

Transcript of the Sheku Bayoh Inquiry

Tuesday, 27 June 2023

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(10.00 am)

LORD BRACADALE: Good morning and welcome to this hearing in the Sheku Bayoh inquiry.

One of my Assessors, Mr Raju Bhatt, will be attending the hearing remotely.

The purpose of this hearing is to give the legal representatives of core participants the opportunity, if they wish, to make oral submissions. A number of core participants have already lodged written submissions and after I have heard all the oral submissions, the written submissions will be published on the Inquiry's website.

The oral submissions will allow representatives to highlight or develop points made in the written submissions. Legal representatives will have up to 40 minutes to make their oral submissions.

As I indicated at the end of the last hearing, the submissions at this stage are focused on the evidence about the events leading up to and including the death of Sheku Bayoh and the cause of death. There is of course still a substantial amount of evidence to be led in the Inquiry. It would therefore be premature for me to draw any conclusions at this stage and I will not be issuing an interim report.

When all the evidence is completed, core

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1 participants will have an opportunity to make final
2 submissions on the whole evidence. The current
3 submissions will allow me to assess the evidence led in
4 relation to the events and the cause of death and
5 consider whether there are any areas which require
6 further exploration.

7 The oral submissions will be taken in the following
8 order: first, Senior Counsel to the Inquiry, thereafter
9 counsel for the Bayoh families; counsel for
10 Police Scotland; counsel for Ms Short, PC Walker and the
11 Scottish Police Federation; counsel for Mr Paton,
12 counsel for Constables Good, Smith and Tomlinson;
13 counsel for Sergeant Maxwell and Constables Gibson and
14 McDonough; and finally counsel for the Coalition for
15 Racial Equality and Rights.

16 Counsel for the remaining core participants have
17 indicated that they do not intend to make oral
18 submissions.

19 I intend to take breaks at appropriate points in the
20 course of the hearing, so can we begin with Counsel to
21 the Inquiry, Ms Grahame.

22 Submissions by MS GRAHAME

23 MS GRAHAME: Thank you.

24 Shortly after 04.00 hours on Sunday 3 May 2015,
25 Sheku Bayoh was spending time with friends at the home

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1 of Martyn Dick. During their time at Mr Dick's
2 property, Mr Bayoh began to act differently and believed
3 the others in the house were being disrespectful towards
4 him.

5 At around 05.30 hours he left the house abruptly.
6 This was out of character. Zahid Saeed tried to find
7 him and they met up outside Mr Bayoh's home at
8 Arran Crescent in Kirkcaldy. Mr Bayoh did not recognise
9 him and thought he was in the CID. His eyes were
10 switching and his personality changing. Mr Saeed
11 attempted to leave and was followed by Mr Bayoh, who
12 punched Mr Saeed to the head several times and chased
13 him with a wooden washing line pole.

14 After Mr Saeed fell, Mr Bayoh punched him several
15 times to the head, face and body.

16 Subsequent toxicological analysis confirmed MDMA and
17 Alpha PVP in his blood and urine. The medical evidence
18 suggests he was suffering from psychostimulant
19 intoxication and drug-induced psychosis.

20 It is likely that Mr Bayoh returned to his house and
21 took a knife from a set in his kitchen. He then
22 encountered his neighbour, Mr Neil Morgan, in the street
23 and Mr Morgan spoke to Mr Bayoh and noticed he was
24 holding a knife. He invited Mr Bayoh to come back,
25 "Have a cup of coffee, a cup of tea, you need to settle

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1 down". Mr Bayoh replied that he was fine. Mr Bayoh
2 seemed calm, although Mr Morgan described his eyes as
3 "starey" and said Mr Bayoh wasn't himself.

4 Afterwards, Mr Bayoh walked a journey of under
5 1 mile to Hayfield Road. Within a period of 8 minutes
6 between 07.09.43 and 07.16.33, six emergency calls were
7 received in the Police Scotland area control room at
8 Bilston Glen. This included calls from Mrs Joyce at
9 07.11 who described a black man who had a 9-inch knife
10 in his hand, and Mr Kolberg who described the man
11 jumping out, trying to hit other cars, stopping
12 vehicles, he said he didn't know what was wrong with
13 him.

14 These calls were received by the area control room
15 and classified as grade 1. That's defined as:

16 "An ongoing incident where there is an immediate or
17 apparent threat to life or a serious crime in progress."

18 The ACR deployed officers to respond to the incident
19 and continued to monitor calls and update their STORM
20 log. They continued to communicate with and listen to
21 Airwaves messages with the responding officers.

22 At 07.16.32, PC Tomlinson and PC Short were diverted
23 to deal with the incident. All units were summoned and
24 PC Paton and PC Walker rerouted and arrived at
25 Hayfield Road at 07.20.23. They were the first to

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1 arrive. At the time Mr Bayoh was walking along
2 Hayfield Road near the bus stop. He was described as
3 "goggle-eyed, oblivious to everything else that's going
4 on about him".

5 Both officers got out of the van armed with CS and
6 PAVA spray. Both shouted commands at Mr Bayoh, to which
7 he did not respond, and both officers discharged their
8 sprays. The sprays had no effect on Mr Bayoh.

9 At 07.20.39, reinforcements arrived in the form of
10 PC Tomlinson and PC Short, approximately 16 seconds
11 behind PC Walker and PC Paton.

12 Mr Bayoh walked up the nearby footpath away from
13 PC Paton and PC Walker, who were affected by the
14 discharge of their sprays, and PC Tomlinson and PC Short
15 began mirroring him.

16 PC Tomlinson was shouting commands at the top of his
17 voice. There was no reaction. PC Tomlinson took out
18 his spray and adopted a defensive stance and sprayed his
19 CS spray twice. On the second occasion he navigated the
20 wind direction. This had no effect on Mr Bayoh.

21 At some point PC Short stopped and took out her
22 baton. Mr Bayoh looked at her and started walking
23 towards her with a kind of boxer skip. She swiped her
24 baton towards him but did not make contact and then ran
25 away. As she ran across Hayfield Road she felt him

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1 behind her and then she was hit with what she described
2 as "an almighty blow" to the back of her head in the
3 area of her ear. She was unable to stay on her feet and
4 fell forward, putting her hands out to save herself.

5 The next thing she remembered she was curling up
6 into a ball and grabbing the bun at the back of her
7 head, trying to protect her head. She did not recall
8 being stamped.

9 At this point versions diverge and I address this in
10 some detail in my written submissions.

11 PC Tomlinson stated Mr Bayoh stomped on her back
12 with his foot with a great deal of force. He put his
13 full body weight into the stomp and used his arms to
14 gain leverage, then stomped on her back again with the
15 same force and she was not moving.

16 He is supported to some extent by PC Walker, who
17 gave evidence that he also saw Mr Bayoh stamp once on
18 PC Short.

19 In response, PC Tomlinson struck him with his baton
20 about two or three times in total to the head area. He
21 also struck him two or three times with his baton to
22 Mr Bayoh's arms.

23 On the contrary, Mr Nelson, who lived in
24 Hayfield Road at the time, has given evidence that the
25 stamp and stamps did not take place. There are images

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1 available to you, Chair, created by Mr DeGiovanni of
2 Advanced Laser Imaging of the scene from the living room
3 of Mr Nelson which may assist you in assessing his
4 viewpoint.

5 In addition there is medical evidence, including
6 photographs, regarding the injuries to PC Short and
7 their location and there is forensic evidence about
8 a mark on PC Short's vest from a number of experts,
9 including Professor Dawson who gave evidence about
10 contact between Mr Bayoh's footwear and the samples from
11 PC Short's vest.

12 I address all these matters in the detailed
13 evidence, which may either support or contradict the
14 evidence of PC Tomlinson, PC Walker and Mr Nelson, in my
15 written submissions.

16 At that point Mr Bayoh was brought to the ground by
17 PC Walker, who shoulder-charged or bear-hugged him to
18 the ground. PC Short attempted to stand up but her legs
19 weren't working. She tried to get up again and she saw
20 PC Paton, who came over and helped her up and he told
21 her to run to the van.

22 The restraint was fast moving but again I have
23 addressed the detailed evidence available to you in my
24 submissions. In short, the officers sought to gain
25 control and pin down Mr Bayoh and he resisted their

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1 attempts. They sought to apply handcuffs and leg
2 restraints. Mr Bayoh struggled, using what was
3 described as extreme force. PC Walker punched him
4 a couple of times to his face and PC Tomlinson delivered
5 two or three baton blows to Mr Bayoh's Achilles area and
6 then straddled his legs.

7 At 07.21.19, PC Tomlinson pushed the emergency
8 button for assistance. By the time he did so, Mr Bayoh
9 was on the ground for maybe seconds and PC Tomlinson
10 continued to sit straddling his legs. Mr Bayoh flicked
11 his legs and caused PC Tomlinson to lose his balance and
12 his grip on his handcuffs and PC Tomlinson changed his
13 position in response to this action to lie across
14 Mr Bayoh's legs diagonally to stop this movement.

15 The first officers arrived at 07.20.23 and by the
16 time PC Tomlinson pressed his emergency button it was
17 07.21.19. On my calculation this is a period of around
18 56 seconds. By this time Mr Bayoh was on the ground
19 with PC Tomlinson straddling his legs. CS and PAVA
20 sprays had been discharged in his direction by three
21 officers. He had been struck with a baton multiple
22 times to the head and arms and he had been
23 shoulder-charged to the ground.

24 PC Paton was the third officer to assist with the
25 restraint. PC Paton was located closer to Mr Bayoh's

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1 head. PC Paton had a baton and passed it through
2 Mr Bayoh's left arm to try and apply the handcuffs.
3 PC Tomlinson attempted to apply a handcuff to Mr Bayoh's
4 right wrist but as he did so, Mr Bayoh pulled his hand
5 forward, dragging PC Tomlinson closer to him. Mr Bayoh
6 then attempted a press-up off the ground, lifting the
7 officers.

8 At 07.21.28 to 31 seconds, PC Smith and PC Good
9 arrived. After attending to PC Short, PC Smith went
10 over to assist with the restraint. PC Smith warned
11 Mr Bayoh that he would spray him with CS spray if he did
12 not stop resisting but was told by PC Walker that it
13 would be ineffective.

14 As incapacitant spray was not an option, PC Smith
15 assisted the other officers to gain control of
16 Mr Bayoh's hands and allow handcuffs to be applied.
17 Handcuffs and leg restraints were applied and the
18 officers gained control.

19 Once the Fast Straps had been applied, PC Smith
20 stood up, moving away slightly. When he stood up
21 PC Smith checked the injuries to his hands and turned
22 his attention elsewhere for around 30 seconds to
23 a minute. PC Tomlinson got off Mr Bayoh's legs and
24 Mr Bayoh was rolled on to his left side. PC Tomlinson
25 then searched Mr Bayoh's pockets on his right side

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1 looking for a knife. There was no knife found on
2 Mr Bayoh. Officers later found a knife in a grassy area
3 along Hayfield Road.

4 Officers noticed, when Mr Bayoh was turned on to his
5 left-hand side, that he had stopped struggling. His
6 eyes were shut and he was moving when he was turned on
7 to his left-hand side -- sorry, his eyes were shut and
8 he was not moving when he was turned on to his left-hand
9 side. He was unconscious, he was unresponsive.

10 Officers did not know whether anyone was monitoring
11 Mr Bayoh's breathing prior to them realising that he was
12 unconscious.

13 At 07.25.17, PC Smith transmitted over the Airwaves:

14 "This male now certainly appears to be unconscious,
15 breathing, not responsive, get an ambulance for him."

16 This was the first call for an ambulance for
17 Mr Bayoh.

18 No additional information was given at that time
19 indicating that he had been sprayed with CS or PAVA, or
20 batoned to the head.

21 Dr Carey considered that the cause of Mr Bayoh's
22 loss of consciousness was hypoxia as a result of the
23 restraint and struggle. He explained that loss of
24 consciousness represented a perilous situation,
25 particularly when a person is hypoxic, unless corrected

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1 for example by rescue breaths, and would lead to cardiac
2 arrest.

3 At 07.29.30, Acting Police Sergeant Maxwell
4 transmitted via the Airwaves:

5 "This accused is now not breathing. CPR is
6 commencing."

7 PC Walker was performing chest compressions. CPR
8 appears to have commenced more than around 4 minutes
9 after Mr Bayoh was noted to be unconscious.

10 PC Smith attempted to provide rescue breaths on
11 three occasions with the face shield but was aware that
12 the breaths were escaping out of the side of Mr Bayoh's
13 mouth.

14 At 7.32.11, Acting Police Sergeant Maxwell
15 transmitted:

16 "Chest compressions commenced, however breaths have
17 stopped due to cross-contamination."

18 PCs Smith and Paton attempted to fit a one-way valve
19 shield into Mr Bayoh's mouth but were unable to do so.
20 They attempted to open Mr Bayoh's mouth with their
21 fingers but were unsuccessful. Dr Shearer described
22 finding injuries to this area at the subsequent
23 post mortem which were consistent with those attempts.

24 At 07.33.35 the ambulance arrived at the locus and
25 ambulance staff attended to Mr Bayoh. They were unable

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1 to find a pulse and transported him to
2 Victoria Hospital. A police officer drove the ambulance
3 to the hospital so that both could continue working on
4 Mr Bayoh.

5 At around 07.45 in the morning the ambulance arrived
6 at Victoria Hospital where Mr Bayoh was brought into
7 a resuscitation cubicle and medical intervention was
8 undertaken by seven doctors, assisted by nursing staff.
9 When Mr Bayoh arrived at the hospital his wrists
10 remained handcuffed with leg restraints still applied
11 and they were removed at a doctor's request.

12 On arrival a doctor checked Mr Bayoh's carotid
13 artery and found a pulse. She deduced that Mr Bayoh was
14 actually in respiratory arrest. She then lost
15 Mr Bayoh's pulse and concluded that he had gone into
16 cardiac arrest and CPR commenced. CPR, both manual and
17 with the use of a Thumper machine, lasted for one hour
18 and 14 minutes. Life was pronounced extinct at 09.04 on
19 3 May 2015.

20 In assessing the circumstances that day you may wish
21 to begin by considering the way the incident was managed
22 by the ACR, the divisional officers, and the officers on
23 the ground. Four options emerged in evidence. Firstly,
24 the RVP from the evidence of PC Paton; secondly,
25 observe, wait and feed back, which came from

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1 Inspector Stewart; de-escalation, again which was spoken
2 to by Inspector Stewart; and finally verbal dominance,
3 the hard stop, from Martin Graves.

4 You will also need to consider whether the use of
5 force by each individual officer was justified and
6 lawful, bearing in mind all the circumstances. You will
7 need to ask yourself whether it was necessary,
8 proportionate and reasonable and whether the preclusion
9 principle was observed and that minimum force was used.

10 You will wish to consider submissions on fact and
11 law and have particular regard to the use of force
12 standard operating procedure which was in force
13 in May 2015 and the officer safety training manual,
14 2013, which was also in force at that time.

