he said:

21 "This is what we had the discussion about before
22 when I was doing this. He might have been face down but
23 not on his front."

24 I would just like to find out when he is talking
25 about that, who is he saying that he is discussing these

1 matters with. I wasn't clear on what discussions had
2 taken place.

3 The sixth issue is to ask him about a matter which
4 occurred when it was clear Mr Bayoh was in some way
5 unwell as he records in his statement that PC Paton,
6 still kneeling besides the man's face, slapped him
7 a couple of times on the face to see if there was any
8 reaction, and I wanted to ask him about that, in
9 particular whether or not he considers that a recognised
10 way of ascertaining if this -- a reaction to a man who
11 appears to be at best perhaps unconscious.

12 The next issue that I would like to ask about is the
13 issue of race and it arises somewhat from what
14 my learned friend has already said. This officer has
15 indicated that he has not come across any examples of
16 racial discrimination or heard racist jokes or comments,
17 and I would like to put to him for his consideration
18 that at least one of his colleagues had described
19 Mr Bayoh in their statement as "coloured", to ask him
20 whether or not he would consider that that was a matter
21 which he would find unacceptable and would have to take
22 up with his colleague had he heard it, and that's in one
23 of the police officer's statements.

24 The last and discrete point that I would like to
25 raise in relation to racist stereotyping. The witness

1 says "I am not aware of any stereotyping", and I have
2 gathered together a list of the descriptions that were
3 used of Mr Sheku Bayoh by a number of the
4 police officers, and I wish to ask him individually if
5 he considers whether or not those were stereotyping.
6 They include -- and touch upon -- my learned friend did
7 go to this, but a fuller list which elicits
8 a better list, I suppose, of what might be described as
9 racist stereotyping, including his size, how well built
10 he was, a frightening crazy man, an intimidating figure
11 who they were scared of, deranged with superhuman
12 strength, those sort of things, so I would like to put
13 it to the witness whether or not he considered any of
14 those as stereotyping, to ascertain whether in fact he
15 properly understands what the issue of stereotyping is.
16 Those would be the issues I would like to raise.

17 LORD BRACADALE: Thank you.

18 Mr Scullion, what did you want to deal with?

19 Application by MR SCULLION

20 MR SCULLION: A Rule 9 application was lodged in relation to
21 this witness and Senior Counsel to the Inquiry has asked
22 questions in relation to that application, but in
23 relation to a specific matter, the witness gave evidence
24 that during the period following the incident he was
25 waiting on officers from PIRC to come and take

1 a statement and in that regard he was asked about
2 a meeting which took place on 7 May of 2015 and he
3 confirmed that he had met with officers on that date and
4 that he was asked to provide a statement on that date,
5 but that he gave evidence that he was under the
6 impression at that time that the officers were not from
7 PIRC.

8 He said that he thought the officers were MIT who
9 were operating, he thought, a parallel investigation to
10 PIRC. He also said that he was informed not to give
11 a statement as it was a tick box exercise and so he need
12 not provide a statement.

13 The officers that PC Walker met with were Detective
14 Chief Inspector Keith Hardie and Detective Inspector
15 Stuart Wilson. Those officers were at that time acting
16 on behalf of PIRC and were there on the instruction of
17 PIRC in order to obtain a statement.

18 Now, on 4 June 2015, PC Walker gave a statement to
19 PIRC, which is reference PIRC 00264, and in that
20 statement, in June of 2015, he told the officers at that
21 time that when he was asked to provide a statement on
22 7 May 2015 he had refused to provide the statement on
23 the basis of legal advice.

24 Now, in my submission, that is different from
25 thinking that it was a tick box exercise that there was

1 really no point in. There will be, I anticipate,
2 evidence in this case that he was informed at the
3 meeting on 7 May 2015 that he was being asked to provide
4 a statement in relation to the incident, and during that
5 meeting he was informed that his status was that of
6 witness, but he refused to provide a statement on the
7 basis of legal advice, and I would wish to clarify with
8 the witness whether he refused to provide the statement
9 on the basis of legal advice at that time in the
10 knowledge of his status rather than because he thought
11 it was an inconsequential tick box exercise.

12 LORD BRACADALE: Thank you. I shall allow each of you to
13 ask these questions. I would have thought between you
14 would complete him this afternoon without any
15 difficulty, would you?

16 MS MITCHELL: I would hope so, my Lord.

17 LORD BRACADALE: I would hope so.

18 MR SCULLION: I certainly won't be long.

19 LORD BRACADALE: Yes, I can see that.

20 Very well, I think I may have to rise very, very
21 briefly in order to set up the table for the examiner
22 and the witness, so we will do that.

23 (3.00 pm)

24 (Short Break)

25 (3.07 pm)

1 LORD BRACADALE: Ms Mitchell.

2 Questions from MS MITCHELL

3 MS MITCHELL: Thank you.

4 I wonder if I can ask you first of all, yesterday
5 you explained that you and PC Paton had worked together
6 and you were asked a specific question about how long
7 you had worked together?

8 A. Mm-hm.

9 Q. And you said:

10 "I honestly can't remember as to when -- we move
11 teams about -- people get moved within teams. I would
12 say at that time we were pretty set, [it] was me and
13 Alan were the van crew for that shift. As to how long
14 that had been for, I honestly can't remember."

15 Now I wonder if we can try and narrow that down
16 a little. Do you know how long both yourself and
17 PC Paton worked together at Kirkcaldy?

