

Transcript of the Sheku Bayoh Inquiry

Monday, 28 November 2022

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(10.00 am)

MR MARTIN GRAVES (continued)

LORD BRACADALE: Ms Grahame.

Questions from MS GRAHAME (continued)

MS GRAHAME: Thank you.

Good morning, Mr Graves.

A. Good morning.

Q. We were discussing hypothetical scenarios on Friday, and we'd gone through three of them.

The first one was the rendezvous point and the second was: observe, wait and feed back --

A. Yes.

Q. -- perhaps at a nearby location. And the third was de-escalate. I'd like to, if you remember, I said there were going to be four I was going to talk to you about, and I'd like to go over the fourth today.

A. Right, yes.

Q. You'll remember that we were -- I was asking you these questions in the context of a hypothetical reasonable officer --

A. Yes, correct.

Q. -- who complies with legal requirements and SOPs and these things.

So I'd like to move on to scenario 4, if I may. We

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1 are discussing scenarios where calls come in to the ACR,
2 and officers are deployed to an incident where the
3 subject is alleged to have had a knife, and perhaps have
4 been chasing cars.

5 A. Yes.

6 Q. And this hypothetical scenario is that these are -- this
7 is a high risk incident --

8 A. Yes.

9 Q. -- the calls have been graded 1.

10 A. Yes.

11 Q. So the fourth scenario I'm calling verbal dominance,
12 which actually was a phrase that you've used in your
13 Inquiry statement.

14 A. That's correct, yes.

15 Q. And at paragraph 73 for anyone that wants to look at
16 that, but we don't need to go to that at the moment.

17 So this, if I may describe it, is an authoritarian
18 approach, where the officer or officers are wanting to
19 try and control the individual by verbal dominance
20 approach through -- of communication?

21 A. That's correct, yes.

22 Q. And it's a methodology of trying to dominate the
23 individual by getting them to comply with your
24 instructions, to minimise the risk or minimise the
25 requirement to possibly use other force?

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- 1 A. That's correct, yes, it's a sort of a verbal shock
2 treatment using very loud, very simple, direct verbal
3 commands to try and verbally dominate the individual
4 into submission.
- 5 Q. And am I correct in saying that -- I've looked at other
6 paperwork in this matter, and you've also described it
7 as a hard stop?
- 8 A. Yes, yes.
- 9 Q. So in terms of the officers arriving and considering
10 that approach, if the officers use that approach, can
11 you help us understand, in terms of permitting the
12 officers time to observe and feed back to ACR, what
13 impact does this approach, the verbal dominance
14 approach, have on that?
- 15 A. Certainly on the feedback, as I said, hopefully the
16 initial information that they'd located the individual
17 would have been fed back immediately, which it wasn't.
18 However, once they engage with the subject, it's
19 unlikely that they're going to look to or possibly
20 consider transmitting because they're then engaged with
21 the individual and all of their attention needs to be on
22 that person to observe what they're doing and how
23 they're responding to those verbal commands.
- 24 Q. So this type of approach will delay or prevent,
25 certainly immediately, that feedback being given to the

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1 ACR.

2 A. The officers' attention would be on the subject not on
3 considerations of information to the ACR or to the other
4 units attending.

5 Q. Thank you.

6 In terms of permitting the officers time to attempt
7 to engage or communicate with the subject, what impact
8 would this tactical approach have?

9 A. It's a lot quicker, it's a lot faster approach. Once
10 that decision is made, taking a hypothetical, if the
11 armed vehicle, the armed response vehicle had turned up,
12 I would have very much have expected a hard stop from
13 them on Mr Bayoh in the street: out quickly, perhaps
14 weapons drawn, strong verbal commands, instructing him
15 to get his hands out where they could see them, possibly
16 lie on the floor, kneel on the floor, et cetera.

17 Q. But where there's no ARV there and it's officers who are
18 unarmed, uniformed officers, would that minimise the
19 ability of those officers to engage in the sort of
20 tactical communications we were talking about?

21 A. Once that decision had been made to utilise that type of
22 verbal communication, then yes. It sort of negates --
23 it's difficult to come back down from that until such
24 time as you have control of the individual and they've
25 complied with the instructions or the commands that

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1 you've given them.

2 Q. Thank you.

3 In terms of the ability of officers, if they're
4 engaged in that verbal dominance approach, what impact
5 would that have on their own personal ability to factor
6 information into the -- we discussed the National
7 Decision-Making Model, and new information being
8 factored in and reviewed and decisions being reviewed;
9 what impact would that approach have on --

10 A. It would -- obviously at this point their adrenalin,
11 their heart rate are starting to raise because of the
12 situation and the individual that they believe they're
13 dealing with. What they'll be focusing on is the
14 response from that individual against the commands that
15 they're issuing. So every time a command is issued and
16 a negative response or a resistance by lack of response
17 comes from the subject, then they will be factoring that
18 into that decision-making process, basically I'm telling
19 him to do something, they're not doing it, therefore
20 heightening the threat level, heightening their
21 perception of risk.

22 Q. Thank you.

23 To what extent would this approach permit officers,
24 reasonable officers, to assess whether -- to what extent
25 the subject may be suffering from a mental health crisis

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1 or to be intoxicated by drink or drugs?