15 You may be assisted in particular by paragraphs 4.5
16 and 4.6 of the standard operating procedure, which lists
17 the profiled offender behaviour, categorised levels 1 to
18 6, and the reasonable officer response, categorised
19 levels 1 to 5.

20 These were mirrored in the manual which was in force
21 at the time and you have heard evidence from both
22 PC Walker and PC Tomlinson about their understanding of
23 these categories. That evidence alone should be
24 sufficient to allow you to carry out that exercise if
25 you wish, but you may go on to consider the expert

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1 evidence you have heard from Martin Graves and
2 Joanne Caffrey. Both have given evidence.

3 Both are in agreement that the four tactical options
4 were open to reasonable officers that day, that these
5 options could be instructed by the ACR inspector, the
6 sergeant on the ground, or the officers themselves.
7 They agree that all options were available to reasonable
8 officers on that day.

9 Both Mr Graves and Ms Caffrey explained the
10 framework that existed in the use of force SOP at the
11 time and gave examples and that should provide
12 additional assistance to you and allow you to compare
13 the actions of the officers who engaged with Mr Bayoh
14 against that framework.

15 In relation to the most recent hearing on cause of
16 death there appears to be consensus amongst the medical
17 witnesses that Mr Bayoh's sudden death was due to sudden
18 cardiac arrest contributed to by the drugs he consumed
19 and the restraint and struggle at Hayfield Road.

20 Dr Carey considered that although the death was
21 multi-factorial, the most significant factor was the
22 restraint and struggle. He proposed an adjustment to
23 the wording of the cause of death certified by
24 Dr Shearer and Dr Bouhaidar, such that it would read:

25 "1(a) Sudden death in a man intoxicated by MDMA

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1 (Ecstasy) and Alpha PVP in association with struggling
2 and restraint."

3 Dr Shearer and other doctors, including Dr Crane,
4 agreed with this proposed form of words.

5 There were factors mentioned in evidence that all
6 medics were agreed had absolutely no bearing on
7 Mr Bayoh's cause of death. These included minor
8 ailments, blunt force injuries, infection, excited
9 delirium and heart disease. Factors which may have had
10 a bearing and upon which you have heard detailed medical
11 evidence include the consumption of illicit drugs,
12 restraint and struggle against restraint. I have
13 addressed these matters in detail in my written
14 submissions.

15 In addition to the above, you have also heard
16 evidence about sickle cell trait. Mr Bayoh was
17 a carrier of the sickle cell trait and Dr Carey
18 explained that the presence of sickling in someone with
19 that trait means they have been pushed to the limit
20 physiologically and become hypoxic, which has
21 precipitated sickling. He considered that the presence
22 of sickling provided evidence of hypoxia and lactic
23 acidosis due to restraint and that sickling is an
24 independent marker for hypoxia.

25 Professor Lucas was of the view that the struggle

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1 and restraint would have caused hypoxia and acidosis.
2 The effect of the sickling in the lungs was respiratory
3 arrest leading to cardiac arrest.

4 Dr Carey agreed with Professor Lucas that sickling
5 developed during the restraint and struggle. In
6 relation to sickling, Professor Lucas gave evidence that
7 sickle cell trait should be recorded under part 2 of the
8 death certificate and Dr Shearer agreed.

9 You have also heard of petechial haemorrhages.
10 Dr Shearer's evidence was that petechial haemorrhages
11 could indicate a degree of asphyxia, either positional,
12 being chest down; or mechanical, caused by the
13 application of pressure to the back which could impede
14 breathing.

15 Dr Carey agreed that petechial haemorrhages could be
16 indicative of a degree of asphyxia, specifically
17 mechanical asphyxia due to the application of pressure,
18 weight or force to the front or the back of the trunk.
19 He was of the view that substantial force was required
20 to cause petechial haemorrhages and the presence of the
21 petechial haemorrhages provided support for mechanical
22 asphyxia.

23 My detailed written submissions address each of the
24 issues for consideration, particularly where that
25 evidence diverts. You alone will have the

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1 responsibility of deciding which witnesses are telling
2 the truth and which witnesses are accurate in their
3 recollections. I have also addressed the guidance which
4 was provided to you on the questions of whether the
5 management of the event and the use of force by the
6 officers was reasonable or excessive.

7 I have addressed issues regarding the legal test you
8 may apply in determining cause of death.

9 You will now hear oral submissions from the core
10 participants on the events that occurred at
11 Hayfield Road and the cause of death, which follow on
12 from their detailed written submissions which have been
13 provided to you, and you will receive considerable
14 assistance from them in this regard.

15 There are two final matters I would wish to raise at
16 this stage. As you have noted this morning, these are
17 interim submissions. Further evidence will be led
18 before you in relation to matters of some significance.
19 As a result, I would recommend that you do not form any
20 final concluded views about the actions and states of
21 mind of the officers pending that further evidence.

22 Firstly, I hope to lead further evidence about
23 training at our hearing later this year and this may
24 impact on how you view the actions at Hayfield Road.
25 For example, PC Paton felt he did not have adequate

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1 training for this situation.

2 Secondly, I hope to lead evidence about the
3 potential impact of racial threat theory in the final
4 race hearing next year. This may assist you in gaining
5 a fuller understanding of the events that occurred at
6 Hayfield Road.

7 Thank you very much.

8 LORD BRACADALE: Thank you, Ms Grahame.

9 Next on behalf of the families of Sheku Bayoh,
10 Ms Mitchell.

11 Submissions by MS MITCHELL

12 MS MITCHELL: We make our submissions in the form of
13 propositions and we will read with interest and care the
14 propositions of other core participants and where
15 appropriate make responses, either agreeing with or
16 highlighting areas of disagreement.

17 We do so in an effort to assist the Chair in
18 narrowing the relevant issues for him to consider, with
19 the assistance of the Assessors.

20 As just touched upon by my learned friend, we have
21 not finalised our position in relation to matters as it
22 is vital to hear all of the evidence before we make
23 suggestions in relation to findings.

24 Before detailing our submissions in writing, we have
25 produced for this morning an overarching introduction.

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1 When, in October 2019, the Lord Advocate advised the
2 Bayoh family that no police officer or Police Scotland
3 would face charges for the death of Sheku Bayoh, his
4 family felt betrayed, believing there had been a failure
5 to hold power to account, that a flawed investigation
6 had taken place where many promises made by those at
7 Crown and PIRC were repeatedly broken over the course of
8 a number of years.

9 From the very day that Sheku died, his family stated
10 that the Sheku they knew and loved had acted out of
11 character and if he broke the law then the police had
12 a right to act. But the family fundamentally believed
13 that any force used had to be reasonable, legitimate and
14 proportionate. Under no circumstances did he deserve to
15 die.

16 Within minutes of Sheku's death the family believed
17 that misinformation began to be spread, not only
18 information given to them directly but also appearing in
19 the media. Police sources painted an image of a large
20 black man with stereotypical characteristics of
21 extraordinary strength and dangerousness, wielding
22 a machete, to criminalise and to negate Sheku's right to
23 life.

24 Matters in relation to media and race will of course
25 be dealt with in later chapters, however some of those

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1 issues arose in the session and the evidence of
2 police officers and the descriptions of Sheku Bayoh in
3 the written material.

4 In relation to the incident itself, Sheku was
5 experiencing a mental health crisis and should have been
6 dealt with as a medical emergency. According to the
7 Inquiry's reconstruction timeline, the first police van
8 to arrive at Sheku Bayoh stops at 07.20.23 hours.
9 The police then shout at Sheku.

10 (Video played)

11 By 07.20.29 two people were visible and moving near
12 the rear passenger side of the police van. This may
13 indicate that Sheku Bayoh had been sprayed within
14 six seconds of the car first arriving and the officers
15 getting out. There was no standing back and assessing
16 the situation, there was no reporting back to the
17 control room, there was no consideration given to the
18 fact that this was a man whose actions were consistent
19 with being in a mental health crisis, an observation
20 which was made by people in their cars, by his neighbour
21 and indeed by the police themselves.

22 A person is seen falling over and then:

23 "... there is some coming together and another
24 falls."

25 Indicating that Sheku Bayoh was sprayed three times,

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1 hit with a baton and forced to the ground within 40 to
2 50 seconds of the first police car arriving. Sheku was
3 brought to the ground in less than 45 seconds of the
4 first police contact, never to get up again.

5 Sheku was not 6-foot plus, he was 5-foot 10 inches
6 and he weighed 12 stone, 10lb. The first two officers
7 who dealt with him were, however, 17 and 25 stones and
8 both 6-foot 4 inches tall.

9 We provide written submissions in some significant
10 detail about restraint and about the cause of death, but
11 in relation to the latter matter, as my learned friend
12 has already indicated, there is a consensus on the cause
13 of death.

14 Mr Bayoh suffered multiple injuries and was
15 pronounced dead in hospital an hour and a half after
16 first contact with the police. In contrast, none of the
17 police suffered physical harm requiring significant
18 medical attention that day.

19 The families, with the benefit of evidence heard
20 during the Inquiry, understand that Sheku was in the
21 throes of a medical health crisis. The process and
22 procedures put in place to allow for assessment of
23 a person in a mental health crisis were ignored. His
24 safety was not considered. He ought to have been met
25 with careful consideration and assessment. Instead

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1 Sheku was met with immediate, verbal then physical
2 violence.

3 The reasoning for these actions given by
4 PC Alan Paton was in the following terms:

5 "I was straight out of the passenger side door of
6 the van and I immediately took out my CS spray out of my
7 vest. I continued to think that he may still have been
8 in possession of a knife and I wasn't taking any risks.
9 As I have already said, I was still conscious of the
10 fact that just because I could see his palms, he might
11 still have the knife in his waistband or secreted
12 somewhere about his person. With my spray in my
13 right-hand and pointing in the direction of the man
14 I shouted loudly and very clearly, 'Get down on the
15 ground'. The guy was walking towards me and completely
16 ignored me. He kept walking with his palms out and
17 I remember thinking how crazy he looked, as if he was on
18 a mission. I was in genuine fear for my life at this
19 point. I pressed my red emergency button and shouted
20 loudly and clearly, 'Get down on the fucking ground'.
21 My shouting and my pointing of my spray had absolutely
22 no bearing on him and he kept walking towards me,
23 ignoring me as if he was in a one-track mind. I was
24 terrified and I thought I was going to get attacked by
25 him."

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1 The question is asked:

2 "Question: Now, I would like to ask you some
3 questions about that paragraph. You have told us today
4 about your spray and shouting of commands. Now, earlier
5 today you talked about communication and I'm interested
6 you also say in your Inquiry statement you had been
7 trained in de-escalation procedures and I'm quite
8 interested in finding out -- there's no mention there of
9 communication in the sense of a conversation or --

10 "Answer: It wasn't the time for a conversation.

11 "Question: Right, so you felt there wasn't time for
12 that?

13 "Answer: It wasn't the time or the situation for
14 a conversation.

15 "Question: Oh, sorry it wasn't the time? Right.

16 "Answer: Yes.

17 "Question: Is that because of the circumstances you
18 have told us about earlier?

19 "Answer: Yes.

20 "Question: So do you think that there was time to
21 ask him any questions like 'are you okay?' or anything
22 like that?

23 "Answer: It's not the situation for asking questions
24 like that. The man was out of control. The man was
25 drugged up. The man had a big knife. He was using it.

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1 He was attacking cars. I needed firm control from the
2 word go and then once he is in cuffs, then asking him if
3 he is wanting a cup of tea or that, but not at that
4 stage."

5 The incident has been described as a violent
6 confrontation. It was the officers who initially
7 offered violence to Sheku Bayoh. On arrival at the
8 scene he walked with his hands outstretched in front of
9 him, a non-violent, non-threatening gesture. He did not
10 say anything which might suggest he would offer
11 violence. He did not have a knife in his possession.
12 He did not pose a risk level necessary to engage with
13 him in the way that he did.

14 Instead of acting in accordance with their
15 instructions or their own standard operating procedures
16 and following the UK wide recognised force continuum
17 model, through their own actions they escalated events
18 beyond that which was necessary. They failed to follow
19 the very reasonable option of containment suggested by
20 Professor Eddleston.

21 We heard from experts on how people in a mental
22 health crisis should be dealt with: to stay calm and to
23 give the person space so as not to put them under
24 pressure, to express empathy. As set out by
25 Professor Eddleston in his report at paragraph 22:

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1 "If the first police officers on the scene had
2 realised that Mr Bayoh was psychotic, consistent with
3 their observations that he was ignoring them and looking
4 crazy, and had followed Police Scotland advice for
5 dealing with psychotic patients, the outcome might have
6 been different. Ideally open and empathetic questioning
7 while offering Sheku Bayoh a space to keep walking might
8 have calmed the situation and prevented the attack or
9 the need to restrain him physically until submission.
10 In the meantime an ambulance could have been called to
11 help take Sheku Bayoh to hospital.

12 "If this conservative approach had been ineffective,
13 a combined physical and chemical restraint approach
14 would have been necessary. At the very least, an
15 ambulance and paramedic should have been present when
16 physical restraint was initiated. This would have
17 allowed paramedics to rapidly gain intravenous access to
18 administer sedative diazepam and/or haloperidol under
19 guidance if necessary from the local emergency
20 department. At best restraint could have been delayed
21 until a doctor had come urgently from the emergency
22 department to help control the situation, allowing the
23 administration of fast-acting ketamine."

24 We know that if Sheku Bayoh was treated in a calm
25 and considered manner the outcome could have been

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1 completely different. Only a short time before
2 the police arrived at Hayfield Road, Sheku Bayoh had
3 a conversation with his neighbour, Mr Neil Morgan, who
4 treated him with consideration, care and kindness. And
5 although it was clear to Neil Morgan that Sheku "was not
6 himself", he was able to speak to him, to reason with
7 him, to get him to respond and invited him into his
8 house for a coffee. He offered what Sheku needed: help.

9 It has been suggested that Mr Bayoh repeatedly
10 stamped on a female police officer. For the families,
11 no credible or reliable evidence has been presented to
12 prove this. Rather the absence of significant forensic
13 evidence and the absence of medical evidence supports
14 the proposition that this stamp or stamps did not happen
15 and Officers Tomlinson and Walker ought not to be
16 believed.

17 The evidence of an independent witness who saw what
18 happened from his window and did not see the stamp as
19 described by these officers ought to be preferred.

20 Mr Bayoh was batoned to the head and brought to the
21 ground. As soon as reasonably practical thereafter
22 communications should have been made to the control room
23 to get an ambulance to the scene. This was not done
24 until it was too late to save him.

25 Thereafter the police carried out a method of

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1 restraint that they have been trained to understand is
2 dangerous and carries with it a foreseeable risk to
3 life. It is well recognised that the method of
4 restraint used can produce life threatening positional
5 asphyxia.

6 Whilst he was on the ground, Sheku was restrained
7 and forced face down where he was handcuffed and leg
8 restraints were applied to both his knees and ankles.
9 Six officers were involved in restraining Sheku and
10 during the time he was face down, six officers lay on
11 top of Sheku, crossing over him from both sides and
12 covering his whole body.

13 The first two officers, Paton and Walker, as already
14 described, had a combined weight of 42 stones. The
15 combined weight of six officers involved in the initial
16 restraint was 446.7 kilograms, which is 86 stones and
17 21lb, which is over half a tonne of body weight on Sheku.