18 A. No, that's what I'm saying -- I moved teams within
19 Kirkcaldy as well and Alan moved teams within Kirkcaldy.

20 Q. So you don't know how long he has worked at Kirkcaldy
21 for?

22 A. How long Alan has worked at Kirkcaldy for?

23 Q. Yes.

24 A. I wouldn't be able to say because he moved departments
25 as well, so he was in community for a bit and he was in

1 response for a bit, so I -- some days I would see him
2 for a while, some days I wouldn't so aye, that's --

3 Q. Would you know if he had gone somewhere else to work
4 somewhere else, to a different police station?

5 A. Not particularly.

6 Q. You said at that time "We were pretty set"; what did you
7 mean by that?

8 A. That the pairings were pretty set, so when we came in
9 for a muster on a day shift it would be a safe
10 assumption that me and Alan would be on the van and --
11 the pairings were set. You got used to who you were
12 working with.

13 Q. And how long had that been in place for?

14 A. That's what I'm saying, I can't remember.

15 Q. Well, could you help us with this: was it years? Was it
16 months? Was it weeks?

17 A. I honestly don't know. I honestly don't know how long
18 I was on that team at that time.

19 Q. So if you weren't on that team, even though you were
20 both within Kirkcaldy, you could be -- simply not see
21 one another from week to week, month to month, year to
22 year?

23 A. Yes, pretty much. If I'm team 4 and he is the opposite
24 team, when he goes days off, I start day shift, when
25 I go day shift, he starts night shift and aye, you never

- 1 see each other.
- 2 Q. Were there other times that you worked together?
- 3 A. I think that's the first time -- I honestly --
- 4 I couldn't tell you.
- 5 Q. So when you say "We were pretty set", you have in your
- 6 mind at that time that it was you and Alan that worked
- 7 together?
- 8 A. Yes.
- 9 Q. PC Paton?
- 10 A. Yes.
- 11 Q. But you can't remember --
- 12 A. For how long that had been the case, no.
- 13 Q. Is it likely to have been years?
- 14 A. I can't -- honestly, I can't -- I can't recall who moved
- 15 off the team, who was there, when he came, when he
- 16 didn't. I mean, it's ten years -- or 17 years now, we
- 17 were moving and shifting so ...
- 18 Q. Moving then on to another issue I want to speak to you
- 19 about, you have given evidence to the Inquiry that the
- 20 sequence of events was that you see PC Paton spray
- 21 Mr Bayoh, that you shout and attract his attention --
- 22 A. Yes.
- 23 Q. -- that he turns and starts to walk towards you, you
- 24 back away from him, he continues to come towards you and
- 25 you're backing away around the van; is that correct?

- 1 A. Yes. Around the front of the van is my recollection,
2 yes.
- 3 Q. Around the front of the van. And at that point, as
4 you're walking around the front of the van, you then
5 spray him; is that a fair summary of what your evidence
6 has been?
- 7 A. Yes, because he is closing down the gap quicker than
8 I can back away from him.
- 9 Q. Now, and I think your words were:
10 "Because I was trying to create the space, so I was
11 coming back round the front of the van to try and get --
12 to create the space and he has followed me round the
13 front of the van."
- 14 A. Yes.
- 15 Q. And then you have said:
16 "... and then at which point I have sprayed my PAVA
17 into his eyes and made quite good contact with it."
- 18 A. Yes.
- 19 Q. Okay. Now I wonder if I might take you to your previous
20 statements. The first statement is a statement you took
21 by yourself and that's PIRC 265. I wonder if Ms --
22 thank you. I would like you to go to page 3 of 7,
23 please. Now, if I can take you to about halfway down
24 that second paragraph you can see there's a paragraph
25 that starts:

1 "I drove the vehicle in the direction of the male."

2 Do you see that?

3 A. Yes.

4 Q. And if we can go slightly further down, we see that
5 PC Paton exits the vehicle and PC Paton gives a command
6 and PC Paton thereafter deployed the CS spray at the
7 male. Do you see you have written that there?

8 A. (Pause)

9 "... (reads sotto voce) ... and thereafter deployed
10 CS spray at the male."

11 Yes.

12 Q. Now, can I ask you from that "deployed CS spray at the
13 male", can I ask you to read the last three lines and
14 the next paragraph -- the next paragraph to the part
15 where it says "... PAVA to the male's face and eyes".
16 I will just stop you when you get to that point?

17 A. So:

18 "I noted that the CS spray seemed to have no effect
19 on the male. I am aware that the PAVA spray that I have
20 been issued is superior to CS spray and that it should
21 have an effect on all persons. By this time I had
22 exited the vehicle. I walked around the front of the
23 van to the male's (inaudible) position. I gave a clear
24 verbal warning to the male to stop and to drop any
25 weapons. I noted at this time that PC Paton had

- 1 suffered from the effects of the spray. I was
2 struggling to see him (inaudible) was disorientated."
- 3 Q. Sorry, can I ask you just to keep your voice up
4 a little?
- 5 A. Yes:
- 6 "The male, now aware of my presence, turned to
7 (inaudible) in my direction, and appearing not to be
8 following any of the directions given, I therefore
9 deployed PAVA spray. I was approximately 8 feet from
10 the male (inaudible) direct spray of PAVA to the male's
11 face and eyes."
- 12 Q. Right. If I can ask you to stop there. Do we see that
13 there you don't mention that the male was walking
14 towards you?
- 15 A. Yes.
- 16 Q. And do we see that there is no mention of him following
17 you round as you back away round the van?
- 18 A. Yes.
- 19 Q. And in fact, if we go on to the next paragraph, if you
20 can read out that next paragraph?
- 21 A. From "I felt several drops of PAVA...."?
- 22 Q. Indeed.
- 23 A. "I felt several drops of PAVA spraying and hit me in the
24 eyes and due to the windy conditions at locus this
25 immediately had an effect on me and caused my eyes to

1 start nipping. I started blinking rapidly, I raised my
2 hands ... (Reading to the words)... transmitted on the
3 police radio 'spray ineffective'."