2 A. You've still got your observational skills although they
3 are starting to reduce because of the increased stress
4 levels. You can still, you know, visually see how the
5 person is behaving. Some of the officers comment in
6 their evidence in relation to what they thought or how
7 they thought Mr Bayoh was looking, for want of a better
8 terminology, so that indicates to me that they were
9 observing, they were taking that information in. So,
10 yes, you can probably still factor that in as to whether
11 the person may be under the influence of drink or drugs,
12 or may be suffering some sort of mental ill health
13 episode. But, as I say, again, their main focus I would
14 suggest at that point is the fact that there's
15 non-compliance, because they've started down a road that
16 they've really only got one way to go. They've got to
17 make that individual at some point comply with what
18 they're after them doing. So if verbal dominance isn't
19 working they have very little option other than to
20 escalate from that point of view to make that individual
21 comply with the directions that they're giving.

22 Q. Are you able to help the Chair understand, are there
23 circumstances in which a reasonable officer would not
24 adopt this type of scenario, the verbal dominance
25 approach?

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1 A. I think if -- if the decision had been made to engage
2 Mr Bayoh in a more communicative way, possibly, as
3 I said, trying to talk to him through the window,
4 you know, asking how he was, what's going on, what's he
5 doing out on a Sunday morning, things like that, they
6 might have gleaned more information in relation to his
7 demeanour. Unfortunately, that wasn't the case. The
8 officers decided on this verbal dominance approach. So
9 I think it's difficult to -- it's difficult to sort of
10 step back from that. If you think of it as a ladder,
11 once you've decided to climb the ladder, it's quite
12 difficult to then try and climb back down the ladder,
13 once you've come in at a certain level. It's a lot
14 easier to come in at a lower level and escalate from
15 there. Although not impossible, but it is difficult.

16 Q. Talking about climbing that ladder, I wonder if we could
17 look at some of the documents at that time, and maybe
18 also clear up something from Friday.

19 A. Yes.

20 Q. Could we look at the -- a letter of instruction that you
21 were sent by Crown Office, and it's COPFS00008.

22 A. Is this the one 24 January? Yes.

23 Q. You anticipated, yes, 24 January 2018. This is a letter
24 of instruction from the Crown office. You remember on
25 Friday we talked about you being originally instructed

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1 by the Crown Office?

2 A. Yes.

3 Q. If we look through that, and if we go to the -- right
4 down, I think, to page 10, if I remember correctly.

5 There should be two documents in this -- doc ID, and
6 there is a second letter of instruction at the very end.

7 Here it is. So that's page 10, dated 22 February 2018.

8 A. That's correct, yes.

9 Q. So we will deal with this first of all while we have it
10 on the screen, and it shows that in fact a PowerPoint
11 called "PowerPoint Historic" was provided to you by
12 Crown Office under cover of this other letter?

13 A. From the second list of documents, yes.

14 Q. Right. If I'm right in my assessment, that will be
15 a document COPFS05973, which we -- I think we looked at
16 on Friday. It's a PowerPoint. If we just wait
17 a moment, that'll come up on the screen.

18 (Pause)

19 Do you remember we looked at this on Friday briefly?

20 A. That's correct, yes.

21 Q. And was this the PowerPoint that you were sent by Crown
22 Office?

23 A. Yes, having checked back over the weekend that was the
24 PowerPoint that was sent me, yes.

25 Q. Thank you.

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1 Then if we can go back, sorry, to COPFS00008 and
2 we'll go on to the second page of that document, so this
3 is the letter of instruction to you from Crown Office,
4 and do we see in fact that a number of training
5 materials were sent to you with that letter of
6 instruction?

7 A. Yes, that's correct. As I said, once I'd finished the
8 case, obviously I deleted all of these files, but this
9 was the original list, so yes, I was supplied that as
10 part of my original instruction.

11 Q. So although there may have been some confusion on
12 Friday, that was your letter of instruction?

13 A. Yes, that was.

14 Q. And you did receive training materials?

15 A. That's correct, yes.

16 Q. As part of those training materials, you did receive the
17 use of force SOP?

18 A. Yes.

19 Q. We see that at the number 1, "Police Scotland, Use of
20 Force SOP, version 1.03".

21 A. That's correct.

22 Q. And you also -- if we just move down that page slightly,
23 you will see at the very bottom there, not right, it
24 says:

25 "[Police Scotland], Probationer Officer Safety

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1 Course training manual (Version 2). Scanned in two
2 separate sections Modules 1-3 [and] 4-9"?

3 A. That's correct, yes.

4 Q. I think from memory on Friday you said that was the
5 redacted document that --

6 A. From memory, I said, yes, because I haven't got the
7 original document that was supplied, I remember it being
8 particularly heavily redacted, but I was aware of the
9 content -- the majority of the content anyway.

10 Q. Thank you. We will briefly look at that manual again,
11 PS11538A. I think we looked briefly at this on Friday.
12 I think that's the manual that we looked at, and you
13 confirmed that was the one that you'd seen before?

14 A. That's correct, yes.

15 Q. And then I'd like to move on to the use of force SOP,
16 and this is PS10933.

17 I'd like to ask you some questions about this
18 standard operating procedure.

19 A. Yes.

20 Q. In your experience, can you tell us, what is a standard
21 operating procedure?

22 A. It's a set of guidelines, sometimes referred to as
23 a policy, in relation to how officers are expected to
24 apply their powers under -- to use force under the
25 directions of Police Scotland.

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- 1 Q. Thank you. You will see that this is version number
2 1.03?
- 3 A. Yeah.
- 4 Q. And that's the one you were sent by the Crown?
- 5 A. Originally, yes.
- 6 Q. Yes. Can we look at section 2, please, which is just --
7 if we move down the page. Here, thank you. So we see 2
8 is called "Process or Procedure", and 2.1, I'd like to
9 go through these briefly with you --
- 10 A. Yes.
- 11 Q. -- and ask you some questions:
12 "The police Service ... recognises ...
13 an individual's right to life and the maintenance of
14 public order are paramount considerations when
15 contemplating the use of force."
- 16 A. Correct, yes.
- 17 Q. And 2.2 is:
18 "Any force used by a Police Officer or member of ...
19 Staff must be legal, proportionate, and reasonable in
20 the circumstances and the minimum amount necessary to
21 accomplish the lawful objective concerned."
- 22 A. Correct, yes.
- 23 Q. We've heard a reference to a mnemonic "PLANE":
24 proportionate, legal, ethical, necessary and --
- 25 A. Accountable. Accountable, necessary and ethical.