18 One officer used a baton to hold Sheku down by
19 pushing it on his body and other officers were also seen
20 to be using their body weight in order to restrain Sheku
21 by placing themselves on his upper back, shoulders and
22 neck area and by using their knees to hold him down.

23 Sheku positioned lying on the ground face downwards
24 and a high degree of pressure applied to his trunk, his
25 breathing became restricted and stopped. Mr Bayoh died

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1 in hospital covered with a number of injuries, including
2 petechial haemorrhages to his eyes and a fractured rib.

3 The issue of race flows as a river through this
4 Inquiry. We cannot address the woeful lack of training
5 available and the attitudes of police officers, whether
6 conscious or unconscious in biases, in these
7 submissions, but we have been asked to flag up evidence
8 which we rely on in the future.

9 At the start of this Inquiry, senior counsel for the
10 Chief Constable made an opening statement on behalf of
11 Sir Iain Livingstone in which it was stated that they
12 were sending a very clear, strong and clear message that
13 if you hold racist, misogynist or discriminatory views
14 you are unwelcome in policing. The Chief Constable
15 declares that upholding the core values of Police
16 Service of Scotland demands that it be anti-racist.

17 This statement was welcomed by the families of
18 Sheku Bayoh as they hoped it would shine a light on the
19 actions of Police Scotland on 3 May 2015 and in the
20 days, weeks and months and years that followed.

21 In May of this year 2023, the Chief Constable of
22 Police Scotland went one step further from his opening
23 statement a year earlier, in that he accepted that
24 Police Scotland was institutionally racist. This
25 declaration was welcomed by the families of Sheku Bayoh

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1 as something that the black, Asian and minority ethnic
2 communities had in fact known for decades.

3 However, in the case of Sheku Bayoh it will be
4 submitted that a combination of overt and covert racism
5 of police officers, combined with institutional racism
6 and unconscious bias, there was a thread that weaved
7 through the moments from Sheku Bayoh meeting the police
8 until he met his death, until the Lord Advocate made
9 a decision not to prosecute.

10 Whilst this is very much welcomed, the response of
11 those representing the rank and file exposes the wide
12 chasm of opinion in the police force in relation to
13 race. When speaking about the impact the comments would
14 have made on police morale, David Threadgold, Chair of
15 the Scottish Police Federation, said:

16 "The use of the phrase 'institutionally racist' is
17 one that has deeply offended and upset them and they do
18 not recognise themselves in that way."

19 It is noted that in his opening statement senior
20 counsel for PCs Kayleigh Good, Alan Smith and
21 Ashley Tomlinson submitted that race did not influence
22 their actions in any way. That view is reflected in the
23 evidence of the officers who have given evidence before
24 this hearing.

25 However, several significant race issues arose, not

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1 only in relation to the actions of officers but more
2 broadly in relation to racism within the police force.
3 The following is only a small number of the various
4 issues.

5 The possible use of racial profiling or racial
6 assumptions in considering this may be a terrorist
7 incident. The fact that language was used that is
8 common to racial bias and unconscious racism. The
9 perceptions of the black men being seen as larger or
10 more aggressive such as, "He was the most muscular man
11 I have ever seen", and, "He was massive and is the
12 biggest male I have seen". The fact that officers
13 either did not know or did not understand the use of
14 offensive language like "coloured", language which was
15 described over 20 years ago by the Stephen Lawrence
16 Inquiry, report paragraph 6.3 as:

17 "Use of inappropriate expressions such as 'coloured'
18 or 'negro' fall into that category. The use of such
19 words which are now well-known to be offensive display
20 at least insensitivity and a lack of training. A number
21 of officers used such terms and some did not even during
22 the course of evidence seem to understand that the terms
23 were offensive and should not be used."

24 We note that this report came out in February 1999,
25 almost quarter of a century ago.

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1 The fact that we heard officer after officer say
2 what could be described as a colour blind approach, an
3 approach which is outdated and wholly fails to take into
4 account unconscious racial bias, a matter which
5 Police Scotland, it seems, does not understand. If
6 officers were to be believed, for example, there was
7 a lack of knowledge of black men dying in police custody
8 being a particular issue. The fact that racist comments
9 about Isis were made in court and on TV. The fact, for
10 example, despite the acknowledgement of senior officers
11 about the evidence of a WhatsApp group which had racist,
12 sexist and homophobic language, where every police
13 officer said if they saw racism they would call it out
14 and/or report it, yet none of the officers involved in
15 such groups appear to do so.

16 In submissions we address where we say that some
17 officers have not provided credible and reliable
18 information to this Inquiry, that they have lied. We
19 say that this reflects the experiences of the families
20 of Sheku Bayoh, who say they were lied to and not told
21 the truth by officers about the death of their loved one
22 when they were spoken to after he died.

23 The living reality for the Bayoh family is that
24 five days of protests for Floyd George in the US
25 delivered more than five years of waiting for the

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1 Scottish criminal justice system to act. For the
2 families of Sheku Bayoh it is imperative that this
3 Inquiry proceeds with the utmost diligence and care,
4 taking account of all of the relevant evidence and the
5 family remain committed to uncovering the truth, no
6 matter how difficult or uncomfortable that may be for
7 the institutions of our criminal justice system which
8 stand accused of failing Sheku Bayoh and his family.

9 In Scotland a society begins to wake up to an
10 institutionally racist police force and racial
11 injustice, the families hope that this Inquiry will be
12 robust in its analysis, searching out and recognising
13 the existence of racism as a factor in the death of
14 Sheku Bayoh.

15 Sadly, Sheku is not by any means the first black man
16 to die in police custody but his family still have hope
17 that his name does not fade from memory and that one day
18 the name of Sheku Bayoh leaves us a legacy of change and
19 that his sons Isaac and Tyler can be proud of.

20 Those are the submissions on behalf of the
21 Sheku Bayoh families.

22 LORD BRACADALE: Thank you, Ms Mitchell.

23 I think we will take a break now and sit again at

24 11.15.

25 (10.55 am)

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1 (Short Break)

2 (11.19 am)

3 LORD BRACADALE: Now on behalf of the Chief Constable of the
4 Police Service of Scotland, Ms McGuire.

5 Submissions by MS MCGUIRE

6 MS MCGUIRE: Thank you, Chair, for this opportunity to make
7 interim closing submissions on behalf of
8 Sir Iain Livingstone QPM, the Chief Constable of the
9 Police Service of Scotland.

10 Written submissions on his behalf were submitted to
11 the Inquiry on 23 June. These are adopted and they will
12 be made available to the public by the Inquiry.

13 Today I will only address one part of those
14 submissions. Because of its importance to policing in
15 Scotland and public confidence in the police, I will
16 focus on the chapter which deals with the issue of race.

17 Before doing so, the Chief Constable has asked that
18 I once again address the families of Mr Bayoh.

19 The Chief Constable is aware that you have attended
20 every hearing from May last year and that you have
21 required to listen to difficult evidence about your
22 loved one, Sheku. You are at the heart of this Inquiry
23 and the Chief Constable wishes to acknowledge the
24 courage, the strength and the dignity you have shown
25 throughout.

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1 The Chief Constable made a commitment to you in his
2 opening statement. When he expressed his support for
3 this Inquiry, he affirmed the mission of Police Scotland
4 to improve the safety and wellbeing of the people and
5 communities of Scotland, including your community, and
6 to do so for the benefit of all citizens.

7 He wishes to reassure you of the positive steps that
8 have been taken in honouring that commitment.

9 The Chief Constable has continued to support the
10 Inquiry with absolute candour. He has engaged bespoke
11 resources to provide extensive material and position
12 statements to the Inquiry to assist the Inquiry in all
13 its aims.

14 He has supported the Inquiry in its investigation to
15 understand what happened in Kirkcaldy on 3 May 2015 and
16 through operational organisation he has facilitated the
17 attendance of officers of Police Scotland to ensure that
18 they have been available as and when the Inquiry has
19 needed them.

20 Like you, the Chief Constable is determined to
21 support the Inquiry to ascertain and understand fully
22 what happened that day. Organisational learning systems
23 have been developed to respond to the evidence given to
24 the Inquiry, lessons have been learned, continue to be
25 learned, and there will be a constant striving for

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1 continuous improvement.

2 He wishes to reassure you that your experiences have
3 been heard and are informing changes in police practice
4 and procedure and are building awareness.

5 Although not a matter upon which submissions have
6 been invited, the Chief Constable wishes to state
7 publicly regret for the manner in which the news of the
8 death of Sheku was conveyed to you. This can only have
9 added to the shock and distress for you at the most
10 terrible of times. The officers who gave evidence on
11 this matter were clear that they wished they could have
12 done things differently. The Chief Constable shares
13 this view, which is why Police Scotland is now reviewing
14 and redeveloping the training for communicating with
15 families in tragic circumstances. This forms part of
16 family liaison officer training but the Police Scotland
17 learning, training and development department is now
18 reviewing this from the point of view of probationer and
19 detective training.

20 I turn now to address the Inquiry on the question of
21 race.

22 In his opening statement on 11 May last year, the
23 Chief Constable focused on the issue of racism and
24 policing in Scotland. He did this as it is vital to do
25 so to maintain and enhance public confidence in the

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1 police. He committed Police Scotland to being
2 anti-racist.

3 Since that opening statement, significant work has
4 continued and programmes are in place to further the
5 anti-racist strategy, to ensure that there is no place
6 for racism in Police Scotland and that racism is
7 addressed and challenged at every stage and at every
8 level.

9 On 25 May this year, in an address to the Scottish
10 Police Authority, the body to which Police Scotland is
11 accountable, the Chief Constable acknowledged that
12 institutional racism, sexism, misogyny and
13 discrimination exist and that Police Scotland is
14 institutionally racist and discriminatory.

15 What I propose to address in these oral submissions,
16 under six headings, is the following: 1, the meaning of
17 institutional racism and why it was recognised as being
18 present in Police Scotland; 2, what the acknowledgement
19 of it means for members of Police Scotland as
20 individuals; 3, the consequences of the acknowledgement
21 for the position of officers involved in this
22 Public Inquiry; 4, the response to the acknowledgement;
23 5, what is being done by Police Scotland to address
24 institutional discrimination; and finally, what the
25 acknowledgement means for the communities of Scotland.

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1 So turning to the first heading, the meaning of
2 institutional racism and why it was recognised. An
3 organisation cannot simply declare itself to be
4 anti-racist. It requires to develop policies,
5 structures and systems, followed by actions to
6 deconstruct racism and address issues of power, justice
7 and inequality. It requires to address and challenge
8 the existence and workings of racism at personal,
9 cultural and institutional levels. It is an intentional
10 approach and includes a challenge to all contributing
11 forms of racism, including historic causes and systemic
12 failures.

13 This means that there has to be a collective effort
14 to be permanently proactive and accountable for the
15 prevention of discrimination, the advancement of
16 equality of opportunities and fostering good relations
17 between people who share a protected characteristic and
18 those who do not.

19 Any public body such as the Police Service has
20 a legal duty as well as an ethical and moral imperative
21 to have regard to the issue of institutional racism, to
22 be on guard for it, guard against it and address it.
23 This can only happen if there is a clear understanding
24 of what it is and what it means for an organisation and
25 the consequences of failure to address it openly and

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1 transparently.

2 The meaning of institutional racism was given by
3 Sir William Macpherson in the Stephen Lawrence Inquiry
4 in 1999 and it is:

5 "The collective failure of an organisation to
6 provide an appropriate and professional service to
7 people because of their colour, culture or ethnic
8 origin. It can be seen or detected in processes,
9 attitudes and behaviour which amount to discrimination
10 through unwitting prejudice, ignorance, thoughtlessness
11 and racist stereotyping which disadvantage minority
12 ethnic people."

13 The Macpherson Report emphasised the particular need
14 for police organisations to be aware of the manner in
15 which they communicate and interact with members of
16 communities having regard to their specific needs.

17 The Chief Constable considered that it was essential
18 that Police Scotland examined the issue of
19 discrimination to a standard which the public have
20 a right to expect. It was a moral and a legal duty.
21 The assessment had to be mature, candid, humble,
22 reflective, relentless, robust and fearless.

23 Acknowledging institutional racism means recognising
24 that discrimination rooted in racism is not to be seen
25 as isolated individual acts, but is often possible

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1 because of institutional failures. This is not to lose
2 sight of the importance of recognising and addressing
3 explicit racism or direct discrimination. However,
4 a personal act of discrimination cannot be properly
5 understood outwith the institutional setting in which
6 that act has been thought to be acceptable by the
7 perpetrator.

8 Discrimination is institutional when institutions
9 are not doing enough, or are not doing well enough at
10 preventing discrimination and promoting equality.

11 It is important to be aware of the intersectionality
12 of all forms of discrimination. One person can suffer
13 discrimination for more than one reason, for example
14 they can be exposed to racism and sexism, or racism and
15 homophobia, or racism and disability discrimination.

16 The Chief Constable's recognition of institutional
17 discrimination is not confined to racism. There is
18 a clear understanding that there's a need to be aware of
19 and to address the intersectional effect of
20 discrimination and the Chief Constable gave the Police
21 Authority an unequivocal commitment to the recognition
22 of intersectionality when looking at the needs and
23 sensitivities of individual members of communities
24 served by Police Scotland.

25 To be an anti-racist organisation there has to be

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1 a recognition that addressing the question of
2 institutional racism is a dynamic process.
3 Police Scotland, as an organisation, has become better
4 informed about racism, the causes of racism and what an
5 organisation needs to do be to be anti-racist. Racism
6 in our culture is as a result of slavery and colonial
7 power. It is necessary to deconstruct this and bring
8 about truly transformative change.

9 Addressing institutional racism acknowledges
10 history, power and existing privilege.

11 The term "institutional racism", addressed properly
12 in an informed way is therefore a guiding principle. It
13 is a commitment to the duty not to lose sight of what is
14 required for an organisation to work towards anti-racism
15 in order for those who have experienced racism to begin
16 to have experiences that are more positive and for them
17 to feel confident that those experiences of racism that
18 had not previously been addressed will not be repeated.

19 Yet, it seems that an acknowledgement by an
20 institution that it is institutionally racist could at
21 times be sensational and denote only failure and shame.
22 This appears to have resulted in organisations being
23 reluctant to engage properly with the question of the
24 existence of institutional racism and be fearful of it.
25 The Chief Constable acknowledged frankly his own initial

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1 reluctance when he made his statement to the Police
2 Authority when he said this:

3 "Institutional racism, sexism and institutional
4 discrimination have become iconic terms in the vital
5 battle to tackle injustice. Police officers and staff,
6 including police leaders, can be conflicted both in
7 acknowledging their existence and in using such terms,
8 fearing it would unfairly condemn dedicated and
9 honourable colleagues, or that it means no progress has
10 been made since the 1990s."

11 He recognised and understood that conflict because
12 he had experienced that conflict himself over a number
13 of years. He shared the reservation and concerns about
14 acknowledging that institutional discrimination exists
15 in policing.