4 Q. So can we see there that the statement that you took
5 yourself, this was your aide memoire at the time, has
6 the circumstances differently, that you sprayed
7 Sheku Bayoh first with the spray, it doesn't mention
8 that he was walking towards you, and then said that you
9 went round the van after you had sprayed him in order to
10 create distance because you were getting the spray in
11 your eyes? Do you see that?

12 A. I disagree with the second part. I mean that goes with
13 the statement that I said that I ended up on the offside
14 of the van to crouch and get away from him. I didn't go
15 round the other side of the van to put the van between
16 us, that's a different statement.

17 Q. I think what you have read here is:

18 "I started blinking rapidly and raised my hands to
19 my face to overcome the effect, whilst stepping back to
20 the offside of the police vehicle."

21 A. Mm-hm.

22 Q. So the spray went into your eyes and you moved to the
23 back of the vehicle?

24 A. Yes, which is what I stated earlier. The spray was in
25 my eyes, I ducked away and ended up at the back of the

1 offside of the vehicle.

2 Q. I wonder if I can take you to the next statement, that
3 would be PIRC 264, Ms Drury. Can we go to the bottom of
4 page 5 of 14. At the bottom of page 5, do you see
5 a paragraph that said:

6 "It was clear to me that PC Paton got some of the
7 spray in his face."

8 A. Yes.

9 Q. So it says:

10 "It was clear to me that PC Paton got some of the
11 spray in his face and he immediately tried to duck away
12 and crouch downwards towards the van. He pulled both
13 his hands up towards his face. From my experience
14 I reckoned he would be in a bit of pain from CS and
15 would be unable to see properly or defend himself
16 properly. He would be pretty much out of the game. No
17 other officers had arrived at that stage as far as I was
18 aware. As I got past the front of the van, he turned
19 towards me after I shouted at him 'stay there', or words
20 to that effect."

21 Do you see that?

22 A. Yes.

23 Q. It then says:

24 "He faced me and I had my PAVA spray in the drawn
25 position I described in my right-hand. I also had my

1 left arm extended pointing at him. I think I was
2 standing in a defensive position. I again shouted 'drop
3 your weapon', or something like that, but there was no
4 response from him. I still thought he had a weapon
5 concealed on him and he wasn't giving verbal or
6 non-verbal communications at all."

7 And then you write:

8 "I immediately discharged my PAVA spray at him.
9 I didn't issue a warning re the discharge but it would
10 be obvious to him as I had it up in front of him in
11 plain sight and it has a bright red lid on it."

12 So do we see once again that in this statement which
13 was taken I think in June of 2015, 4 June 2015, you
14 don't make any mention there that he was walking towards
15 you?

16 A. No, I make mention to the fact that he has closed the
17 distance to about 8 feet in the next line.

18 Q. He has closed the distance to about 8 feet, but you have
19 already identified in fact that you had sprayed him by
20 that point?

21 A. No, that was the point I sprayed him. The canister
22 sprayed directly into his face from a distance of
23 8 feet, so at the point of spraying, he was 8 feet away.

24 Q. You haven't said at all that he turned and walked
25 towards you?

- 1 A. Yeah, I appreciate that line is not there, but it is
2 covered by the statement, that he has managed to get
3 within 8 feet of me at that point.
- 4 Q. Or that he followed you in front of the van?
- 5 A. I didn't give my position anywhere in that statement
6 really.
- 7 Q. So in the first two statements in 2015 you have
8 indicated in the first statement that he turned towards
9 you and you deployed the spray and in the second one,
10 that he turned towards you and deployed the spray but
11 you have not mentioned in either of those that he
12 started walking towards you, or came round towards you
13 at the front of the van; is that correct?
- 14 A. No, but I gave -- the second one I certainly said he's
15 got to within 8 feet of me. So he has had to come from
16 not being 8 feet to me, to 8 feet to me, and I've not
17 moved.
- 18 Q. And your explanation for why you have not put that in
19 your first statement?
- 20 A. That was just -- that was prepared a couple of days
21 after the event and I have probably just -- an omission
22 at that point. When I was going into further detail
23 with the PIRC investigators I have covered it in greater
24 detail.
- 25 Q. It seems when you have looked at your first statement

1 you have been very, very clear about the time that you
2 have deployed the PAVA spray. Would you agree with
3 that, the statement -- sorry, PIRC 265.

4 A. 265?

5 Q. And we're looking at page 3 of 7, the bottom of page 3
6 of 7. And if we look at the second last paragraph. Do
7 you see what it says in that paragraph is you issue
8 a command to stop and drop any weapons?

9 A. Mm-hm.

10 Q. Do you then see that you see PC Paton is struggling to
11 see and was disorientated?

12 A. And again in that statement it says that the PAVA was
13 deployed when he was 8 feet from me as well.

14 Q. And you have said:

15 "The male, now aware of my presence, turned his head
16 in my direction."