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- 1 Q. I'm sorry, I've mixed up my ethical -- I can't spell
2 today.
- 3 Have you heard of that mnemonic, PLANE?
- 4 A. Yes, originally it was produced as "PLAN", and then the
5 E, the "ethical", was added to it afterwards.
- 6 Q. Right, thank you. Well, I'll stick with 2.2 which I can
7 read out. So, any force must be legal, proportionate
8 and reasonable in the circumstances. I'm interested in
9 any views you have about that phrase: legal,
10 proportionate and reasonable. What does that mean?
- 11 A. They're all words drawn from sections of either
12 legislation or powers for officers, police officers, to
13 use force: reasonable, necessary, in the circumstances,
14 they all sit within legal definitions both within
15 England and Scotland in relation to ethical and lawful
16 use of force.
- 17 Q. So it depends on the particular circumstances which
18 exist at any given moment in time?
- 19 A. That's correct, and it doesn't just apply to police
20 officers, it also applies to members of the public as
21 well.
- 22 Q. Then it says:
23 "... the minimum amount necessary to accomplish the
24 lawful objective concerned."
- 25 A. Yes, that doesn't mean a minimum amount of force, it

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1 means a minimum amount to establish your objective. So
2 if the -- if the minimum amount would be dictated as
3 possibly lethal force, that means lethal force could be
4 justified in that -- those particular circumstances.

5 Q. Again, is it dependent on the particular circumstances?

6 A. Very much so, yes, every incident is different.

7 Q. Right. Thank you.

8 Then 2.3:

9 "Action must be proportionate in relation to the
10 competing rights of individuals and any force used
11 should be no more than is absolutely necessary."

12 A. Yes, the terminology sometimes used there is "you can't
13 use a sledgehammer to crack a nut", to give that sort of
14 analogy, it must be proportionate and in balance with
15 the risk or the threat that you're trying to prevent.

16 Q. So again vital to know what the particular circumstances
17 are?

18 A. Yes, the perception of the individual, you know, whether
19 incorrectly based or otherwise, is a major factor in
20 this sort of anticipation.

21 Q. And it says:

22 "In this regard, individual officers ... must be
23 prepared to account for their decisions and to show that
24 they were justified."

25 A. Yes, officers are sort of told that it's not just about

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1 telling or trying to explain why you did something, it's
2 also a necessity for those officers to be able to
3 explain why they didn't do something. So it's not just
4 about the actions that they take, it's about the actions
5 that they don't take. So you're looking at balancing
6 that decision-making process with regards to what
7 they've done against what they may not have done,
8 especially if they haven't -- if they've considered that
9 particular course of action and ruled it out, we would
10 then need to know the reasoning behind that action being
11 ruled out.

12 Q. We've heard some evidence of a phrase or a word called
13 "preclusion", are you able to explain that?

14 A. Exactly with what I've just said, it's precluding
15 an incident. If I give you again a hypothetical. If
16 I decide as an officer to use my baton on an individual,
17 the first question, or one of the first questions
18 I would expect to be asked is: why did you use your
19 baton? So you answer that question by giving your
20 justification as to why you used that particular
21 tactical option. However, the second question I would
22 then expect to be asked is: why did you not use your
23 irritant spray, why did you not use something else, why
24 did you not talk to them, et cetera, et cetera. So
25 looking at precluding those other tactical options and

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1 being able to give an explanation and a reason why that
2 particular tactical option was ruled out. So it might
3 be the case of: Why didn't I use my irritant? I might
4 say I was in an enclosed space, there were other
5 officers present and I didn't want to use it so I didn't
6 cross-contaminate the other officers. There I'm giving
7 an explanation as to a tactical option I have considered
8 and precluded for a particular reason.

9 Q. So it's not necessary to try every possible option?

10 A. No, no, officers are -- officers are given a tool box,
11 for want of a better terminology, and from that tool box
12 they draw what they believe to be the best tactical
13 option to deal with the situation that they are faced
14 with.

15 Q. Thank you.

16 And it then goes on to say:

17 "It is recognised as good practice for ... Officers
18 and ... Staff to record details in their notebooks of
19 all instances involving the use of force and the reasons
20 why force was necessary."

21 A. Yes, it goes back to the accountability side of it,
22 without notes, without evidence, without an explanation
23 as to why you've done something, it's very difficult to
24 then explain that to a third party.

25 Q. Thank you.

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1 Then 2.4:

2 "An arrest should be made as unobtrusively as
3 possible. In no circumstances must a prisoner be
4 harshly treated or have greater force than is absolutely
5 necessary to restrain them."

6 A. That's correct, yes.

7 Q. Right.

8 A. Again that just links back to the minimum force or,
9 you know, the minimum amount of force for the
10 circumstances.

11 Q. The minimum force necessary --

12 A. In the circumstances.

13 Q. In the circumstances, and preclusion --

14 A. Yes.

15 Q. Which you've explained. Thank you.

16 Then it says 2.5:

17 "The decision to use any defensive technique or
18 equipment in a confrontational situation is for each
19 individual to assess based on the circumstances
20 involved."