16 However, the Chief Constable was aware that there is
17 considerable power in accepting the existence of
18 institutional racism as properly understood because only
19 then can one assess how real change can be effected
20 throughout the organisation for it to be truly
21 anti-racist.

22 The Chief Constable was acutely aware that given the
23 essential role policing has in society he had and has
24 a duty to lead, uphold and inspire change that improves
25 the experiences and lives of the public served by

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1 the police in Scotland.

2 Addressing the issue properly is a fundamental
3 requirement of the equality duty. Not to value the
4 meaning and importance of institutional racism is to be
5 underinformed of the social construct and the world in
6 which we live.

7 The Chief Constable made a commitment to listen to
8 the experiences of the families of Mr Bayoh and members
9 of the community. Having heard the evidence to date, he
10 was satisfied that a proper and fair assessment of the
11 organisational learning and awareness as at 3 May 2015
12 in the recently formed Police Service of Scotland was
13 such that there was a systemic issue.

14 This was apparent from the evidence of the families
15 of Mr Bayoh, the evidence that some diversity training
16 did not appear to have been retained, and importantly in
17 the fact that there appeared to be a lack of awareness
18 of some officers of the importance of not treating
19 everyone the same.

20 That approach to equality fails to address cultural
21 needs, sensitivities and concerns of individuals. He
22 also heard evidence from independent review and internal
23 truth to power sessions that made it clear that
24 discrimination within Police Scotland was regrettably
25 a reality.

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1 Failure in training and systems means that it is an
2 institutional matter. It is a failing of the
3 organisation and not individual officers.

4 For these reasons the Chief Constable acknowledged,
5 without reservation, that Police Scotland would come
6 within the definition of institutional racism set out by
7 Sir William Macpherson. This acknowledgement was
8 essential to ensure that Police Scotland adheres to its
9 core value of anti-racism. Any omission to recognise
10 this in the face of the facts would wholly undermine the
11 aims of Police Scotland to be anti-racist. Such
12 a refusal would lack credibility: arrogant, defensive,
13 semantic or ill-informed denial of the existence of
14 institutional racism only obstructs progress and serves
15 no legitimate purpose. If a body does not acknowledge
16 institutional racism, how can it work towards becoming
17 anti-racist?

18 Police Scotland was the first UK police service to
19 introduce a code of ethics and that will now be made
20 law. All officers are required to take a statutory oath
21 of office which includes a pledge to discharge their
22 duties with fairness, integrity, diligence and
23 impartiality, to uphold fundamental human rights and to
24 accord equal respect to all people. It is therefore
25 right that he, as Chief Constable, ensured that

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1 Police Scotland continued to lead the way and took this
2 essential step to being an anti-racist service.

3 The Chief Constable has been part of the leadership
4 team since 2012 prior to the creation of the Police
5 Service of Scotland. He is accountable for the
6 organisation. The work to address issues of racism and
7 discrimination in Police Scotland was undertaken before
8 the start of this Public Inquiry. The acknowledgement
9 of institutional racism at the meeting of the Police
10 Authority was possible only because of the reflective
11 approach taken by the organisation under his leadership
12 which has led to more knowledge and understanding.

13 In accepting that institutional racism exists in the
14 organisation in which he serves and which he commands,
15 the Chief Constable has chosen a new way, one that is
16 more productive and effective. He has chosen
17 transformative change. The acknowledgement was one
18 which was proper for him as Chief Constable to make
19 under his command, with his informed understanding and
20 following his commitment to effect change.

21 It will allow successors to the office of Chief
22 Constable of Police Scotland to continue on a clear path
23 for the organisation to achieve a new level of
24 performance for all the communities it serves and to be
25 anti-racist.

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1 So moving on to the second heading, which is what
2 the acknowledgement means for members of Police Scotland
3 as individuals. In his statement to the Police
4 Authority, the Chief Constable made clear the
5 distinction between individual officers and the
6 collective responsibility of the organisation. It
7 absolutely does not mean that all Police Scotland
8 officers and staff are racist or sexist.

9 The Chief Constable has great confidence in the
10 character and values of the people in Police Scotland
11 and he was clear that it is an institutional matter for
12 which he as leader has taken responsibility. But the
13 Chief Constable recognised that the acceptance of
14 institutional racism without discernment could lead to
15 every individual member of the organisation feeling, or
16 being labelled as racist by those who misunderstand or
17 misinterpret the definition. He understood that there
18 was a risk that the acknowledgement could result in
19 officers being accused of being racist "because the
20 Chief Constable told us that". He was aware that
21 officers and staff would have to deal with that
22 misrepresentation and whilst he could not withhold the
23 acknowledgement which had to be made, he wanted to be
24 clear in his message to members of Police Scotland.

25 All officers and staff have been given explanations

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1 as to what the acknowledgement of institutional
2 discrimination means and that it is not the same as
3 saying all officers and staff are racist. It is
4 a candid recognition that the organisation needs to do
5 more in respect of education, policies and practice to
6 ensure that everyone gets the service that is their
7 right.

8 The Chief Constable calls on all officers and staff
9 to reflect on their perceptions and understanding of the
10 meaning of the acknowledgement. An extensive
11 communications programme is in place within
12 Police Scotland to facilitate understanding, listen to
13 concerns and encourage engagement. Leaders have been
14 tasked with communicating with officers and staff to
15 address what the acknowledgement means for individual
16 officers.

17 Changes in behaviours are already taking place, with
18 an observed confidence in challenging unacceptable
19 behaviour in others, but it is necessary to address
20 heading 3, which is the consequences of the
21 acknowledgement for the position of officers involved in
22 the Public Inquiry.

23 The acknowledgement is in relation to the
24 organisation only. The issue as regards individual
25 officers must, in fairness and having regard to the

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1 Terms of Reference of the Inquiry, be determined by the
2 Chair. Nothing that was said in the Chief Constable's
3 statement to the Authority or to the Inquiry about the
4 organisation should be taken as any comment on whether
5 the actions of any individual officer whose actions are
6 being examined by this Inquiry was influenced by race or
7 perceived race, and that's particularly so of those who
8 are core participants.

9 The position of any individual officer whose actions
10 are being considered by the Chair should not be
11 adversely affected by the acknowledgement of the Chief
12 Constable regarding the matter as it affects the
13 organisation.

14 Turning now to heading 4, which is the response to
15 the Chief Constable's acknowledgement. The
16 acknowledgement by those informed of its purpose and
17 incident, including people affected by discrimination,
18 has been welcomed within policing and across society.
19 Support for the Chief Constable's position was
20 articulated by SEMPER Scotland, the primary staff
21 association which exists to support and represent all
22 minority and ethnic officers and staff within
23 Police Scotland, who said:

24 "We stand with our Chief Constable in his courageous
25 acknowledgement of institutional racism within

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1 Police Scotland. We recognise that work needs to be
2 done to create a truly equitable society and will
3 support efforts towards that goal."

4 The Chair of the Scottish Police Authority,
5 Martyn Evans, in support and recognition of the work
6 which lay behind the statement said that it is the
7 crucial next step for effective organisational
8 development. He said that:

9 "The Authority is confident that this marks that
10 moment for policing, one that moves the focus from
11 continually describing problems within Police Scotland
12 to how it changes."

13 The vice-chair of the external independent reference
14 group, Chris Creegan, in his address to the Police
15 Authority said that:

16 "Police Scotland's intention and commitment has
17 integrity and substance. The fact that this was
18 a judgment by the Police Service of itself was a huge
19 strength, a watershed moment~..."

20 And that the impediment to change had been removed.

21 Aberdeen City Council carried a motion unanimously
22 acknowledging how difficult it was for the Chief
23 Constable to make his statement because of the lack of
24 understanding of the terms institutional racism, sexism,
25 misogyny and discrimination. It also acknowledged that

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1 the Chief Constable's statement did not suggest that any
2 officer is prejudiced but accepted that to improve
3 Police Scotland as an organisation, initially
4 a statement had to be made of the problem.

5 The Council expressed its full support and thanks to
6 all members of staff at Police Scotland for their work
7 in immensely difficult circumstances and recognise their
8 dedication and commitment to public protection.

9 Leaders from across the political spectrum expressed
10 public support, including the First Minister,
11 Humza Yousaf. The Scottish labour leader,
12 Anas Sarwar MSP, believed the Chief Constable's
13 statement had progressed discussions about institutional
14 racism and discrimination. He said:

15 "We cannot pretend that institutional racism,
16 sexism, misogyny and discrimination does not exist in
17 many of our public organisations and the first step to
18 addressing that is to acknowledge it."

19 He also noted that a large part of the Chief
20 Constable's statement had been lost in the firestorm
21 that followed. That firestorm is exactly the response
22 which has made organisations reluctant to engage
23 properly with the definition and leaders concerned to
24 address it with the candour required. They risk
25 personal attacks, such as have been made on the Chief

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1 Constable.

2 True leadership means making hard decisions, facing
3 harsh realities and accepting responsibility without
4 fear. However, it is vital that there is a shared
5 responsibility of all of us in furthering the
6 understanding of the meaning of the definition of
7 institutional discrimination and why there has to be
8 acknowledgement of such discrimination where it exists,
9 if there's to be any hope of a society which is fair for
10 all communities.

11 The definition of institutional racism is a powerful
12 tool and a standard with which to work. It shows
13 clearly what needs to be changed in an organisation. It
14 is the duty of the organisation to establish that this
15 is a position of strength, maturity, forward thinking
16 and not a failure or indictment of every member.

17 It is not a label to be applied in a pejorative way,
18 it is a recognition of systemic issues in order for them
19 to be addressed. It is a commitment to constant regard
20 and review, to enable the service to hold themselves to
21 the standards required by the Macpherson Report, the
22 Equality Act duties and the Scottish specific duties
23 under the regulations under that Act. It is
24 a manifestation of the policing principles.

25 The acknowledged authenticity of the Chief

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1 Constable's statement is reflective of it having been
2 made from a position of proper understanding of what
3 institutional racism is and of education in how it can
4 be addressed effectively.

5 Now, that brings me to heading 5: what is being done
6 by Police Scotland to address institutional
7 discrimination. The public will no doubt be concerned
8 as to what the acknowledgement means for Scottish
9 policing in 2023 and for the future.

10 Police Scotland has taken the Macpherson definition
11 and used it as a blueprint for action. The issue of
12 racism was already being addressed through
13 evidence-based actions, effective leadership, campaigns,
14 empathy building, positive narratives, awareness
15 building, legal action and peer support. The very
16 acknowledgement of the institutional nature of
17 discrimination is part of the strategy to address
18 racism.

19 What has been described as the rotten apple approach
20 does not address the fundamental root problem of the
21 environment in which such individuals have been
22 permitted to act and this is why it is the institution
23 which needs to acknowledge the root problem in order for
24 it to be addressed.

25 The major engine for change is the Policing Together

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1 equality, diversity and inclusion strategy, which the
2 Chief Constable introduced in September 2022 when he
3 stated the aim of that strategy, which is:

4 "To build a society where everyone can thrive and
5 flourish and collectively build a country where everyone
6 knows they are safe and secure."

7 The Policing Together strategy outlines the action
8 Police Scotland is taking to champion equality and
9 inclusion so that it tackles sexism and misogyny and
10 becomes an anti-racist organisation.

11 Deputy Chief Constable Fiona Taylor QPM is providing
12 leadership to build and maintain a values-based
13 organisation and to drive improvements, demonstrating
14 how policing in Scotland reflects, represents and serves
15 all communities. The Chief Constable has created a new
16 dedicated Assistant Chief Constable role to oversee
17 the Policing Together strategy with bespoke
18 organisational resources. Assistant Chief Constable
19 David Duncan has been appointed to lead work in the
20 implementation of the strategy.

21 This is to give effect to the Chief Constable's
22 commitment to Police Scotland being an anti-racist and
23 anti-discriminatory service with a culture which
24 reflects its values of integrity, fairness, respect and
25 commitment to upholding human rights.

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1 Policing Together is a dynamic, integrated,
2 coherent, long-term programme, the purpose of which is
3 to embed thorough every part of Police Scotland the
4 fulfilment of that commitment. It addresses what is
5 needed in terms of ethos, commitment and action.

6 There are four pillars which will underpin the work
7 of the Policing Together programme going forward. They
8 are mutually supportive and are used collectively and
9 interactively on an evolving basis and they are
10 leadership, training, communication and prevention.

11 Fuller detail of the Policing Together strategy is
12 set out in the written submissions and the Inquiry will
13 hear more evidence about this in due course, but I will
14 mention some key points today.

15 The executive of Police Scotland has called upon all
16 its leaders to live, lead, support and embed high
17 standards, equality training and a focus on values by
18 taking action which includes building and maintaining
19 professional standards and boundaries, publication of
20 anonymised details of gross misconduct outcomes,
21 equality and diversity training, and a communications
22 campaign calling on Police Scotland officers and staff
23 to know and live Police Scotland values.

24 People entrusted with positions of leadership must
25 lead the desired culture change. The public has a right

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1 to expect that any officer or member of staff employed
2 by Police Scotland will be held to a high standard,
3 otherwise Police Scotland cannot rightly ask them to
4 have confidence in the service.

5 Training will continue to seek to address racism,
6 misogyny and all forms of discrimination within policing
7 in Scotland. Police Scotland recognises that the
8 majority of officers and staff act in accordance with
9 Police Scotland's values and standards every day.
10 Police Scotland is aware that to continue to deliver
11 excellent service in an ever-changing world, there is
12 more the organisation can learn through continuous
13 professional development.

14 Training delivery for Policing Together has the
15 depth of support available for colleagues at different
16 stages in their career, ensuring all officers and staff
17 have guidance on how they can role model and lead on the
18 changes required, ultimately delivering the commitments
19 made in the Policing Together strategy.

20 The way police officers conduct themselves, both on
21 and off-duty, is fundamental to maintaining public
22 confidence and essential to policing by consent. At the
23 heart of Policing Together is the organisation's code of
24 ethics and from this the organisation derives a direct
25 link to values-based policing which reflects and

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1 represents all communities.

2 In May last year the Chief Constable reinforced the
3 very clear message that if you hold racist or
4 discriminatory views, you are not welcome in policing.
5 The process for vetting at the recruitment stage has
6 been reviewed and revetting is being carried out on
7 a systematic basis.

8 These strategies are not projects to be announced
9 with fanfare and which will have a finish date. They
10 require continuing commitment to further the aim of
11 Police Scotland to be an anti-discriminatory and
12 anti-racist organisation, which will review, reflect,
13 learn and change as required.

14 Since the statement of the Chief Constable to
15 the Police Authority in May this year, action has
16 accelerated. With further understanding has come an
17 even more focused drive to purposeful action.

18 Police Scotland will ensure continued scrutiny of
19 the effectiveness of the strategies as a crucial part of
20 the perpetual commitment to anti-racism, the collective
21 effort to be permanently proactive and accountable.

22 Police Scotland will be aided and informed by
23 external independent critical groups such as the
24 Independent Reference Group and the Professional
25 Reference Group.