17 So you have gone into the detail of how he came to
18 be looking at you:

19 "He turned his head in my direction whilst appearing
20 not to be following any of the directions given."

21 And your next statement is:

22 "I therefore deployed the PAVA spray."

23 You haven't said before he was further away than
24 8 feet; you have said he turned his head in your
25 direction and therefore you deployed the PAVA spray, is

1 that correct?

2 A. That's the wording of that statement, yes.

3 Q. And if we go to the final paragraph of that statement --
4 sorry, I'm sorry, the final paragraph on that page,
5 which is page 3 of 7. It says:

6 "I felt several drops of PAVA spray then hit me in
7 the eyes due to the windy conditions at the locus. This
8 immediately had an effect on me and caused my eyes to
9 start nipping. I started blinking rapidly and raised my
10 hands to my face to overcome the effect whilst stepping
11 back to the offside of the Police vehicle."

12 So do we see that contemporaneously with feeling the
13 effects of the PAVA spray that you have sprayed on him,
14 it is you who go back during that period of time,
15 because at that time, you are feeling the effects of the
16 spray?

17 A. No, I disagree with that interpretation of that
18 paragraph, that I have -- I have had the after-effects
19 of the spray and I have made my way to the offside of
20 the vehicle. I didn't suggest that I walked round the
21 front to the offside of the vehicle.

22 Q. Well, I wonder if we can just try and analyse that. The
23 first thing is that you feel drops of spray.

24 A. Mm-hm.

25 Q. And that's after you have said that you did this because

- 1 he turned his head in your direction and you sprayed
2 him. It doesn't say he was walking towards you --
- 3 A. Mm-hm.
- 4 Q. -- it doesn't say you were backing away from him to
5 create space while he was walking towards you?
- 6 A. It doesn't say I was walking towards him.
- 7 Q. No, but it doesn't say that you were walking backwards
8 as he was walking towards you?
- 9 A. Mm-hm.
- 10 Q. It doesn't say that he was -- you were moving round the
11 back -- round the front of the van to create space. The
12 only time that it mentions you walking round to the
13 front of the van was already when you had PAVA drops
14 sprayed in your eyes and this having an immediate effect
15 on you meant that you started blinking rapidly, raised
16 your hands to your face to overcome the effects whilst
17 stepping back to the offside of the police vehicle. Are
18 you suggesting that that doesn't mean that what happened
19 was he turned his head, you sprayed him, it came back
20 and affected you and then you went round to the van, you
21 went round the van?
- 22 A. It says I stepped back to the offside of the police
23 vehicle so if I'm at the front of the vehicle and I step
24 back, I end up on the offside of the vehicle. It
25 doesn't say anywhere about me moving round from the

1 front of the vehicle to the offside or passing the front
2 of the vehicle to get to the offside. There's no
3 mention of the front of the vehicle in that paragraph at
4 all.

5 Q. Sorry, back to the offside of the police vehicle.

6 A. Yes, so if I was standing in front of the vehicle,
7 having walked past the front of the vehicle, when I'm
8 off the offside front light cluster, if I take a step
9 back I'm on the offside of the vehicle.

10 Q. And nowhere in either of those statements does it
11 suggest that you were doing that because Sheku Bayoh was
12 walking towards you.

13 A. Well, like I said, it's covered it with the -- I mean,
14 I appreciate that it's not stated, but there is parts in
15 there which suggest he's got to within 8 feet of me.

16 Q. Wouldn't it have simply been easy to do so, to -- if he
17 was walking towards you, to put that in? It seems like
18 an odd thing to leave out?

19 A. The statement was prepared by myself at the house
20 a couple of days after the event and I was just trying
21 to recall things to the best of my recollection at that
22 time and, as I say, further things have been cleared
23 when it was given to the PIRC investigators.

24 Q. You have already been taken back to previous statements,
25 I think on three occasions, and you have accepted that

1 your memory would have been better for those occasions
2 at the time. Why not this particular issue? Why are
3 you so clear that he was walking towards you when that's
4 not been recorded as your evidence or in your statements
5 in 2015?

6 A. Because the times where I have said -- when I was
7 referring left to right or something like that, it was
8 basically stated to be different. There's nothing
9 I could see in this statement that's contradictory to
10 what I have suggested and --

11 Q. Would it not have been -- sorry.

12 A. No, I mean fair enough, I will admit that it's not as
13 clear detail but there's nothing in there
14 that contradicts to what I have said.

15 Q. Would it not be important to note in a statement if
16 someone was walking towards you before you discharged
17 your spray?

18 A. But again, he's got to the point where he's been 8 feet
19 from me so ...

20 Q. The question was would it not be important to note at
21 the point you are discharging your spray that someone
22 was walking towards you?

23 A. The statement could be clearer in that fact, but I don't
24 think it makes the statement any less true.

25 Q. Does it not suggest that what happened was contained in

1 the first two statements that you have given in 2015,
2 that in fact he wasn't walking towards you?

3 A. No, I would say that he was walking towards me and he
4 got approximately 8 feet from me when I administered the
5 spray of PAVA.

6 Q. I wonder if I can move on to the next issue. You have
7 explained to us how you felt physically when you got
8 PAVA in your eyes, but how did you feel emotionally when
9 that happened?

10 A. In what way?

11 Q. How did you feel?

12 A. Like I said, it was the instinctive reaction to duck
13 away and -- I'm not sure --

14 Q. Well, why? What did you feel emotionally? You must
15 have had an emotional reaction to the circumstances that
16 you were in?