21 A. And that goes back to the comment I made about the tool
22 box, it's the officers' decision as to what they decide
23 to draw or use for that particular set of circumstances.

24 Q. So the individual officers do have an element of
25 discretion in assessing the appropriate level of

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1 response?

2 A. They do, because they are the one faced with the
3 particular set of circumstances. Any interrogation or
4 any investigation afterwards is being done by
5 a third party who wasn't present at that time. So
6 that's why the officer is in the best position to make
7 that judgement call based on the training that they've
8 been given.

9 Q. And then at 2.6, do we see:

10 "Indiscriminate or unnecessary use of force is
11 unacceptable and the individuals will be personally
12 accountable for such improper use."

13 A. Yes, it relates back, as I said, if it's their decision
14 to do something, they are reliable and they are
15 responsible for that decision.

16 Q. And:

17 "There are only two criteria for any use of physical
18 force, those being:

19 "[One] justification: where the force used is
20 reasonable and proportionate to the perceived threat."

21 A. That's correct.

22 Q. And:

23 "Preclusion: where other reasonable response options
24 have, either, been attempted and failed or are
25 considered to be inappropriate."?

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- 1 A. Yes, which is what I've just explained, yes.
- 2 Q. It's what you've explained already.
- 3 Then 2.7:
- 4 "The overriding principle is that any force used by
- 5 Police Officers and ... Staff must never be excessive.
- 6 Any force used must be reasonable based on the
- 7 individual person's perception of the threat that they
- 8 are immediately facing."
- 9 A. That's correct, yes.
- 10 Q. And so another important factor is the individual's
- 11 perception of the threat?
- 12 A. Yes, and I said the officers -- I said on Friday, the
- 13 officers' perception is a major part of their assessment
- 14 of the level of risk. Every officer will perceive
- 15 a situation differently. If we look at the officers in
- 16 this case, they were different sizes, different genders,
- 17 had different views on the particular incident that they
- 18 were -- they were being faced with, so they will have
- 19 all come up with a slightly different level -- initial
- 20 level of risk and an initial assessment of that
- 21 situation.
- 22 Q. We've heard some evidence last week now that the use of
- 23 force standard operating procedure and things that come
- 24 from the manual that is taught and in fact some of these
- 25 key issues are in the PowerPoint, and was that your

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1 understanding of the position, that these documents
2 mirrored each other?

3 A. Yes. As I said, obviously this document is far more
4 in-depth, as is the training manual. The PowerPoint is
5 a very basic set of bullet points, and it really depends
6 on how that is delivered as to how much information is
7 given to the officers during the training. As I said,
8 you know, the lesson plan that supports that PowerPoint
9 would, should give a lot more information in relation to
10 what key points should go from these documents and from
11 the training documents to the officers.

12 Q. We've heard some evidence about the use of force SOP
13 that indicates that that's given some priority or
14 pre-eminence in relation to training. Is that your
15 understanding of --

16 A. Yes, I mean, all of the training packages contain
17 a large element of use of force powers, and getting
18 officers to fully understand their legal requirements
19 under the law in relation to use of force, and how that
20 applies to their various tactical options.

21 Q. Thank you.

22 To go back for a moment to the four hypothetical
23 scenarios that I gave you, I wonder if it's possible,
24 with your assistance, to rank these in terms of force,
25 or the use of force, in the sense that you've explained

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1 to us: justification, preclusion, and the climbing of
2 the ladder that you talked about.

3 So if we look at the four options, the four
4 scenarios I gave, there was: the rendezvous point; the
5 observe, wait, feed back; de-escalation; and verbal
6 dominance. I wonder, if you could tell us, in terms of
7 the ladder, climbing the ladder, can you explain to us
8 where they would fall?

9 A. Basically as you've given them. Thinking about it
10 logically, going to a rendezvous point, there's no
11 interaction with the individual, so as a level of force
12 they haven't even got to presence yet, which is the
13 first step on the ladder. Basically an officer turns up
14 in uniform, "I'm here, I've come to sort this situation
15 out". So they haven't even got to presence.

16 It could be then if they are then parked in a marked
17 vehicle some distance away from the individual, that
18 could be classed as presence, they're visible, the
19 individual can probably see them, therefore they're on
20 the first step of the officer response.

21 I would then go to the communication skills, which
22 again is the next step on the officer response. So
23 although technically verbal dominance and the
24 negotiation and sort of communication go together on the
25 same level, I would suggest that it's an escalation to

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1 use verbal dominance skills, but you are technically
2 still on the same level of officer response, which is
3 communication skills. But I would suggest that the
4 negotiation, the de-escalation, would come first. If
5 that didn't work then an escalation to more verbal
6 dominance or more crisis communication, for want of
7 a better terminology, would be used by the officers.
8 But you're still technically on the same level of
9 communication skills.

10 Q. But the verbal dominance is the authoritarian, I think
11 was the word you used, approach. That would be the most
12 forceful?

13 A. Technically as per the training of the officers, it's
14 not -- it's on exactly the same level, it's just
15 a different form of communication, and it's for them to
16 decide what they think communication style is best
17 suited to that individual and to that situation. So
18 it's not an escalation, but if you think about, in
19 practice, whereby if I'm talking to somebody and trying
20 to sort of negotiate and de-escalate and I'm not getting
21 any response, I could then try that shouting verbal
22 dominance routine, but I would technically, as per the
23 officers' training and as per, you know, what we
24 instruct officers from the manual, that would be
25 technically on the same response level.

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1 Q. Thank you. If we continue with the use of force SOP,
2 can we look at 4.6, please.

3 We've heard some evidence about profiled offender
4 behaviour, and are you familiar with these levels?
5 There's levels 1 to 5, I think.