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1 I move on finally to ask the question and answer the
2 question: what does the acknowledgement mean for the
3 communities of Scotland? The recognition by the Chief
4 Constable of the existence of institutional racism is
5 intended to be a message of confidence in an
6 organisation that is determined to be an anti-racist
7 service and which is not afraid to face difficult
8 questions. And it is right that this comes from a body
9 with responsibilities for the safety and wellbeing of
10 all communities.

11 To the communities most affected, it is one of
12 reassurance that it is not an empty statement to be made
13 and then forgotten. It is not said just for today, or
14 for political expediency. It was not imposed upon
15 Police Scotland. It is the organisation's reflective,
16 purposeful statement and commitment. There will be no
17 final point in Police Scotland's own assessment of
18 itself against the Macpherson definition and nor should
19 there be. Racism is as a result of power imbalance. As
20 history has shown, this can re-emerge. It is therefore
21 continuing robust, rigorous commitment which is required
22 and this is an integral part of the core value of being
23 anti-racist.

24 The power to address racism in policing is vested in
25 every officer of Police Scotland. It cannot always be

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1 left to those who have suffered racism to bear the
2 burden of trying to effect change, no matter how
3 willingly they have carried it for so long. The burden
4 has to be shared and it is a collective responsibility
5 of every one of us.

6 To members of the Police Scotland community it is
7 also a message from their Chief Constable of confidence
8 in all those who adhere to the core values daily,
9 including that of anti-racism, and who are proud to do
10 so; those who embody, individually and collectively, the
11 respect for the human rights of others and fulfil their
12 statutory obligation of protecting communities and
13 keeping them safe.

14 He is aware that police officers and staff do
15 incredible things to keep all communities safe,
16 demonstrating professionalism and these shared values
17 and he encourages every officer and member of staff to
18 keep doing so and to show the true meaning of Policing
19 Together for the benefit of all communities.

20 A great strength of Police Scotland is that officers
21 and staff are drawn from different backgrounds and
22 experiences. What unites them is the shared and
23 non-negotiable set of Police Scotland values. Only by
24 working together will the organisation fulfil its aims.

25 This recognition of the systemic issues which bring

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1 the organisation within the definition of institutional
2 racism will undoubtedly have seemed to be a blow for all
3 those dedicated police officers and staff who give up so
4 much of themselves and their personal lives in their
5 vocation to help others.

6 It is not intended to be.

7 This acknowledgement demonstrates the professional
8 confidence of the organisation and is made with
9 awareness and understanding of why it is necessary to
10 make it to progress to be anti-racist. It is truly
11 a sign of real progress, effective change and the Chief
12 Constable's belief in those professional, hard working
13 officers and staff of whom the Chief Constable is proud
14 to serve alongside and to command. Under continued
15 strong leadership they are the ones who will ensure that
16 Police Scotland will always be a police service in which
17 the public can have full trust and confidence.

18 That concludes my submissions, Chair, with my thanks
19 for the opportunity.

20 LORD BRACADALE: Thank you, Ms McGuire.

21 Now, on behalf of Ms Short, PC Walker and the
22 Scottish Police Federation, Dean of Faculty.

23 Submissions by the DEAN OF FACULTY

24 DEAN OF FACULTY: Obligated, my Lord.

25 For understandable reasons this Inquiry has focused

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1 on the tragedy of the death of Mr Bayoh. Nothing that
2 I say today is intended to suggest that that death was
3 anything other than tragic, but Mr Bayoh's interests are
4 not the only ones in play here. The events of
5 3 May 2015 have had serious impacts on many others.

6 I know that the Inquiry will look at matters
7 dispassionately and avoid the temptation to reimagine
8 events with 20/20 hindsight.

9 In assessing what happened that day, as has been
10 stressed in our written submission, it is important to
11 recognise the fallibility of human memory. Witnesses
12 gave their evidence to the Inquiry seven years after the
13 event. It is crucial that one does not consider that
14 evidence in isolation, or uncritically.

15 The best evidence here lies in the contemporaneous
16 and unallied evidence found in the Airwave
17 transmissions, in the CCTV and dash cam footage and in
18 the post mortem tests. It is there that the true
19 picture emerges and from that true picture it is clear,
20 in my submission, beyond peradventure, that Mr Bayoh
21 voluntarily consumed a significant amount of illicit
22 drugs with a clear and dramatic effect on his mental
23 state.

24 Having done so, he got into a fight with his friend,
25 Mr Saeed. The latter's performance at the Inquiry was

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1 plainly unhelpful (inaudible - audio skipped) the state
2 of the premises afterwards of Mr Morgan.

3 There was a clear violent altercation between
4 Mr Bayoh and Mr Saeed and the evidence of Mr Freemont
5 means that it is likely that Mr Bayoh sustained his rib
6 fracture in the course of that altercation.

7 Mr Bayoh then armed himself with a large knife and
8 headed out into the streets of Kirkcaldy. We know this
9 from the evidence of Mr Morgan. We know this from the
10 dash cam footage that shows Mr Bayoh carrying a knife.
11 He was on the streets at 7.09 am when he was first
12 picked up on the dash cam.

13 Having done so, Mr Bayoh then started to attack
14 passing cars, provoking fear and alarm. The terrifying
15 nature of what he was doing was clearly explained by the
16 nurse, Ms Limbert.

17 By 7.15 am, Mr Kolberg and others were calling 999.
18 Mr Kolberg reporting that Mr Bayoh was jumping out,
19 trying to hit other cars, stopping vehicles, jumping on
20 cars, jumping out in front of them, everyone is having
21 to reverse and turn around.

22 A minute later at 7.16 am, Police Constables
23 Tomlinson and Short were asked to attend. They were
24 told:

25 "There is a male armed with a knife, African-looking

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1 male, chasing someone, maybe carrying a knife~..."

2 Described as:

3 "... big with muscles, about 6 feet tall."

4 And other officers were also deployed.

5 Constables Walker and Paton encountered Mr Bayoh
6 first at 07.20.13. Constables Tomlinson and Short
7 arrived 26 seconds later.

8 Mr Bayoh had by then discarded the knife but all of
9 the evidence indicates that officers require to proceed
10 on the assumption that he remained armed. Nothing else
11 would make sense.

12 Matters escalated very quickly after that.
13 PC Paton's emergency status was activated at 07.20.42
14 followed by PC Tomlinson's at 07.21.19. Within seconds,
15 despite the deployment of CS gas and PAVA spray,
16 Mr Bayoh had violently assaulted then PC Short by
17 punching her to the back of the head, propelling her to
18 the ground.

19 Mr Bayoh had been apprehended by 07.22.10,
20 14 seconds later he was reported by PC Walker to be in
21 cuffs but still struggling. By 07.25.17, three minutes
22 later, Mr Bayoh was reported by PC Smith to be
23 unconscious, breathing but unresponsive.

24 My Lord, none of that can seriously be disputed. It
25 means that Mr Bayoh, doubtless as a result of

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1 self-intoxication, acted in a seriously criminal manner,
2 creating a plain danger to members of the public that
3 absolutely had to be addressed by the police. The
4 crucial interactions with Mr Bayoh took place in the
5 space of five minutes. To criticise officers who ran
6 towards the danger he presented when the rest of us
7 would run from it would be wholly unwarranted.

8 Of course the Inquiry will want to look at events
9 with extreme care and in what follows I will address the
10 main points that seem to be in contention.

11 Firstly, should officers have waited before
12 confronting Mr Bayoh? A number of suggestions have been
13 advanced as to how Mr Bayoh might have been dealt with
14 other than by confronting him. None bears scrutiny.
15 A firearms unit was not available within a reasonable
16 time, nor was a dog unit. Resort to either would have
17 entailed leaving a man reported to be armed with a knife
18 and attacking passing cars unrestrained for 20 minutes
19 or more. Viewed through the eyes of the attending
20 officers at 7.20 am on 3 May, that would have been
21 unconscionable. It would have exposed the public to
22 unacceptable risk.

23 That leaves only the possibility of confinement at
24 the locus. Any suggestion to that effect parts company
25 with reality. Officers did not know in advance

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1 precisely where Mr Bayoh was. They encountered him
2 randomly walking briskly and with purpose through an
3 open residential area, an area with multiple houses, and
4 frequented by dog walkers. There was no realistic way
5 in which the officers who encountered him might have
6 contained him -- confined him at the locus.

7 We see that from what happened when they did engage
8 with him. He did not respond to verbal commands.
9 Instead, he advanced upon officers as they retreated in
10 an attempt to keep distance. Bearing in mind the
11 necessary assumption that he remained in possession of
12 a large knife, this must have been terrifying. To
13 propose that he should have been allowed to proceed on
14 whatever journey he was on is, in my submission,
15 ludicrous. To suggest he could meaningfully have been
16 contained in the open space where he was found, without
17 endangering passers by, and in a manner that would have
18 led to any other outcome, is equally fanciful.

19 The stark fact of the matter is Mr Bayoh presented
20 objectively a high risk of danger to the public. That
21 danger needed to be addressed. If Mr Bayoh had stopped
22 when told to do so, we would not be here. He did not.
23 He advanced on the officers and they responded
24 appropriately.

25 Ultimately, in my submission, the true position is

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1 given by Mr Graves. When he assessed the decision with
2 the benefit of hindsight he expressed the view that the
3 officers did everything correctly: go to the scene,
4 locate the individual, attempt to engage the individual.
5 To stand off and not to engage would have created an
6 unacceptable risk.

7 The Inquiry has heard evidence that Mr Bayoh was
8 a kind, loving, friendly man who would help anyone who
9 needed it. I do not suggest for a second that there is
10 anything wrong or inaccurate in that description. That
11 was not, however, the man who was on Hayfield Road on
12 3 May 2015.

13 With the benefit of hindsight, and solely with the
14 benefit of hindsight, Mr Bayoh was suffering from
15 a constellation of symptoms that would fall within the
16 bracket of acute behavioural disturbance, likely
17 prompted by drug-induced psychosis from the consumption
18 of MDMA and Alpha-PVP.

19 None of the attending police officers shared any
20 responsibility for his consumption of those drugs. They
21 share no responsibility for his acute presentation in
22 light of that consumption and they share no
23 responsibility for Mr Bayoh obtaining a knife and
24 roaming the streets of Kirkcaldy, placing members of the
25 public at significant risk. It was Mr Bayoh and

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1 Mr Bayoh alone that caused a clear and pressing danger
2 that simply had to be addressed, and it was addressed by
3 officers doing their best in terrifying circumstances
4 that unfolded in a very short period of time.

5 The micro-analysis that this Inquiry will undertake
6 is understandable, but it is done with the luxury of
7 time and resource and absence of fear that were not
8 available to the officers on Hayfield Road.

9 The next step in the analysis is the decision to
10 deploy CS gas and PAVA spray. Here again in my
11 submission any criticism would be unwarranted. Mr Bayoh
12 was given clear, audible commands to stop and to get on
13 the ground. We have heard today the video footage
14 played of how loud that command was. He did not comply
15 and he did not comply doubtless because he was in
16 a state of psychosis.

17 He advanced upon officers who tried to retreat.
18 That is precisely the sort of situation in which
19 non-lethal measures such as incapacitant sprays are
20 meant to be used. Regrettably, and again no doubt
21 because of the psychosis, those incapacitants did not
22 work.

23 Some of the evidence has suggested that a more
24 passive response should have been adopted to the effect
25 that Mr Bayoh should have been asked if he was okay and

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1 offered a cup of tea. This again is wholly unrealistic.
2 Police officers do not tackle violent knife crime by
3 asking suspects if they want a cup of tea. In any
4 event, we know what would have happened if it something
5 like that had been tried; it was tried by Mr Morgan, to
6 no avail.

7 The suggestion that the police should have attempted
8 a friendly chat is again not one that can be
9 countenanced.

10 Next we have the decision to restrain Mr Bayoh.
11 Mr Bayoh was restrained after, on the incontestable
12 evidence, he had committed a violent assault on
13 Ms Short, a much smaller female officer who was running
14 away from him. On any view he punched her to the back
15 of the head, propelling her to the ground. At that
16 point he absolutely had to be restrained. Ms Short was
17 on the ground in a situation of real peril. Her
18 colleagues had to intervene.

19 Was there a stamp? Much time and effort has been
20 expended in exploring this question. On one view it
21 does not matter. Once Ms Short had been punched to the
22 ground, Mr Bayoh needed to be restrained. There was no
23 other option, whether or not he stamped on her. But
24 I quite accept that evidence -- clear evidence of
25 a stamp has been given and disputed. It is recognised

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1 that the Inquiry will need to consider that point.

2 When it does so, in my submission there is no doubt
3 about it: Mr Bayoh stamped on Ms Short as she lay on the
4 ground. Clear evidence of that stamp was given by PCs
5 Walker and Tomlinson. The only eye-witness who said
6 otherwise was Mr Nelson and we know from the evidence
7 that his sight line was hugely impaired. He could have
8 seen nothing below shoulder level, so it is hardly
9 surprising he saw no stamp.

10 The medical evidence comes nowhere close to ruling
11 out a stamp, so much would turn on unknowns such as the
12 force of the stamp, where it actually landed, the
13 protective effect of body armour, that the medical
14 evidence is only of limited assistance. The Inquiry
15 may, however, find that the evidence of Mr Crawford,
16 despite severe challenges posed by Counsel to the
17 Inquiry, is consistent with a stamp having occurred.

18 But there is other evidence which puts the matter in
19 my submission beyond any sensible doubt. Firstly, there
20 is the soil evidence. How can it be, looking at matters
21 realistically, that precisely the same soil type was
22 found both on the sole of Mr Bayoh's boots and ingrained
23 into Ms Short's jacket? A situation which required the
24 application of force and cannot have happened, as the
25 Inquiry has heard, by incidental transfer. That is

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1 a coincidence for which there is no sensible explanation
2 other than the stamp having taken place.

3 Secondly, and here I again return to the need to
4 check any evidence against the known contemporaneous
5 events, we have the Airwave transmissions. The first
6 indication of any cause for the concern of the wellbeing
7 of Mr Bayoh came at 07.25.17 when PC Smith reported
8 unconsciousness. Almost a minute earlier, at 07.24.24,
9 Sergeant Maxwell initiated a call to control and in that
10 he can clearly be heard to say the following:

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

15 At that point in time, within 4 minutes of the
16 interaction with Mr Bayoh starting, there was no reason
17 to think this was anything other than the routine arrest
18 of a suspect. There was no reason to think Mr Bayoh
19 might die. As he had punched Ms Short to the ground
20 there was no embellishment the needed to justify the
21 arrest.

22 Accordingly, the question the Inquiry has to
23 consider is if there was no stamp, how does one explain
24 what Police Sergeant Maxwell said 4 minutes after the
25 first interaction with Mr Bayoh and a minute before he

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1 was noted to be unconscious? To suggest that this was
2 anything other than a report as to what had been
3 observed by those in attendance makes no sense at all.

4 The next point I would seek to address is the method
5 of restraint. There is in my submission no sensible
6 criticism of the way in which PC Walker brought Mr Bayoh
7 to the ground. Thereafter he was swiftly restrained.
8 He was on the ground by 07.21, noted as being in cuffs
9 by 07.22.24. At 07.23.13, DS Davidson described a big
10 restraint, indicating that leg restraints would be
11 necessary, doubtless because of the ongoing struggles of
12 Mr Bayoh. Mr Bayoh became unconscious within
13 two minutes.