17 A. It was a physical reaction, the pain in the eyes.

18 Q. You didn't have any emotional feeling at the time that
19 it happened? Well, why did you duck away?

20 A. Like I said, that's a biological reaction to the pain in
21 the eyes, you move away from the pain source, is my
22 understanding of how the PAVA works.

23 Q. I suppose the pain source would be in your eyes, so you
24 wouldn't be moving away?

25 A. No, but your body tries to move away from the pain

1 source.

2 Q. So are you simply saying you had no emotional reaction,
3 or you can't recall an emotional reaction?

4 A. I don't recall a notable emotional reaction at that
5 point.

6 Q. We have heard in evidence that you have suggested that
7 you had an instinct to jump over something when you
8 charged at Sheku Bayoh.

9 A. Mm-hm.

10 Q. That piece of information hasn't been contained in any
11 of your previous statements as far as I'm aware, so none
12 in the one that you wrote by yourself in 2015 shortly
13 after the incident, not the one in June of 2015, not the
14 one given to PIRC, and not the one given to the Inquiry.
15 This appears to be new evidence.

16 Can you explain why you haven't mentioned that
17 before in any of your statements?

18 (Pause).

19 A. No, but it's something that I do distinctly remember.

20 Q. Again, wouldn't it be important if there was something
21 you distinctly remembered like that to put it in any of
22 these previous statements when you're being asked about
23 what happened?

24 (Pause).

25 If you want we can go through the other statements.

1 I don't think anyone is seeking to correct me that it's
2 not contained in those other statements.

3 (Pause).

4 A. It's -- I need to take your word, that's not in the
5 first two statements, I would need to check through them
6 all.

7 Q. Well, I'm sure if they are, someone will explain that to
8 us and lead that evidence before the Inquiry, but it
9 appears that that is the only time you have ever
10 mentioned that. My question is to you, if that was
11 something that had happened, can you explain why you
12 didn't put it in any of your previous statements?

13 A. No.

14 Q. You would realise that these statements are obviously
15 clearly very important?

16 A. Yes.

17 Q. And that the detail of these statements is going to be
18 important and gone through by others in some detail?

19 A. Yes.

20 Q. But you simply can't help the Inquiry with why you
21 didn't put that in?

22 A. I don't -- I mean in relation to the PIRC -- sorry, the
23 Inquiry statement, I don't think it was a particular
24 question that was asked in the Rule 8 request.

25 Q. Well, you perhaps wouldn't be asked something in

1 relation to something that you had never mentioned
2 before, you wouldn't be asked a question.

3 A. In that case I can't be criticised for not answering a
4 question that was never asked.

5 Q. Well, what you no doubt have been asked quite clearly on
6 a number of occasions is to explain what has happened
7 and I'm suggesting you simply haven't indicated that on
8 previous occasions that somehow instinct made you jump
9 over something and I'm wondering if you have any
10 explanation for why that's been missed out.

11 (Pause).

12 LORD BRACADALE: Ms Mitchell, I think the point has been
13 made. We can perhaps move on now.

14 MS MITCHELL: I'm obliged.

15 We move on to another issue. You said in evidence
16 earlier today, you were being asked about Mr Bayoh in
17 the prone position and you said:

18 "You mean by on his front. This is what we had
19 a discussion about before when I was doing this. He
20 might have been face-down but not on his front so he
21 went across from over to here ..."

22 And you were indicating. What I want to know is
23 when you said "This is what we had the discussion about
24 before when I was doing this", what did you mean? What
25 discussion? You were talking about the physical --

1 Mr Bayoh being physically restrained, you were talking
2 about him lying down, and it was just a sentence I have
3 sort and cut and paste it from the transcript so the
4 exact words were:

5 "... you mean by on his front. This is what we had
6 the discussion about before when I was doing this."

7 A. When I was filling out the reply to the Rule 8 request.

8 Q. And who did you have the discussion with?

9 A. The person that was noting my statement.

10 Q. I see. I want to take you on to an issue in relation to
11 your PIRC statement, PIRC statement 264, page 8 of 14.

12 This is at a point, PC Walker, when Mr Bayoh was already
13 restrained on the ground and it was clear that there was
14 some kind of issue with his physical health, and you
15 have recorded, at the bottom of this paragraph:

16 "PC Smith knelt down beside the man at his left-hand
17 side. He leaned down with his ear to his face, looking
18 down onto his chest. PC Smith said 'he is still
19 breathing'."

20 And you have recorded that you recall:

21 "... PC Paton then still kneeling beside the man's
22 face, slapped him a couple of times to see if there was
23 any reaction. He didn't move."

24 Is that a recognised way to ascertain if there's
25 a reaction to someone who you have come across who is

- 1 perhaps unconscious?
- 2 A. A pain reaction, just to see if there's any sort of --
- 3 I want to say I don't know if it would be recognised
- 4 or -- I can't answer on behalf of PC Paton.
- 5 Q. I'm asking whether or not if that would be something
- 6 that you would do to test for a reaction? Is that, for
- 7 example, something that you're trained to do?
- 8 A. I mean part of the OST training is to see if there's
- 9 a pain reaction in somebody, to see if they could -- and
- 10 then ...
- 11 Q. And as part of that training, do they suggest slapping
- 12 a person?
- 13 A. I think it was done with the best intentions to see if
- 14 the male was conscious.
- 15 Q. Are you able to answer the question? Is that part of
- 16 the training, any training you get?
- 17 A. I mean, the training is to see if there's a reaction
- 18 from somebody.
- 19 Q. Yes.
- 20 A. Yes, and that could be rouse them, shake them -- I mean
- 21 the rules -- I wouldn't say the rules, the guidance
- 22 changed, you used to like, nip people's ears and that to
- 23 see if you can get a reaction from them, or push down on
- 24 the top of their eyelid or something like that to try
- 25 and get a pain reaction from someone.