6 A. Yeah.

7 Q. From "Compliance" up to "Serious Aggravated Assaultive
8 Behaviour". Sorry, level 5 is "Assaultive Resistance",
9 and can you go up? And then 6 is "Serious/Aggravated
10 Assaultive Resistance".

11 A. Yes.

12 Q. You're familiar with all of those?

13 A. Yes, these are terminologies that have been in existence
14 for some time.

15 Q. Right. Then if we can go on to 4.7, please, it says:
16 "Officers Reasonable Response (Force Options)."
17 And this is the one with:
18 "Level 1 - Officer Presence"
19 Which you've mentioned:
20 "Level 2 - Tactical Communications"
21 And tactical communications I think -- is this what
22 you're talking about in relation to --

23 A. Yes, and, as I say, I think if you look at the bottom
24 bit of that, 4.7.3, it quite clearly says there:
25 "... commands and/or instructions to an offender,

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1 even in a forceful vocal manner."

2 So that would be your verbal dominance.

3 Q. From what you said a moment ago, does tactical
4 communication also include the lesser level of
5 communicating in a conversational tone?

6 A. Yes, it's any communication, whether verbal or
7 non-verbal, given by the officer or, you know, presented
8 by the officer. So that could be how you stand, where
9 you're standing, you know, what you're saying, how
10 you're saying it, it's the full rasp of communication
11 skills that we talk about.

12 Q. We've heard that within each level they're not neatly
13 defined, there can be a range within each level that's
14 given in this SOP?

15 A. That's correct, it's, as I said, it's a terminology and
16 a system that's been used for a very long time. Over
17 recent years a lot of services have sort of drifted away
18 from this in making -- and made it a lot more around
19 a sort of holistic approach in relation to assessing
20 risk and looking at the different levels of resistance
21 or the different levels of behaviour from subjects, and
22 then getting officers to select elements from each of
23 these that might better fit the situation that they're
24 being faced with. This can be a little bit rigid and it
25 can be used as a, as I said, as a continuum or

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1 a stepping ladder. Certainly the way it is -- it was
2 taught then within Police Scotland.

3 Q. And so can we move back up to level 1 there, please. So
4 this is the reasonable officer responses, level 1 is
5 "Officer Presence", moving up to the "Serious
6 Aggravated..."

7 If circumstances permit, and an officer wishes to
8 use minimum force, where would he start?

9 A. It's not a matter of starting anywhere on the ladder,
10 this is the situation, is if -- if the officer perceives
11 that the level of resistance from the individual is at
12 a certain level at the outset of the incident, then they
13 are sort of trained to come in at that level, or what we
14 class as the "plus 1 version" where they're allowed to
15 come in one level above that to be able to negate and
16 actually deal with that level of resistance.

17 So if we say, for example, in this situation, if we
18 could possibly go down the document, back up the
19 document, sorry, no, the other way, please?

20 Q. Up to the "profiled offender behaviour"?

21 A. Yes, up to the profiled behaviour.

22 Q. 4.6.

23 A. So if we go right up to the beginning and we take this
24 incident as an example --

25 Q. So there's "Level 1 - Compliance" there.

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1 A. Compliance, that's basically I say "Stand up, put your
2 hands up, come here, sit down, don't move" and they
3 comply, that's compliance, that's level 1, I'm getting
4 what I want from the communication level that I'm using.
5 If I don't get that, then I'm instantly being presented
6 with level 2, so I'm getting, you know, a lack of
7 response, the person's standing still, they're refusing
8 to stop coming towards me, they won't show me their
9 hands, then I'm getting a resistance by gesture, by
10 a lack of action basically. Therefore I may then
11 escalate then to some form of control measure whereby
12 I may adopt a different stance, I might use a different
13 communication style, or I may even draw a piece of
14 equipment to indicate to the individual that I don't
15 want them to come any closer to me. So that could be
16 an irritant spray, that could be my baton, I could adopt
17 a defensive stance, which is obviously a lot sort of
18 harsher than the body stance I may have been standing in
19 previously.

20 Q. So even the body language, the stance can be
21 an escalation up the ladder?

22 A. We say an awful lot more from our body language in these
23 types of situations than we do from our verbal
24 communication. Therefore, how we look, how we stand,
25 how we present ourselves to the subject can greatly

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1 change how that subject responds to us. That's why
2 presence is the level 1, because sometimes just getting
3 out of the vehicle or arriving at the scene in uniform
4 with your equipment on can have an impact or a desired
5 effect on the situation and those people involved in
6 that situation.

7 Q. We actually heard on Friday from a dog-handler in
8 Police Scotland who explained that sometimes even by
9 opening the van, the back of the door in the van and the
10 dog's there in the cage, the very presence of the dog
11 can have an impact?

12 A. Very much so, very much so, yes, you know, a dog just
13 being there, getting out the vehicle, the vehicle just
14 turning up and the dog barking in the back of the
15 vehicle can have an effect on individuals involved in
16 a situation.

17 Q. Right, thank you.

18 So moving on from the current situation, if I could
19 ask you some more hypotheticals. So where officers are
20 attending an incident, where the allegation is that the
21 subject has a knife and has been chasing cars, there has
22 been a call for all units to attend, from the sergeant
23 in charge --

24 A. Yeah.

25 Q. -- of the team, and in a situation where the officers

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1 arrive at the scene, I'd like to ask you some questions
2 about the tactical options that are open to them --

3 A. Yes.

4 Q. -- to hypothetical reasonable officers.

5 So let's think, first of all, about the first
6 officers arriving at any given scene in that scenario,
7 where the subject is seen to be walking briskly and his
8 eyes are bulging out of his head, it's been raining,
9 blowing a gale, and the subject is wearing a T-shirt,
10 his palms are held out, there's no knife visible in his
11 hands, he's already walking towards the officers when
12 those officers get out of the van, and an officer
13 becomes aware at that point that he, the subject, was
14 high on something.