14 There is no suggestion of death by asphyxia, there
15 is no question of anyone being anywhere near Mr Bayoh's
16 neck. Contrary to what has been said in certain media,
17 at no point did Mr Bayoh say, "I can't breathe".

18 This was a violent male who we now know to have been
19 in the grip of drug-induced psychosis, who needed to be
20 arrested, who struggled violently against that arrest.
21 The use of body weight to subdue him was entirely in
22 accordance with training and in the normal run of things
23 it would not have been expected to have any effect other
24 than the subduing of Mr Bayoh.

25 Next, should the police have acted differently, as

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1 Mr Bayoh was in psychosis? There are two answers to
2 this. First, there is no basis for a finding that
3 officers should have been able to diagnose psychosis.
4 They're not medics. They were tasked with dealing with
5 a man with a knife. Even if they had medical training,
6 this was still a police matter not a medical one. If
7 one wants to test that, I invite the Inquiry to consider
8 the evidence of Ms Limbert, a staff nurse at the
9 Victoria Infirmary. She was confronted by Mr Bayoh on
10 Hayfield Road. Her reaction, with all her medical
11 training, was not, "I had best phone an ambulance"; it
12 was, "I'm phoning the police".

13 In any event, even if the police had managed to
14 jalousé psychosis, it would have made no difference.
15 A man with a knife -- and I repeat that is the
16 assumption they had to proceed on -- a man with a knife
17 needs to be stopped whether or not he is psychotic,
18 indeed particularly if he is psychotic. Someone who is
19 psychotic -- we know from the evidence the Inquiry has
20 heard -- is not in mental crisis in the sense of being
21 depressed. Someone who is psychotic cannot be reasoned
22 with. Someone who is psychotic presents a clear danger
23 to the public and needs to be stopped.

24 As for the suggestion that an ambulance should have
25 been in attendance from the off, that cannot be accepted

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1 either. It is well-known that the ambulance service is
2 under unprecedented pressure. To require the police to
3 summon an ambulance whenever a suspect is acting oddly
4 or violently would be distinctly unhelpful.

5 Next, the actions once Mr Bayoh became unconscious.
6 Officers have basic first aid training. They followed
7 this to the letter. Mr Bayoh was placed into the
8 recovery position. Once he stopped breathing CPR was
9 started. An ambulance was called as soon as concerns
10 arose. There is no realistic criticism of what happened
11 after the loss of consciousness.

12 Why did Mr Bayoh die? There were multiple reasons
13 for the death. He would not have died if he had not
14 been restrained by the police, that much is clear. But
15 he would also not have died if he had not taken illicit
16 drugs, if he had not armed himself with a knife, if he
17 had not created a situation in which he needed to be
18 restrained, if he had obeyed lawful commands to stop, if
19 he had not assaulted Ms Short, or if he had not
20 continued to resist arrest so violently.

21 He was not killed by the police, he died because he
22 created a situation in which he had to be restrained and
23 where he was able to survive -- sorry, unable to survive
24 lawful restraint.

25 My Lord, by way of brief conclusions to this oral

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1 submission, this was, as I have said already, a tragedy.
2 It was a tragedy for Mr Bayoh and his family of course
3 and I do not seek to downplay that in any way, but it
4 was also a tragedy for Ms Short, who has lost her career
5 and whose only involvement here was to be the victim of
6 a violent assault. It was a tragedy for the other
7 officers who have been lambasted in the media and under
8 the microscope now for over eight years.

9 The first and overriding duty of a police officer is
10 the protection of life. Whatever virtues Mr Bayoh
11 displayed previously, on 3 May he acted in a manner that
12 posed risk to life. He took illicit drugs to the point
13 of psychosis, armed himself, took to the streets,
14 attacked passing cars and terrified the public. He
15 created the situation that led to his death. He
16 assaulted a female police officer and created
17 a situation in which he had to be restrained. No one
18 involved wanted Mr Bayoh to die. They only wanted him
19 to cease and desist but he struggled to the end. The
20 anger of the family is understandable but it is
21 misdirected.

22 The stark reality of the matter is that everything
23 that happened between 7.20 and 7.25 -- and it really is
24 that tiny window of time that matters -- was brought
25 about by what Mr Bayoh had done before then and his

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1 interactions with the police thereafter.

2 Everyone is sorry that Mr Bayoh is dead. It is
3 a death that no one intended, that no one relishes. It
4 is, as has been repeatedly recognised, tragic, but it is
5 not a tragedy for which those I represent bear any
6 responsibility in law or in morality. They did their
7 duty. They responded to a situation that needed to be
8 addressed. They dealt with a rapidly escalating
9 incident to the best of their ability and in accordance
10 with their training. The duty of a police officer is
11 not to be perfect, it is to act reasonably and in
12 accordance with the law. On any view they did just
13 that.

14 As a final observation, if I may, I would urge the
15 Inquiry to bear in mind the law of unintended
16 consequences. It is all too easy hearing matters in
17 intricate detail and with the benefit of hindsight to
18 try and imagine convoluted scenarios in which matters
19 might have proceeded differently. This was a dynamic
20 situation. As soon as officers engaged with Mr Bayoh,
21 matters unfolded rapidly. There was little opportunity
22 to do anything differently.

23 That might lead the Inquiry to consider whether
24 officers should have held off in the first instance.
25 That would be a very dangerous suggestion to make. The

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1 risk of defensive policing is clear. The dangers of
2 a lone individual acting aggressively and erratically
3 reported with a knife are equally clear.

4 If one needs an illustration, consider the example
5 provided by Ms Caffrey. She held her team off from
6 attending a knife incident and when they eventually went
7 in they discovered an arterial bleed. Given how quickly
8 such a bleed will lead to exsanguination, her decision
9 to delay even by a few minutes may well have led to that
10 arterial bleed. That is indeed what happens if
11 police officers are mandated to hold off and not engage:
12 people die.

13 For that reason, this Inquiry must take extreme care
14 not to make recommendations based on a minute
15 reassessment of the dynamic events of 3 May, which,
16 rather than addressing the understandable concerns
17 arising from the death of Mr Bayoh, instead put officers
18 and members of the public at greater risk. That would
19 be an even greater tragedy than the one that brings us
20 here.

21 My Lord, I'm obliged.

22 LORD BRACADALE: Thank you, Dean.

23 Now, on behalf of Mr Paton, Mr McConnachie.

24 Submissions by MR MCCONNACHIE

25 MR MCCONNACHIE: On behalf of Alan Paton we adopt the

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1 written submissions lodged on 23 June 2023. They
2 contain our submissions with regard to the conclusions
3 the Chair should reach based upon the available
4 evidence, both oral and written.

5 It is important for the public to understand that
6 the Chair's findings will be based on that evidence and
7 the facts he may infer therefrom and not on the
8 unsubstantiated narrative so often fed to the media over
9 the past eight years by those with an interest to do so.

10 Whilst our only interest involves Alan Paton,
11 understandably points made by others representing
12 officers relating to some of the issues may also be
13 relevant to him and no doubt, if appropriate, the Chair
14 will have regard to those.

15 In summary, we consider the evidence has
16 demonstrated that Sheku Bayoh voluntarily ingested
17 illegal drugs and alcohol on the evening of 2 May and
18 into the early hours of 3 May, that this cocktail caused
19 him to act in a strange, concerning and paranoid manner
20 which was a type of behaviour he had previously
21 exhibited when taking illegal drugs.

22 In the early hours of the morning he left the
23 company of his friends in such a manner that his best
24 friend, Mr Saeed, left to go after him to make sure he
25 was okay.

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1 When he caught up with Sheku Bayoh, he was not
2 prepared to be reasoned with, nor was he prepared to be
3 calmed down. Mr Bayoh violently attacked his best
4 friend, punching him repeatedly to the head and
5 attacking him with a weapon in the form of a clothes
6 pole.

7 As a consequence, his best friend ran away to escape
8 the violence and was so concerned that he contacted
9 Sheku Bayoh's partner.

10 Mr Bayoh then went to his home and armed himself
11 with a large kitchen knife and went out into the public
12 streets. Nearby he met a neighbour whom he knew, who
13 offered to help him and who invited him into his home.
14 Sheku Bayoh refused the offer of assistance and indeed
15 poked that neighbour in the stomach with the knife.

16 Neither his best friend, Mr Saeed, nor the neighbour
17 who knew him saw reason to call for an ambulance because
18 they felt he was suffering from a mental health crisis.

19 Mr Bayoh then strode off and was seen by numerous
20 people who were alarmed by the sight of a powerfully
21 built man striding with a purpose early on a Sunday
22 morning armed with a large kitchen knife. As
23 a consequence, a number of them telephoned the police.

24 Alan Paton was one of the first officers on the
25 scene. He and his colleague had reasonable grounds to

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1 suspect that Sheku Bayoh was armed with a potentially
2 lethal weapon. It appears, however, on the evidence,
3 the knife had been discarded moments before Mr Bayoh
4 came into contact with the police.

5 Alan Paton issued instructions to stop which were
6 ignored. As a consequence, he discharged his CS spray,
7 most of which, it appears, blew back into his own face
8 and incapacitated him for a period when he had no idea
9 what was taking place. By the time he had recovered
10 sufficiently, Mr Bayoh was already on the ground being
11 restrained by officers, he, Sheku Bayoh, having
12 assaulted PC Short, albeit that was unknown to Mr Paton
13 at the time.

14 Alan Paton's involvement in the restraint was to put
15 his baton forcibly across Sheku Bayoh's bicep. The
16 restraint was of short duration and during it Alan Paton
17 played what might be seen to be a peripheral role.

18 When it became apparent that Sheku Bayoh was
19 unconscious, Alan Paton attempted to assist his
20 breathing and in all likelihood the injuries
21 subsequently seen around Sheku Bayoh's mouth were caused
22 during the efforts to save his life.

23 Mr Bayoh died as a result of a combination of his
24 drugs intoxication, whilst struggling during what is
25 submitted to have been a lawful restraint.

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1 The other injuries he was later found to have were
2 minor and did not contribute to his death.

3 Various suggestions were made from various witnesses
4 about other options which could have been tried in an
5 effort to de-escalate the situation. It is submitted
6 that whilst no doubt theoretically possible, these were
7 unrealistic in the real world and in the particular
8 circumstances that pertained here.

9 Indeed, with hindsight it would be reasonable to
10 conclude that any such attempts may well have resulted
11 in potentially serious injury to an officer, or any
12 member of the public who had happened upon the scene.

13 Of the last two people who had interacted with
14 Mr Bayoh, both of whom he knew and presumably trusted,
15 one was left battered, bruised and running for safety,
16 whilst the other had a large kitchen knife poked into
17 his stomach.

18 The effect of Sheku Bayoh's interaction with his
19 neighbour who offered him assistance was for Mr Bayoh to
20 head off armed with the large kitchen knife, threatening
21 members of the public and attacking their vehicles.

22 On the issue of race, which featured certainly in
23 the questioning of Mr Paton, if there was a thought on
24 the part of anyone that this Inquiry was anticipated to
25 reach a pre-determined conclusion about the police,

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1 racism and its part in this incident, then the
2 announcement by retiring Chief Constable
3 Sir Iain Livingstone as regards institutional racism in
4 the police did nothing to allay those fears. Its
5 content and particularly its timing, having regards to
6 this Inquiry and the Terms of Reference which it has,
7 frankly astonished Mr Paton and as we understand many of
8 his colleagues. He considers that the Chief Constable
9 threw a skunk into the room whilst swiftly closing the
10 door behind him.

11 This Inquiry will no doubt in due course, on the
12 basis of the evidence which it chooses to hear, reach its
13 own conclusion about institutional racism.

14 Irrespective of that, however, the evidence to this
15 Inquiry has disclosed nothing to support any contention
16 that Sheku Bayoh's race or perceived race had anything
17 at all to do with this incident.

18 Despite repeated and detailed questioning of the
19 officers involved, particularly Alan Paton, not a shred
20 of evidence has been led to support such a conclusion.
21 In particular, it is submitted that the historical
22 complaints relating to Alan Paton's service as a police
23 officer are wholly irrelevant. The other allegations
24 came from disaffected family members who have used the
25 Bayoh family as a vehicle for their own issues.

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1 Although Alan Paton was questioned about these
2 allegations, their evidence has never been tested and
3 any suggestion about obtaining other evidence from
4 people who knew Alan Paton, both personally and as
5 an officer, has been discouraged.

6 Despite any evidence, Alan Paton has effectively
7 been on trial for the past eight years through the media
8 and on social media. This Inquiry has heard no credible
9 and reliable evidence to substantiate the allegations
10 repeatedly made against him. Furthermore, and arguably
11 more importantly, there is no evidence at all to support
12 any contention that Sheku Bayoh's race or perceived race
13 played any part in the decisions he made -- he,
14 Alan Paton, made on the morning of 3 May.

15 We submit that the evidence demonstrates that
16 Alan Paton did nothing wrong. He went out that morning
17 on a shift like any other and has not worked since. The
18 toll on him and his family has been immense.

19 The Inquiry has the medical evidence to substantiate
20 that and indeed it is submitted has seen it itself from
21 his own evidence and the way in which it was given.

22 As the learned Dean of Faculty has already
23 mentioned, we the public run from danger and various
24 members of the public ran or drove away from the danger
25 that Sheku Bayoh posed that morning. However, our

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1 police force, in the execution of their duty, need to
2 run towards the danger we are running away from.

3 Alan Paton and his fellow officers did that.

4 The death of Sheku Bayoh was an unforeseen tragedy
5 but the reality is that on the evidence before this
6 Inquiry he was to a very significant extent the author
7 of his own misfortune.

8 The police, including Alan Paton, were faced with
9 a dynamic set of circumstances where decisions had to be
10 taken as a matter of urgency, where the safety of the
11 officers and the public was paramount. On the evidence
12 the decisions taken were rational and reasonable and
13 were to no extent whatsoever motivated by race.

14 Those conclude the oral submissions on behalf of
15 Mr Paton.

16 LORD BRACADALE: Thank you, Mr McConnachie.

17 Now, I'm mindful of the need to give the
18 stenographer a break so what I'm going to do -- I think
19 the best plan is to stop for lunch and try to sit again
20 at 10 to 2.

21 (12.40 pm)

22 (The luncheon adjournment)

23 (1.53 pm)

24 LORD BRACADALE: Now, on behalf of Constables Good, Smith
25 and Tomlinson, Mr Jackson.

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1 Submissions by MR JACKSON

2 MR JACKSON: Thank you.

3 The history and sequence of events of this most
4 tragic incident have been rehearsed very fully by the
5 Dean of Faculty and Mr McConnachie. All I want to do is
6 to focus on a few issues which are of particular concern
7 to those I represent.

8 The first one is the stamp, whether there was
9 a stamping on PC Short. That of course is a very big
10 issue and one of the perhaps few areas where there is
11 conflicting evidence.