- 1 Q. So you explained the pinching the ear lobe, pressing
2 down the eyes; was slapping one of them?
- 3 A. Anything to sort of test to see if there was a pain
4 reaction. Again, I don't know -- I don't know if it was
5 an official test, but, like I said, it was done with the
6 intention of seeing if there was a reaction, to see if
7 the male was unconscious.
- 8 Q. If I may move on to the next issue in relation to race.
9 Now, you have said in your time at Kirkcaldy Police
10 Office -- which has been how long?
- 11 A. At that time, it was ten years.
- 12 Q. Ten years. At your time at Kirkcaldy Police Office, you
13 have never seen any examples of racial discrimination?
- 14 A. Correct.
- 15 Q. You have not come across any racist jokes or comments?
- 16 A. Not that I could recall.
- 17 Q. And if you did come across anything like that, you would
18 respond by challenging them?
- 19 A. Yes.
- 20 Q. At that particular time we may hear evidence that one of
21 your colleagues used the word "coloured" to describe
22 Mr Sheku Bayoh. If you heard that, what would you have
23 done?
- 24 A. Corrected them into the use of the word, that he was
25 a black man, and that there was some sensitivities

1 around the use of the word "Coloured".

2 Q. When you say "some sensitivities"; it's not an
3 acceptable term.

4 A. Yes.

5 Q. So you would have challenged them?

6 A. Yes.

7 Q. You indicated that you are not aware of any racist
8 stereotyping that you have yourself been involved in; is
9 that correct?

10 A. Yes.

11 Q. And you were given one or two examples of that by
12 my learned friend who spoke to you about that. I wonder
13 if I can run through a list just now to see whether or
14 not you consider any of these might be racist
15 stereotyping. Being described as a "large black male";
16 would you describe that as a possibly racist stereotype?

17 A. Not if it's an accurate description.

18 Q. "Could be part of a terrorist plot".

19 A. There needs to be more information surrounding that
20 before you could draw a conclusion.

21 Q. Describing someone on your way to this incident:

22 "I kept thinking about the Lee Rigby boy, the
23 soldier who was killed."

24 Would you consider there had been any racist
25 stereotyping going on there?

- 1 A. In relation to ..?
- 2 Q. In relation to the use of that comment in relation to
3 someone's thinking, that when they were hearing they
4 were going out to a call where a black man had a knife
5 that they kept thinking about Lee Rigby, the soldier who
6 was killed?
- 7 A. That would depend on the nature of the call.
- 8 Q. Well, we will no doubt hear -- and we have already heard
9 evidence in this case about the nature of the call and
10 the nature of the call that you received, and what I'm
11 asking you to do is consider whether or not you think
12 any of these might be racist stereotypes.
- 13 A. So you're speaking specifically in relation to this
14 call?
- 15 Q. Yes.
- 16 A. Mm-hm.
- 17 Q. Do you think someone thinking:
18 "I kept thinking about the Lee Rigby boy, the
19 soldier who was killed."
- 20 A. That would depend on their perception of it.
- 21 Q. What about the phrase:
22 "I cannot emphasise the strength of this guy."
- 23 A. Again, if it's an accurate description ...
- 24 Q. You say an accurate description. One person's
25 suggesting:

1 "He was massive and is the biggest male I have ever
2 seen."

3 That wouldn't be an accurate description of
4 Mr Bayoh, would it?

5 A. Not for me to describe him as that, no.

6 Q. Well, not for anyone --

7 A. Yes.

8 Q. -- who would be working with you, for example, so it
9 wouldn't be a correct description to be applying to
10 Mr Bayoh?

11 A. Again, it would depend on their perception at the time,
12 but ...

13 Q. And if their perception at the time was "He was massive
14 and is the biggest male that I have seen", do you think
15 that could be racial stereotyping?

16 A. Again, I mean it could be that he was referring to his
17 muscular build. I don't know. You're asking me to
18 answer questions on behalf of someone -- on their
19 perception of something.

20 Q. I'm asking you whether or not you consider that could be
21 racial stereotyping. I'm not asking you what they were
22 thinking, I'm asking you whether you consider that that
23 could be racial stereotyping:

24 "He was massive and is the biggest male I have
25 seen."

1 A. If somebody was to say that to me about someone then
2 I would just need to say that -- need to go that that
3 was their judgment and their description of the male.

4 Q. "I've never seen a more frightening, crazy man in my
5 life and I could see he was completely out of control."

6 Could that be an example of racial stereotyping?

7 A. Not if it's factual to that person.

8 Q. "He was an intimidating figure. I was scared of him."

9 A. Again, if that's factual to that person, if that's how
10 they're feeling then that's their ...

11 Q. "The man was deranged with superhuman strength and in my
12 mind intent on killing someone."

13 Might that be racial stereotyping?

14 A. Again, that could just be someone's perception of the
15 incident.

16 MS MITCHELL: Would you allow me one moment, my Lord.

17 (Pause).