15 So thinking first of all about that scenario, could
16 you tell us -- if we can look at what's on the screen,
17 the profiled offender behaviour -- what level of
18 behaviour would a reasonable officer view that subject?

19 A. At that point, until such time as they actually engage
20 with the individual, they haven't really got any level
21 to start with, because they haven't issued any
22 instructions, they haven't -- they've arrived, but the
23 person is still walking towards them, so it's very
24 difficult at that point to actually put the subject
25 behaviour onto the level.

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1 As you say, at that point I would be looking at the
2 information in relation to what they knew before they
3 arrived, as I said, specifically they believe that the
4 individual is in possession of a knife, but you're
5 looking at the fact of, as I say, it's a cold morning
6 the person's just wearing a T-shirt, it's raining, their
7 demeanour, their look would -- indicates to the officer
8 that there's possibly intoxication of some description.
9 I would be looking at the -- then thinking around how
10 might this person respond to me, and you've got the two
11 sides of the coin. It might be the case of, well, I get
12 out the vehicle or I approach and they don't like
13 police, they don't want to talk to us, they don't want
14 to do anything, you know, around what we're asking them
15 to do, or it may be the case of that I can try and talk
16 to them, I'll try and see what's wrong with them,
17 they're obviously, you know, intoxicated or possibly
18 intoxicated, I need to establish that, and that's
19 sometimes only available by being able to talk to the
20 individual, just to verify that fact.

21 Q. So if we can move back on to 4.7, which is the
22 reasonable officer's response, "Officers Reasonable
23 Response (Force Options)", and again at that moment in
24 time, before they've engaged with the subject, what
25 would a reasonable officer response be?

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1 A. Well, you've got the level 1 there, they're approaching
2 the individual, they get out the vehicle, they then
3 assess how that individual -- whether that individual
4 and how that individual responds to their arrival.
5 You know, they may run away, they may come and talk to
6 you, they may ignore you. So you've got those three
7 things to then weigh up as to what are they doing and
8 why are they doing it.

9 Then you would go to level 2, so you would engage
10 that individual, try to engage that individual in
11 conversation, that may be something as simple as "stand
12 still, what's up, what are you doing, hello", anything
13 like that, and what sort of response then do I get, do
14 I get a nil response or some sort of physical or verbal
15 response from that attempted communication.

16 So you've got 1 and 2 very quickly together, you
17 turn up and you try and engage the individual in
18 conversation.

19 Q. So at this point, is this about gaining more information
20 to allow officers, reasonable officers, to then feed
21 that into their National Decision-Making Model?

22 A. Yes, if you've -- from your observations if you're
23 believing that individual may be intoxicated and taking
24 into consideration, as I said, all those other factors
25 about the weather, the dress of the individual, how

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1 they're acting, you're trying to establish, you're
2 trying to sort of go over what you already know and
3 trying to make sure that that is the facts as they are,
4 or is something else amiss, is something else afoot
5 here.

6 So you're actually trying to use questioning or
7 communication to verify what you believe may be the
8 situation that you're dealing with.

9 Q. So at this, in this scenario, would a reasonable officer
10 be considering whether this was maybe a medical
11 emergency or a medical matter?

12 A. Certainly in relation to drink or drugs, at that point,
13 then yes, again you would have to take that medical
14 consideration into account, yes.

15 Q. We've heard some evidence from others about a condition
16 known as ABD.

17 A. Yes.

18 Q. You're familiar with that --

19 A. Yes.

20 Q. -- we know from your Inquiry statement. At this moment
21 in time, given the scenario I've given you, would
22 a reasonable officer be contemplating that as
23 a possibility?

24 A. At that particular time, I believe not. There's
25 insufficient, what we call the warning signs, there yet.

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- 1 You have some in relation to the behaviour, but the
2 behaviour in itself, although unusual, is not
3 particularly bizarre. You start to build those -- you
4 would build that through that conversation and more
5 observation of the individual to see, to consider
6 whether that person may be having some sort of episode.
7 At that point are you dealing with somebody who is, as
8 I said, intoxicated rather than suffering from ABD, or
9 if it's not intoxication, could it be a mental health
10 episode, could it be some sort of mental ill health.
- 11 Q. And bearing in mind the possibility it might be a mental
12 health episode or intoxication or some other condition,
13 what would a reasonable officer do, bearing that in
14 mind?
- 15 A. I would be expecting them to try and verify that thought
16 process. If that's their belief at that time, there's
17 two things. One, they want to try and verify it through
18 communication, through further observations, but at some
19 point once you make that decision that that is the case,
20 and it's not just somebody who is upset, possibly
21 agitated or possibly potentially violent, once that
22 decision is made, then I would expect that you would go
23 down the -- treating that individual as requiring
24 medical assistance of some description.
- 25 Q. How is it that officers would seek or obtain medical

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1 assistance for someone?

2 A. That could be one of two ways, they may call ambulance
3 services to the scene, if it was safe to do so, I would
4 suggest in this situation at that point it possibly
5 wasn't, until such time as they knew that Mr Bayoh was
6 under control and the knife had either been located or
7 ruled out, or if they made the decision to approach or
8 arrest Mr Bayoh or detain him, either by taking that
9 individual to a suitable medical facility, a hospital
10 et cetera, or taking them to the police station whereby
11 medical assistance could be called to the police
12 station, that again would be that judgement call
13 dependent on the level and the type of medical
14 assistance that they believed the individual required.