12 The evidence of Officers Tomlinson and Walker was
13 that Mr Bayoh stamped on PC Short after knocking her to
14 the ground. It is submitted that that evidence should
15 be accepted. They were both reliable and credible in
16 giving that evidence, spoke in a straightforward manner
17 and, I suggest, tried to assist the Inquiry.

18 The further evidence which is of great importance,
19 and it has been mentioned already but I remention it,
20 was the transmission by Sergeant Maxwell that
21 Nicole Short had been "stomped to the body and struck on
22 the head". The use of the word "stomped" is quite
23 significant because that is a word that Mr Tomlinson
24 tended to use in his statement and in his evidence, so
25 it is clear that he was saying that immediately. There

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1 was certainly not something made up later.

2 I am also conscious of course that Mr Nelson, who
3 lived in the ground floor cottage flat, says that the
4 stamp could not have occurred. We deal with that in
5 some detail in our written submission, but I touch it
6 just now. It is noticeable that where he was watching
7 from that he did witness Mr Bayoh walking and the first
8 officers arrive on the scene. He witnessed an officer
9 spray with something and the spray go back into the
10 officer's face, such that he put his hands to his face.
11 He saw Mr Bayoh change direction towards a female
12 police officer who he swung out to hit and he spoke to
13 more than one blow to the policewoman, stumbling back.

14 I would submit that Mr Nelson is not/was not in
15 a position to assert that the stamp did not happen. By
16 his own admission his view was obscured by the hedge and
17 parked cars. It was his evidence that although he
18 witnessed the punch, he was unable to see where she fell
19 and by his own admission he did not have a view of what
20 happened on the ground, he was unable to see Mr Bayoh's
21 feet.

22 Furthermore, he did not witness the baton strikes by
23 PC Tomlinson, which I return to, so that confirms he did
24 not witness everything which occurred. Any reasonable
25 witness, I suggest, who by his own admission had an

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1 obscure view and had left his window for a period in the
2 midst of a fast-paced incident would accept that the
3 stamp was a possibility. He refused to accept that.
4 That steadfast refusal indicates that he was not
5 a reliable witness.

6 So there is clear evidence of a stamp. That
7 evidence was not interfered with by the medical
8 evidence, which did not rule out the stamp had occurred.
9 Worthy of note possibly that although PC Short was
10 wearing her police issue vest designed to protect from
11 a stab injury, it would have offered some protection
12 against blunt force trauma as we have here.

13 The evidence of the stamp was not interfered with by
14 Paul Ryder. Indeed he was helpful in terms of the mark
15 on the vest. Nor was the evidence of Lorna Dawson
16 ruling out the possibility of a stamp.

17 There was no need for Officers Tomlinson and Walker
18 to lie about the stamp to justify their use of force.
19 The use of force was justified without the stamp.

20 In the face of that evidence, taken together, the
21 eye-witness with the medical and scientific evidence,
22 the evidence of Mr Nelson is simply not credible, nor
23 reliable on this issue. He is simply not in a position
24 to state with any certainty that the stamp did not
25 occur. His account is inaccurate in other respects, as

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1 we lay out in our submission.

2 Therefore, I submit to you, Chair, that the evidence
3 of Mr Nelson's account should be taken with the utmost
4 caution.

5 My other issue is the striking with the baton by
6 Officer Tomlinson. That too is a very serious issue
7 because the use of a baton is always a matter of very
8 great importance, so I deal with that in some detail.

9 PC Tomlinson arrived with PC Short. He was driving
10 the van. We know the times of arrival and the doors
11 opening, etc. He was unaware of the emergency
12 activation at that point.

13 By that time both PCs Walker and Paton had been
14 affected by their own spray. The first thing Tomlinson
15 saw, Officer Tomlinson saw, was PC Walker standing in
16 the area in the front of the Transit van, which they
17 referred to as the 19 van. He saw PC Walker put his
18 hands to his face. He formed the opinion that he was
19 doing this because he had been slashed or injured to the
20 face, possibly with a knife. He certainly saw that and
21 thought Walker had been injured and he couldn't see
22 Paton at all so he also may have been injured.

23 At that point Mr Bayoh was walking with purpose away
24 from PC Walker. He was given the commands to stop, get
25 down on the ground, which were ignored. The object of

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1 these verbal commands was to try and gain some control
2 of the situation.

3 Mr Bayoh was ignoring the commands, walking off. He
4 was warned that the spray would be used, that was also
5 ignored. He took a defensive stance and used his spray
6 twice. The first made some contact but had no effect.
7 He was continuing to shout commands which were being
8 ignored and eventually Mr Bayoh turned to face the
9 officer. He felt, the officer did, he was going to be
10 attacked and as he ran towards Officer Tomlinson,
11 Mr Bayoh veered off and ran after Nicole Short.

12 He witnessed a punch to the back of the head and she
13 fell forward. He described her as lying flat on the
14 road. When she tried to push herself back up he
15 believed -- when she tried to push herself back up, that
16 is when he saw the stamp taking place. He believed that
17 the officer had been killed, or there was an intention
18 to do that and he was clear in his evidence that his
19 PIRC statement on these matters should be taken as it
20 was closer in time to the incident.

21 He decided therefore to use his baton in defence of
22 both Nicole and himself and he struck to the head area
23 with his baton, first to the back of the head, to the
24 jawline, that didn't do much. He delivered two more in
25 the same area and at that point Mr Bayoh turned round

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1 and he wasn't sure whether the further strikes had
2 connected.

3 Mr Bayoh was then facing the officer with his fists
4 clenched in a boxing stance. Believing he was about to
5 be attacked, the officer delivered a further two or
6 three baton strikes to the arms. In delivering these
7 strikes the officer was acting clearly, in my
8 submission, in defence of himself and the other officer.

9 I therefore submit that the use of the baton was
10 justified in the circumstances, given his belief that
11 Mr Bayoh may have been armed with a knife, that
12 PC Walker had been injured, as he believed, the violent
13 attack on Nicole Short and his belief that Sheku Bayoh
14 intended to kill her and his belief that he himself was
15 liable to be harmed.

16 The other matter I would want to look at fairly
17 briefly, if I may, is the matter of restraint because
18 there are one or two things that are of particular
19 interest to those I represent in that.

20 On the evidence you have -- and again the Dean of
21 Faculty has been very clear on this -- it is clear that
22 the restraint was necessary, particularly in the context
23 of a situation in which the knife had not been recovered
24 and the aggression towards officers and violence towards
25 Nicole Short.

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1 Everyone corroborates the needs for Tomlinson to
2 deliver the baton strike to the Achilles of Mr Bayoh in
3 order to assist in gaining control. This is not
4 a tactic deployed in the heat of the moment, it was
5 a considered, proportionate approach to the level of
6 resistance and the real risk of escape when the knife
7 was yet to be accounted for.

8 The officers who were there, senior officers, more
9 senior than say PC Smith -- and I come back to him --
10 did not take any issue with the manner of the restraint.

11 It is suggested that they might have been aware of
12 a mental health crisis. We now know that Mr Bayoh's
13 behaviour appeared to be that he had taken drugs and had
14 become paranoid and aggressive as a result but the
15 officers could not have known that in this very
16 fast-moving incident. Officers, as was said, are
17 responding to the behaviour in front of them. They are
18 not in a position, nor are they qualified, to make
19 a medical diagnosis. They have to deal with the
20 behaviour they witness in line with their training and
21 the policies they are required to adhere to on use of
22 force. It is my submission that that is precisely what
23 was done in this situation.

24 What about the level of force applied, because we
25 have heard so many tonnes or whatever it was, half

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1 a tonne or something like that. I'm not quite sure how
2 that is actually worked out unless the officers were on
3 top of one another but I do take the point. The
4 restraint was necessary. It was relatively brief.
5 There was no evidence before this Inquiry that any of
6 the officers whom I represent used excessive force
7 during that restraint and, as our written submission
8 addresses, nothing at post mortem that would support
9 that.

10 The one final issue is the first aid given because
11 I think Officer Smith was under some questioning about
12 that. At the stage where Mr Bayoh was rolled on to his
13 left-hand side it began to cross Smith's mind that there
14 might be signs of excited delirium, as he called it,
15 although he had limited training on that and no
16 experience of it in practice. It was his evidence that
17 a period of around 1 minute elapsed between him standing
18 up, thinking about that and then turning his attention
19 back to Mr Bayoh and realising he was unconscious.
20 Other officers were also present.

21 He monitored Mr Bayoh's breathing, putting his face
22 towards his mouth. He was aware by then that he had
23 been struck on the head with a baton, so he checked for
24 any signs of injury. He continued to monitor, having
25 confirmed that Mr Bayoh was breathing, watching,

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1 checking for changes, able to see his chest was moving,
2 check for reaction by pressing his knuckles into the
3 bone at the top of the chest. Once he realised there
4 was unconsciousness, he summoned an ambulance.

5 His evidence was that his sole focus then was
6 monitoring and attending to Mr Bayoh. After three or
7 four minutes of that he was concerned that breathing had
8 stopped and so he turned him on to his back and carried
9 out a further check. So in my submission he did
10 everything that was right.

11 While he took some lead in this matter, he was not
12 the most senior officer there. At least two officers
13 were present who outranked him and who were therefore in
14 it supervisory positions. They saw what he was doing,
15 they did not intervene, they did not instruct him to do
16 anything differently, nor do anything that would have
17 been otherwise done by Mr Smith. They did not instruct,
18 for example, the removal of leg restraints or handcuffs.

19 I say PC Smith provided appropriate first aid in the
20 recovery position while he was still breathing and then
21 dealing with appropriately when that had changed. In
22 that situation I would submit that Officer Smith did
23 everything he possibly could and that could be demanded
24 of him and is not open to any criticism for either the
25 use of force, the method of restraint, or his attempts

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1 to give appropriate first aid assistance.

2 Now, those are the three issues I wanted to deal
3 with in particular and I don't think I will deal with
4 any more because they are covered by others, and indeed
5 I think very fully in our written submissions.

6 LORD BRACADALE: Thank you, Mr Jackson.

7 On behalf of Sergeant Maxwell and Constables Gibson
8 and McDonough, Ms McCall.

9 Submissions by MS MCCALL

10 MS MCCALL: Thank you, Chair.

11 In the opening submission on behalf of
12 Sergeant Maxwell and Constables Gibson and McDonough,
13 I stated that those officers believe that on 3 May 2015
14 they acted in accordance with their duty as
15 police officers and in accordance with their training.

16 The evidence heard in the Inquiry so far in our
17 submission bears that out. Because you do not intend to
18 issue an interim report we have not in our written
19 submissions set out any proposed recommendations, but we
20 do invite you to make certain findings on the facts thus
21 far and we invite the conclusion that Mr Bayoh, armed
22 with a large knife and confronting motorists in their
23 cars on the public road, presented a significant and
24 immediate risk to the safety of any person who
25 encountered him.

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1 We now know of course that Mr Bayoh had taken,
2 perhaps inadvertently it seems, the synthetic cathinone
3 Alpha-PVP and the Inquiry has heard that extreme
4 paranoia and an aggressive reaction are well recognised
5 patterns of behaviour with synthetic cathinones.

6 Now, while psychostimulant intoxication can cause
7 these sorts of behavioural changes, we invite you to
8 find that the intoxication was not the sole cause of
9 Mr Bayoh's behaviour. You should accept
10 Dr Maurice Lipsedge's retrospective diagnosis of
11 drug-induced psychosis. It is the development of such
12 a psychosis that properly and fully explains Mr Bayoh's
13 acutely disturbed behaviour, as experienced by his
14 friend Zahid Saeed and as witnessed by those members of
15 the public that called the police.

16 His behaviour was, we accept, entirely out of
17 character. He was clearly not himself, but numerous
18 members of the public were so alarmed that they called
19 999. The public rightly expected the police to respond
20 and it was the duty of the police to do so.

21 The first call made by the Kolbergs was initially
22 graded by the call handler as a priority 2 call. That's
23 a crime or incident where there is a degree of urgency
24 associated with police action. Unlike a priority 1, it
25 does not require an immediate response. The call

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1 handler having given it that priority,
2 Constable Masterton in the ACR assigned Short and
3 Tomlinson to attend. PC Tomlinson rightly asked if
4 there were any other units available to assist. This
5 was clearly not a priority 2 call.

6 The call that then came from Joyce Joyce was graded
7 as a priority 1 and in response to Tomlinson's request
8 and following the transmission by Mr Masterton of what
9 he called, "Another grade 1 call", Sergeant Maxwell was
10 correct, we say, to override the decision to deploy only
11 a single police unit. He was right to ask all units to
12 attend. You should find that the call was wrongly
13 graded as priority 2 and that Constable Masterton did
14 not initially dispatch appropriate resources.

15 We invite you to find that Sergeant Maxwell
16 responded appropriately to the risk identified in the
17 calls. He assessed the original call as corroborated by
18 the subsequent calls. He correctly identified it as
19 a high risk incident and threat to life, a priority 1.
20 It was clear from the evidence that Sergeant Maxwell
21 followed the usual and expected practice in relation to
22 knife calls of this nature. That was confirmed by
23 the police incident officer, Inspector Kay, and also the
24 ACR duty officer, Inspector Stewart.

25 Joanne Caffrey suggested it was wrong to deploy

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1 unarmed officers without a clear tactical plan or
2 without orders only to observe. Her criticism is
3 principally directed to the ACR. You should reject her
4 evidence on that point. As we have set out more fully
5 in our written submission, she did not have the
6 appropriate expertise or experience to give opinion
7 evidence on this point. Additionally, her opinion is
8 based on standard operating procedures that did not
9 apply to this situation and her understanding of the
10 command structure was flawed.

11 As well as asking all units to attend,
12 Sergeant Maxwell reminded officers of their safety
13 training. That's the message at 07.17.23. While that
14 was not required by any SOP in this situation, as
15 supervisor he was right to reinforce the "stay safe"
16 approach.

17 As the Inquiry knows, it was Sergeant Maxwell who
18 requested an ARV and a dog unit. This shows that he
19 carried out an appropriate risk assessment. Both the
20 inspectors on duty, Kay and Stewart, agreed that it was
21 right for Maxwell to seek specialist resources and as
22 Inspector Stewart put it, it demonstrated Maxwell was
23 thinking about the incident in the correct way.

24 You may wish to conclude based on the evidence of
25 Martin Graves that the control room ought to have taken

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1 the initiative and automatically considered sending
2 an ARV and a dog. There seemed to be some confusion on
3 the part of the controller as to the level of authority
4 required to deploy a dog unit. Certainly the officers
5 attending the incident did not consider that there was
6 clear communication from the control room about whether
7 specialist resources were being deployed and if they
8 were, when they might arrive.

9 By the time Inspector Stewart made his way back to
10 the overview room to begin his assessment of the need
11 for an ARV, Constables Walker and Paton were turning
12 into Hayfield Road and within about 10 seconds of
13 Mr Stewart's transmission at 07.20.13, Paton and Walker
14 had come upon Mr Bayoh, stopped their van and got out.

15 When officers attend an incident in the field the
16 Inquiry has heard that they have autonomy to act as they
17 see fit, in accordance of course with the law, their
18 training and any standard operating procedures, and
19 bearing in mind the potential need to justify whatever
20 action they take.