18 Thank you.

19 LORD BRACADALE: Thank you, Ms Mitchell.

20 Mr Scullion.

21 Questions from MR SCULLION

22 MR SCULLION: Thank you.

23 There's only one small chapter of your evidence

24 I want to ask you about.

25 You gave evidence earlier that you were off sick for

- 1 a period immediately following the incident.
- 2 A. Yes.
- 3 Q. And you knew there had been a death in custody and that
4 the PIRC would be investigating?
- 5 A. Yes.
- 6 Q. And earlier you said that when you were off sick you
7 were waiting for the PIRC to take a statement from you.
- 8 A. Waiting for somebody to come in contact with me to
9 arrange for a statement to be taken from me, yes.
- 10 Q. And you met with police officers on, I think you said,
11 7 or 8 May of 2015, but we will hear it was 7 May and
12 the officers that you met with were Detective Chief
13 Inspector Keith Hardie and a Detective Inspector Stuart
14 Wilson. Do you remember that meeting?
- 15 A. I don't remember the names of the gentlemen, but yes, if
16 they were the gentlemen from the MIT team then yes,
17 I remember that meeting.
- 18 Q. And at that meeting, were you asked to provide
19 a statement?
- 20 A. We were asked -- we were told that they were from the
21 MIT team and that were we prepared to provide
22 a statement at that point.
- 23 Q. Did you meet individually with the officers?
- 24 A. Yes.
- 25 Q. And at that meeting did the two officers ask you to

- 1 provide a statement?
- 2 A. Yes.
- 3 Q. And I think earlier you said, and I think you may have
4 repeated it a moment ago, that you were under the
5 impression that it was not the PIRC who was asking you
6 to provide a statement, is that right?
- 7 A. Yes.
- 8 Q. Now, the Inquiry may hear evidence that Detective Chief
9 Inspector Hardie and Detective Inspector Wilson were
10 there to note a statement on behalf of the PIRC, but as
11 I understand it your evidence is that you didn't know
12 that; is that correct?
- 13 A. That's correct, that was never passed on or disclosed.
- 14 Q. And earlier you said you thought that MIT were operating
15 a parallel investigation to the PIRC; is that right?
- 16 A. Yes -- well, that's the only reason I could assume as to
17 why they would be wanting a statement.
- 18 Q. And you thought, or were told on that day, that this
19 statement was a tick box exercise; is that how you
20 described it?
- 21 A. That's how it was described to me.
- 22 Q. Right, and that therefore you need not provide
23 a statement?
- 24 A. Yes. It was: "They will ask you for it and then just
25 tell them that on advice that you've got you didn't need

1 to provide one".

2 Q. Do you remember you gave a statement to the PIRC on
3 4 June 2015?

4 A. Was that at the police college?

5 Q. Yes.

6 A. Yes.

7 Q. And that's statement reference PIRC 00264. I wonder if
8 you could look at a passage in that statement. It's at
9 the penultimate page of the document, just at the top of
10 that page. Do you see the passage which begins:

11 "That was either on Thursday 7th ..."

12 Do you see that?

13 A. Yes.

14 Q. "That was either on Thursday 7 or Friday 8 May when
15 I was in Kirkcaldy police station just after incident
16 counselling. I was asked to go and see DI Stuart Wilson
17 in the chief inspector's room. He was with a DCI who
18 I don't know and have never met before. I think they
19 were both from the major investigation team."

20 Do you see that?

21 A. Mm-hm.

22 Q. Does it continue:

23 "DI Wilson asked if I would be prepared to provide
24 a statement at that time. I told him that based on
25 legal advice I had been given I would be declining to do

1 so."

2 Do you see that?

3 A. Yes.

4 Q. So looking back now, did you decline to provide
5 a statement on 7 May 2015 because you thought it was
6 a tick box exercise that you didn't need to provide
7 a statement, or did you decline to provide a statement
8 on the basis of legal advice?

9 A. No, that was declined because it was a tick box exercise
10 and I was told to say that on the basis of legal advice
11 we were told not to provide one.

12 Q. So when you were told that it was a tick box exercise,
13 part of that was it was a tick box exercise so refuse to
14 provide a statement on the basis of legal advice?

15 A. Yes, to give that as the reason as to why you weren't
16 providing a statement.

17 Q. And had you been given legal advice at that stage?

18 A. I don't think so. When was that? No, I don't think we
19 had at that time. The days roundabout the aftermath of
20 that was -- I lost track of them all.

21 Q. Sure.

22 A. So aye, the dates don't mean too much to me. I was
23 going in and out the police station for certain things.

24 Q. At the meeting on 7 May, do you remember a discussion
25 taking place about your status at that time?

- 1 A. No.
- 2 Q. But you will be aware that by status I mean whether you
3 were a witness or a suspect at that time?
- 4 A. Yes, yes.
- 5 Q. At the meeting on 7 May 2015, do you recall being
6 informed by either Detective Chief Inspector Hardie or
7 Detective Inspector Wilson that your status was that of
8 witness?
- 9 A. No. That they were just going to take a statement from
10 us.
- 11 Q. So you don't recall being informed that your status was
12 a witness and thereafter declining to provide
13 a statement on the basis of legal advice that you had
14 been given?
- 15 A. Yes, we never got as far as sort of saying if the
16 statement would be under caution or anything like that,
17 it was just "You've got to provide a statement".
- 18 Q. I'm not suggesting that you would have been informed
19 that the statement was under caution; what I'm
20 suggesting is that you were informed that you were
21 a witness, not a suspect, and that you were asked to
22 provide a statement in those circumstances. You don't
23 remember that?
- 24 A. No, I don't think we were given any: that's your status
25 at that point, no.