15 Q. Thank you.

16 To what extent, if at all, at this moment in time,
17 in this scenario, would a reasonable officer consider
18 withdrawing or pulling back?

19 A. I think once that -- once you've made the decision to
20 engage and to communicate with the individual, it's very
21 difficult and it would appear a little bit strange for
22 an officer to just walk away from that situation.
23 You've got to try and then maintain that communication,
24 maintain that -- build that rapport with the individual,
25 with a view to trying to persuade them, for want of

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1 a better terminology, to actually comply with what
2 you're trying to do and that you're trying to assist and
3 trying to help them. So it would be very difficult, and
4 I think unwise to some degree, based on the assessment
5 of risk to the public at that point, to then just pull
6 away and withdraw and leave that individual in the
7 street.

8 Q. Okay. At this moment in time, to what extent would
9 a reasonable officer be feeding back information to ACR
10 and their colleagues on the radio?

11 A. I would hope that once that initial assessment had been
12 made that that would be done. It may well be that, as
13 I say, if one officer is engaging, one officer is acting
14 as the contact officer, that the cover officer may find
15 it -- an opportunity to then transmit what is happening,
16 because, as I've said before, the contact officer is now
17 engaged solely with the individual, and it's very
18 difficult for them to break off or think about other
19 things other than, you know, observing and trying to
20 assess the individual and the situation that they're
21 faced with.

22 Q. But their colleague could --

23 A. Their colleague could, or again if further officers
24 arrive and they're not involved in that initial contact
25 and they're standing back, it could well be a case of

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1 that's the opportunity for them to then give an update
2 to the control room or an update to the sergeant or
3 other unit attending of what's happening and what
4 they're seeing when they arrive.

5 Q. Thank you. At that moment in time, prior to the
6 engagement you've been talking about, if an officer,
7 a reasonable officer, is endeavouring to comply with the
8 preclusion principle that you explained, where would
9 they start?

10 A. They're looking at the different options, as I said,
11 thinking of the element of the edged weapon, the knife,
12 all of their tactical options that they should be
13 considering should be trying to encourage them to deal
14 with the individual at a distance, ie not close them
15 down, not get within their sort of arm's reach --

16 Q. We've heard the phrase "reaction gap"?

17 A. Reactionary gap, yeah, I mean an initial reactionary gap
18 when just dealing with an individual, not an armed
19 individual, is 6 to 8 feet, an arm and a half's length,
20 it's to give you the time to react to them moving or
21 them doing something towards you. When we start adding
22 edged weapons, that gap has to greatly increase, and
23 we're looking at, you know, three -- possibly three
24 times, four times that distance which may sound a bit
25 strange, but if I consider an individual may be in

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1 possession of a weapon I maybe want to be 20 plus feet
2 away from them, across the other side of the street,
3 trying to talk to them at a distance, you know, sort of
4 waving at them, shouting at them, or, as I said, with
5 some sort of barrier between me -- if that distance is
6 reduced, some sort of barrier between myself and that
7 individual, whether that be the car door, the van door,
8 you know, a bollard, a bus shelter, something that's --
9 if the distance can't be maintained then I want the
10 barrier. So ...

11 Q. So if an officer, a reasonable officer, is trying to
12 comply with the principle of preclusion, where would
13 they start at that moment in time?

14 A. I would be starting with -- well, presence is there, I'd
15 be starting with communication.

16 Q. And as you've told us there's quite a range in terms of
17 tactical communications; what would a reasonable officer
18 start with in terms of communication?

19 A. As I say, I think an initial -- an initial response to
20 the individual, trying to engage them, trying to get
21 them to acknowledge that you're there, trying to get
22 them to communicate verbally, possibly issuing some
23 basic commands, you know, "just stay there, can I see
24 your hands, don't come any closer", giving them those
25 verbal cues, that may well then be added to -- with

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1 a non-verbal cue of putting your hands up and giving
2 them the international stop sign, just sort of "stay
3 where you are", you know, "show me your hands", things
4 like that, and then if I'm thinking of other tactical
5 options, as I said, I'm always thinking about: how can
6 I deal with this individual at a distance, so
7 I personally, my tactical option in these situations
8 would have been very similar to what the officers did
9 which would be drawing my irritant spray because it's
10 specifically designed to be discharged and deal with an
11 individual at a distance rather than in close proximity.

12 Q. Well, let's move on to another scenario where, following
13 on from what we've been talking about, if the officers
14 embark on verbal commands, and they are not complied
15 with by the subject, so looking again at things from the
16 hypothetical reasonable officer scenario, can we go back
17 to the profiled offender behaviour, 4.6, which is up the
18 page. So at this point the subject has not complied
19 with the instructions from the officers.

20 If we could just come down a little bit, that's
21 lovely. Can you tell us what behaviour -- that's fine,
22 thank you -- in terms of looking at that profiled
23 offender behaviour, what would a reasonable assessment
24 of that behaviour be?

25 A. That reasonable assessment, as I said, you've got some

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1 level 2 but you are into level 3 because you're getting
2 non-compliance, the person is not doing what you're
3 commanding them or instructing them to do, and that
4 could be as simple as "Stand still", they continue to
5 walk towards me, "Stop", they continue to walk towards
6 me, so you are at that passive resistance, as we call
7 it, because they're not complying with directions at
8 that time.

9 Q. We've heard again that between the levels there's not
10 a clear dividing line --

11 A. No --

12 Q. -- and that things can move from one to the other, is
13 that correct?

14 A. That's correct, yes.

15 Q. What difference does it make if the person is already
16 walking towards the officers when they get out of the
17 van?