21 Sergeant Maxwell knew that the two most experienced
22 officers on the shift were attending and were arriving
23 first at Hayfield Road. Until he arrived at the locus
24 and had eyes on for himself, Maxwell was entitled to
25 expect his officers to exercise their discretion

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1 appropriately and, if they were unsure, to ask for
2 further instruction from him as a supervisor.

3 Like Inspector Stewart and Inspector Kay,
4 Sergeant Maxwell was dependent on feedback from officers
5 already in attendance for him to be able to issue any
6 further instructions.

7 Sergeant Maxwell said he accepted getting feedback
8 from those first on the scene. That was a reasonable
9 expectation on his part.

10 Having dispatched his team to the incident, as the
11 Inquiry knows, Sergeant Maxwell himself deployed to the
12 scene.

13 The situation between Mr Bayoh and those officers
14 initially attending developed extremely quickly and you,
15 Chair, should bear that in mind in reviewing the
16 evidence of what happened.

17 Can I turn then to Constables Gibson and McDonough.
18 They were the fourth pair of officers to arrive at the
19 scene on Hayfield Road. By the time they arrived, other
20 members of Response Team 4 had located Mr Bayoh,
21 physically engaged with him, Constable Short had been
22 assaulted and Mr Bayoh had been brought to the ground
23 and efforts were ongoing to try and restrain him,
24 including attempts to apply handcuffs.

25 Gibson and McDonough knew they were attending an

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1 incident where a man was reported to be in possession of
2 a large knife. They knew an officer had been injured.
3 They knew an emergency button had been pressed. By that
4 point the priority was to gain control over Mr Bayoh so
5 that he was restrained, meaning his arms and legs were
6 under control. The attempted restraint was ongoing,
7 putting everyone involved at risk, until he was under
8 full control.

9 It was clear to both Gibson and McDonough on arrival
10 that Mr Bayoh was displaying active resistance, pushing
11 up those officers who were attempting to hold him down.
12 The officers already trying to restrain him did not have
13 and were not getting control. Mr Bayoh was kicking out
14 his legs. That Mr Bayoh was actively resisting at that
15 time was confirmed by Kevin Nelson.

16 In terms of the use of force standard operating
17 procedure, officers can reasonably use force at level 3
18 to meet active resistance, that is control skills and
19 control skills expressly include the use of leg
20 restraints.

21 The fact that a number of officers were already
22 attempting to control Mr Bayoh does not mean that
23 Constables Gibson and McDonough should not have got
24 involved. As Martin Graves explained, using up to six
25 officers to try to effect a restraint on the ground is

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1 a safe methodology.

2 The proper method of applying leg restraints is to
3 have the subject in a prone position and to apply the
4 straps just above the knees and at the ankle. Both the
5 descriptions given by Gibson and McDonough to the
6 Inquiry, as well as Constable Gibson's demonstration of
7 the technique to control the legs, were
8 indistinguishable from the trained technique.
9 Mr Graves' evidence confirmed the technique demonstrated
10 by Constable Gibson was appropriate. There is no
11 evidence before the Inquiry to suggest that the straps
12 were not applied in the appropriate manner.

13 Once the Fast Straps were in place, the
14 preponderance of evidence is that Mr Bayoh was moved on
15 to his side. That is in accordance with the training.
16 So we invite you to conclude that the application of leg
17 restraints was performed in accordance with training and
18 that it was a justified and proportionate use of force
19 in terms of the SOP.

20 A number of questions have been asked of witnesses
21 to establish who was in command of the incident on
22 Hayfield Road and we invite you to conclude that the
23 command structure was that Police Inspector Kay had
24 overall command, Sergeant Maxwell was subordinate to him
25 and the constables were supervised by and answerable to

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1 both Maxwell and Kay. But until Sergeant Maxwell
2 arrived at Hayfield Road he was in no better position
3 than Inspector Kay, or indeed Inspector Stewart in the
4 ACR, to risk-assess and issue instructions.

5 Once he arrived at Hayfield Road we invite you to
6 find that Sergeant Maxwell's decisions and actions were
7 reasonable and appropriate. He was the last Team 4
8 officer on the scene, arriving at 07.22.29. Within
9 30 seconds of arriving he contacted the ACR but the
10 controller did not respond. Mr Bayoh was struggling but
11 it was clear to Sergeant Maxwell that the officers were
12 now quickly gaining control and within a very short
13 period the cuffs and Fast Straps were in place and
14 restraint was achieved.

15 Sergeant Maxwell at that point noted Mr Bayoh had no
16 obvious injuries. He noted that he was placed on his
17 side. He assessed the risk to Mr Bayoh and the officers
18 as low at that point. We say he was right to make that
19 assessment.

20 Joanne Caffrey appears to criticise Sergeant Maxwell
21 for leaving Constable Smith in control of the monitoring
22 of the restraint of Mr Bayoh. You should reject her
23 criticism. Her opinion was based on the Independent
24 Advisory Panel on Deaths in Custody Common Principles of
25 Safer Restraint. As at May 2015 these had not been

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1 adopted by Police Scotland. Ms Caffrey implicitly
2 criticises Sergeant Maxwell for not taking the role of
3 safety officer on his arrival. She is in our submission
4 wrong to do so. As at May 2015 Police Scotland had not
5 incorporated the role of safety officer into their
6 training or practice. Caffrey's criticism is without
7 proper foundation.

8 In any event, given their respective levels of
9 service, the undoubted experience and skill set of
10 Constable Smith and that Smith's expertise was evident
11 to Sergeant Maxwell in the actions he was taking, you
12 should conclude that Sergeant Maxwell's assessment of
13 risk and his decision to leave Constable Smith to
14 monitor Mr Bayoh while he checked on Constable Short
15 were reasonable.

16 Thereafter, when Mr Bayoh was found to be
17 unresponsive and Constable Tomlinson told Smith and
18 Maxwell that he had struck him to the head, Maxwell
19 immediately checked that an ambulance had been summoned
20 and told the ACR about the baton strike.

21 As soon as Mr Bayoh was seen not to be breathing,
22 Constable Smith and others began CPR and
23 Sergeant Maxwell immediately sought to expedite the
24 ambulance. Dr Pickering said that CPR was started at
25 the correct time.

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1 Insofar as it might be suggested that an ambulance
2 ought to have been called before officers began
3 an attempt to restrain Mr Bayoh, Sergeant Maxwell,
4 Constable Gibson and Constable McDonough cannot be
5 criticised since they only arrived after Mr Bayoh was on
6 the ground and other officers were attempting to gain
7 control.

8 Ms Caffrey insisted that an ambulance should have
9 been called to assist Mr Bayoh sooner than it was and in
10 her opinion when Maxwell called for an ambulance for
11 Constable Short, he should also have called for one for
12 Mr Bayoh.

13 That is in our submission an unfair criticism.
14 Sergeant Maxwell did not initially know about the
15 possible head injury. He did not know about the baton
16 strikes. He did not have any realistic opportunity to
17 assess whether Mr Bayoh might be suffering from drug
18 intoxication or a mental health crisis, or whether he
19 was displaying acutely disturbed behaviour in the
20 90 seconds between calling the ambulance for
21 Constable Short and the point at which Mr Bayoh became
22 unresponsive and an ambulance was called in any event.

23 Sergeant Maxwell chased up the ambulance for
24 Mr Bayoh on three occasions. An ETA was only provided
25 after the third time he did so. The paramedics were not

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1 family of Mr Bayoh have conducted themselves during the
2 course of the hearings and recognise how difficult this
3 process must be for them.

4 The submissions by CRER are of a slightly different
5 nature than those made by other core participants in
6 that the written submissions were largely prepared and
7 written by senior staff from CRER. This is in
8 accordance with the wishes of the Inquiry. It is the
9 specialist knowledge of CRER that is sought by the
10 Inquiry.

11 As was stated in the opening remarks, CRER will be
12 focusing on the role, if any, played by Mr Bayoh's
13 actual or perceived race in the events leading to his
14 death, in how the police dealt with the aftermath and
15 the subsequent investigation into his death.

16 CRER hopes to assist the Chair in answering the
17 question he must ask himself: would it have made
18 a difference if Mr Bayoh had been white?

19 Given this focus on the role played by Mr Bayoh's
20 actual or perceived race, it follows that CRER will
21 provide more comments on certain areas of the Inquiry's
22 work than others. CRER appreciates that there will in
23 time be a dedicated hearing focused on the matters of
24 race. Nonetheless, CRER has provided its written
25 submissions on the evidence heard over the past

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1 13 months.

2 Racism is a structure which exists at personal,
3 social and institutional levels in Scotland. Much of
4 the evidence that the Inquiry has heard has focused on
5 the actions and perceived omissions of the officers of
6 Police Scotland. CRER notes that Police Scotland is, on
7 the admission of its own Chief Constable,
8 institutionally racist and discriminatory.

9 CRER also welcomes the comments made today from
10 senior counsel for the Chief Constable and looks forward
11 to seeing those words turned into action.

12 As CRER set out in its opening submission to the
13 Inquiry, the issue of institutional racism was
14 considered by Sir William Macpherson in the Inquiry into
15 the death of Stephen Lawrence. This was referred to
16 this morning by counsel for the Chief Constable but
17 bears repeating. Sir William Macpherson considered that
18 institutional racism was:

19 "The collective failure of an organisation to
20 provide appropriate and professional service to people
21 because of their colour, culture or ethnic origin. It
22 can be seen or detected in processes, attitudes and
23 behaviour which amount to discrimination through
24 unwitting prejudice, ignorance, thoughtlessness and
25 racist stereotyping which disadvantage minority ethnic

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1 people."

2 CRER submit that the Inquiry's consideration of the
3 events surrounding Mr Bayoh's death must be considered
4 against this background of admitted institutional racism
5 and discrimination in the organisation to which those
6 police officers who dealt with Mr Bayoh and his family
7 in May 2015 belonged.

8 It is of course not only institutional racism which
9 arises in Scotland. There are other forms of racism,
10 including personal racism, having a prejudice against
11 people from ethnic backgrounds which have been
12 negatively affected by racialisation. Social racism,
13 the combination of power and prejudice which allows
14 racial hierarchies to be created and maintained. This
15 can be seen in attitudes, behaviours and social
16 discourse. Averse racism, a reluctance to engage with
17 black and minority ethnic people and/or a reluctance to
18 engage in racial discourse. Racial bias, an attitude
19 which favours white majority ethnic groups and
20 disfavors black and minority ethnic groups. Racial
21 empathy gap, a type of racial bias in which more empathy
22 and compassion is shown towards people from white
23 majority ethnic groups than towards people from black
24 and minority ethnic groups.

25 It is submitted that it will be obvious from these

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1 definitions and from some of the evidence heard by the
2 Inquiry that racism is not always overt and obvious.

3 The Chair will of course recall white police officer
4 after white police officer giving evidence to the
5 Inquiry that they had not witnessed racist comments,
6 jokes or banter within policing. Racist attitudes and
7 behaviour are, however, not always easy to identify and
8 they may take much more subtle forms than direct overt
9 racist language of the type that may be thought to have
10 been consigned to earlier decades. It may, for example,
11 be found in comments referring to "Isis in the station".
12 CRER considers that the Inquiry cannot simply look at
13 individual officers and whether they have used racist
14 language. The role of race in any context is never
15 a matter of simply considering whether someone may be
16 considered to be a racist. Racism is a structure which
17 influences society in the absence of explicit
18 demonstrations of prejudice.

19 CRER has identified a key theme arising repeatedly
20 during the course of the evidence. This key theme is
21 racial threat. This is dealt with in detail in both the
22 body of CRER's written submission and the appendix to
23 the submission. Put short, racial threat theory
24 describes how white majority ethnic populations being in
25 the dominant position in society and surround by

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1 pervasive racial stereotypes, treat people from
2 negatively racialised groups as a threat. Whilst it is
3 of relevance for other non-white minority ethnic groups,
4 CRER considers that especially in the UK black people
5 are disproportionately affected by perceptions of racial
6 threat.

7 This sense of threat leads institutions and
8 individuals to seek to impose control on black
9 populations and the individuals within those
10 communities. It results in black people routinely being
11 treated with less empathy than the majority white
12 population, being more readily suspected of wrongdoing,
13 denied the benefit of the doubt and punished more
14 harshly.

15 CRER considers that the issues of racial threat is
16 central to the question which the Chair must ask
17 himself: would it have made a difference had Sheku Bayoh
18 been white?

19 In its written submissions CRER seeks to identify
20 where the actions of various officers and others
21 involved with Mr Bayoh may be relevant to this question.
22 For example, in a country like Scotland where knife
23 crime remains sadly too prevalent, would reports of
24 a white man in possession of a knife conjure in the
25 minds of officers the murder of drummer Lee Rigby.

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1 Would a white man in possession of a knife on a Sunday
2 morning in Hayfield Road in Kirkcaldy be thought of as
3 a potential terrorist incident? Would a white man, who
4 was both smaller and lighter than PCs Paton, Walker and
5 Tomlinson, be thought of by officers who attended at
6 Hayfield Road to be "massive", "the size of a house",
7 and the biggest man that one officer had ever seen? Had
8 Mr Bayoh been white, would officers have considered him
9 to be such a threat that they were required to discharge
10 CS and PAVA spray within seconds of their arrival at
11 Hayfield Road?

12 CRER considers, as set out in its written
13 submissions, that there is evidence of racial
14 stereotyping on the part of officers who attended
15 Hayfield Road. When comparing the evidence of the
16 manner in which PC Nicole Short was treated by her
17 officers with the manner in which they treated Mr Bayoh,
18 it is submitted that there was a clear racial empathy
19 gap.

20 Sir, in summary CRER contends that several of the
21 officers who attended Hayfield Road were motivated by
22 a sense of racial threat. Those first to arrive sought
23 to restrain Mr Bayoh within a matter of seconds. There
24 was, it is submitted, a disproportionate use of force
25 against Mr Bayoh. CRER considers that the subsequent

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1 events which unfolded on Hayfield Road on that Sunday
2 morning in May 2015 would have been unlikely to have
3 transpired in the same way had Mr Bayoh been white.

4 CRER considers that the Inquiry's consideration of
5 race is of the utmost importance due to the potential
6 implications for the future of criminal justice in
7 Scotland. It is submitted that some of the evidence
8 before the Inquiry has, despite the welcome words of the
9 Chief Constable, highlighted a culture of denial of
10 racism in policing in Scotland.

11 Reforms to ensure that people at risk of facing
12 racism, are safe, respected and treated fairly in
13 situations involving police contact are vital.
14 Differential treatment, discrimination and racial bias
15 within policing are not simply a matter of rights,
16 ethics or social values. They do not simply raise
17 concerns about policing by consent, or even
18 institutional racism. They are a threat to the life
19 opportunities, wellbeing and the very lives of black and
20 minority ethnic people in Scotland. The importance of
21 the Inquiry's remit in regard to matters of race cannot
22 be underestimated.

23 CRER will endeavour to assist the Inquiry to the
24 very best of its abilities as the Chair considers its
25 assessment of the role, if any, played by Mr Bayoh's

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