1 MR SCULLION: Thank you.

2 LORD BRACADALE: Thank you, Mr Scullion.

3 Dean of Faculty, what's your position now?

4 DEAN OF FACULTY: My Lord, I wonder, the only -- I'm sorry,
5 I will sit down.

6 LORD BRACADALE: Yes, I think --

7 DEAN OF FACULTY: The only matter I would wish
8 an opportunity to clarify would relate to Ms Mitchell's
9 issue 2. It will take me five minutes. Rather than
10 the court adjourning, if your Lordship is happy, I will
11 just simply swap positions with Mr Scullion.

12 LORD BRACADALE: Yes, that's fine.

13 Questions from DEAN OF FACULTY

14 DEAN OF FACULTY: Obligated.

15 (Pause).

16 My Lord, just before I go to the point that I was
17 going to clarify, my learned friend suggests it might be
18 helpful, just in light of the question asked by
19 Ms Mitchell about the Lee Rigby affair, if the witness
20 could be directed to document PS 09749.

21 LORD BRACADALE: I'm not sure that's available. I think
22 documents that are going to be used on the day are in
23 a bundle. Would it be easier if Ms Grahame dealt with
24 this?

25 DEAN OF FACULTY: It is perhaps -- I think if the Inquiry

1 have it, it may be acceptable to -- do you recall
2 anything about a "Stay safe" message from Assistant
3 Chief Constable Ruaraidh Nicholson on 19 February 2015?

4 A. The memo that came out on the intranet, the video, is
5 that the one you're referring to?

6 Q. Yes.

7 A. Yes.

8 Q. What was said to members of Police Scotland is:

9 "This means an attack is highly likely. Although it
10 is uncertain what form it may take, we have witnessed
11 recent attacks in Copenhagen, Paris, Australia and
12 Canada, and we can clearly recall the murder of Fusilier
13 Lee Rigby on the streets of Woolwich."

14 Was that something that Police Scotland were keen to
15 make officers aware of?

16 A. Yes.

17 Q. In 2015?

18 A. Yes.

19 Q. Thank you. PC Walker, the only other thing I wanted to
20 ask you about is you recall the suggestion that there
21 was an inconsistency in the original PIRC statement.
22 Can we have that back please, PIRC, 00265, and we go to
23 the third page. And the -- down to the bottom, please,
24 penultimate paragraph. Up a bit, thank you.

25 If we just look at what you have written here,

1 PC Walker:

2 "By this time I had exited the vehicle and had
3 walked round the front of the van to the male's
4 8 o'clock position. I gave a clear verbal warning to
5 the male to 'stop' and to 'drop any weapons'. I noted
6 at this time that PC Paton had suffered from the effects
7 of CS spray and was struggling to see and was
8 disorientated. The male, now aware of my presence,
9 turned his head in my direction whilst appearing not to
10 be following any of the directions given."

11 Now, earlier in that paragraph you have mentioned
12 two directions: 1, drop any weapons. Do we understand
13 from what you have said already, he didn't drop any
14 weapons?

15 A. Yes.

16 Q. The other direction that you record having given was for
17 him to stop. Does this mean that he didn't follow that
18 direction either?

19 A. Yes.

20 Q. And if he didn't stop, what was he doing?

21 A. Walking towards me and closing the gap down to
22 approximately 8 feet away, as per my statement.

23 Q. Yes. So is there any inconsistency in this statement
24 with what you have told the Inquiry?

25 A. No. Like I stated earlier, there was maybe not as

- 1 sufficient detail but there's nothing in it to
2 contradict what I had said.
- 3 Q. Would you have sprayed him if he had just been standing
4 there doing nothing?
- 5 A. No.
- 6 Q. Why did you spray him?
- 7 A. Because he was closing the distance to me and was an
8 immediate threat to my safety, and I had to use
9 defensive tactics at that point.
- 10 Q. The other physical interaction before the restraint that
11 you had with Mr Bayoh was the shoulder charge. Why did
12 you do that?
- 13 A. In order to get him -- or to bring him under arrest and
14 to remove him away from Constable Tomlinson and
15 Constable Short.
- 16 Q. Was this after he had chased Constable Short?
- 17 A. Yes.
- 18 Q. Had PC Short done anything to warrant being chased by
19 Mr Bayoh?
- 20 A. Not that I was aware of.
- 21 Q. Had she done anything to warrant being struck and
22 knocked to the ground by Mr Bayoh?
- 23 A. Not that I was aware of.
- 24 Q. Had she done anything to warrant being stamped on
25 by Mr Bayoh?

1 A. Not that I was aware of.

2 Q. Were your actions in response to that?

3 A. Yes.

4 DEAN OF FACULTY: Thank you, PC Walker.

5 I'm obliged, my Lord.

6 LORD BRACADALE: Thank you.

7 Constable Walker, thank you for coming and giving
8 evidence to the Inquiry. You're now free to go.

9 A. Thank you.

10 (Pause).

11 LORD BRACADALE: We will adjourn now and we will sit again
12 on Tuesday. We're going to have a slightly earlier
13 start on Tuesday at 9.30.

14 Very well.

15 (3.58 pm)

16 (The Inquiry adjourned until 9.30 am on
17 Tuesday, 24 May 2022)

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