18 A. You then have to think of why is the person not
19 complying with an instruction to stop and stand still.
20 Obviously there's many reasons why that might be the
21 case, it may be the case that they just don't like
22 police and they don't want to do what they're being told
23 by a police officer, it could be that they don't hear
24 you, and they have a hearing impairment, or it may be
25 that there's some other reason whereby their rational

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1 response to a direction may not be being processed. So
2 again we would start thinking about the alcohol and drug
3 intoxication or the possible, you know, is it a language
4 issue, is it a possible mental health issue whereby this
5 person just doesn't have the capacity to respond in the
6 way that we would expect them to do.

7 Q. In light of that, can we move down again to 4.7, in
8 terms of the reasonable officer response to that
9 scenario, are you able to assist us with what
10 a reasonable officer -- how they might respond?

11 A. Well, as I said, going back to the training and how
12 officers are taught to assess these, if we just go down
13 a little bit further, please, we've tried officer
14 presence, a tactical communication of sorts has been
15 attempted, then we're being met with level 3, so we're
16 now looking at the possibility of using level 3,
17 "Control Skills", or possibly, if justified, a level 4,
18 "Defensive Tactics".

19 Q. Can we look at these levels for a moment.

20 A. Yeah.

21 Q. "level 3 - Control Skills:

22 "This is the lowest level of physical use of force
23 where there is some form of restraint applied to
24 an offender. [Could be] ... placing a hand on
25 a [person], up to [handcuffs] ... [or] leg restraints."

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1 In this situation where there is a question about
2 whether the person has a knife in their possession, you
3 can't see the knife, but you've not excluded that as
4 a possibility, to what extent would a reasonable officer
5 use level 3 skills?

6 A. So go back to, as I said before, I would preclude that
7 as a tactical option, or any of those as tactical
8 options because it needs me to be in close proximity to
9 the individual. I would immediately be looking at
10 defensive tactics in that situation because there's a
11 risk of the knife, of the edged weapon, and I'm looking
12 at things that I can use to maintain that distance from
13 that individual. So, yes, I'd be moving away, I'd
14 probably be backing away or considering getting back
15 into the vehicle, but I would also be considering my
16 irritant spray, using my CS or my PAVA spray, possibly
17 drawing a baton and using the baton as a distancing tool
18 rather than a striking tool to keep that individual at
19 bay or as I said, looking at some other form of
20 defensive posture or defensive positioning.

21 Q. Do we see in the level 4 description at the end:

22 "These tactics are generally perceived to be
23 strikes, whether delivered by means of empty hand
24 techniques or baton strikes, but also include the more
25 reasons defensive handcuffing techniques and the use of

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1 CS Incapacitant Spray."

2 A. Yes, when they're talking about robust, defensive
3 handcuffing they are talking about applying the
4 handcuffing and using the handcuff to regain control and
5 take the person to the floor. Again I would rule that
6 out as a tactical option in this situation because it
7 requires me to get within touching distance of the
8 individual. Out of all of those I'd be looking at
9 either my incapacitant or my baton and although they're
10 all lumped in together there, what we also talk about is
11 the injury potential of any use of force that we use or
12 any piece of equipment that we use. A baton strike has
13 far more injury potential than an incapacitant.
14 Therefore if I'm looking at the least intrusive option
15 or the least -- minimum amount of force, the sensible
16 selection for me and the minimum amount of force
17 selection for me would be an incapacitant spray.

18 Q. Right. Then also it goes on to say:

19 "In circumstances where use of Specialised
20 Operations are authorised use of Public Order Tactics,
21 Police Dogs, and specialist weapons available to
22 Authorised Firearms Officers such as ... [a] Launcher
23 [or a] Taser may be considered as Defensive Tactics."

24 A. Yes.

25 Q. And again does it appear that within level 4 there's

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1 this range of options where one could escalate from
2 empty hand techniques right up to launchers and tasers?

3 A. Again, sorry to sort of thing -- I wouldn't, I don't
4 like that terminology "escalating up to", because
5 a taser is a far less injurious option again to a baton,
6 they're all defensive tactics, the injury potential of
7 some of those like the L104A1, it's a basic -- it's a
8 baton gun, it's a baton round, so you're getting hit by
9 a hard bit of plastic with a rubber end on at great
10 velocity, bruising, et cetera, but a less lethal option
11 -- it's classed as a less lethal option. Taser is
12 a less lethal option. A baton strike, you know, broken
13 bone, possibly, you know, a serious contusion,
14 et cetera, et cetera, so there's different injury
15 potentials to each of those, but yes, they're all
16 defensive tactics open to police to deal with that level
17 of resistance.

18 Q. So if wouldn't be fair for me to categorise that as
19 an escalation because they are all different tactics
20 within that defensive tactic.

21 A. They are all different tactics, they all have their
22 different merits but they also have a different level of
23 injury potential, therefore when assessing a minimum use
24 of force, that question goes back to what we were
25 talking about earlier, why did I choose a baton and not

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1 an irritant spray, why did I use a taser, a baton gun,
2 et cetera, rather than ... So that question has to be
3 asked. Although they're all lumped together and I said
4 this is where the difficulty comes -- they're all
5 an option, however you would still have to look at why
6 that particular option was chosen in that particular set
7 of circumstances.

8 Q. And depending on the circumstances, it may be that you
9 simply don't have a taser available?

10 A. Yeah.

11 Q. Or you do not have a police dog available or an ARV
12 available?

13 A. Yes.

14 Q. But you may have other options available to you.

15 A. Yes, as I say, and at this point in the situation
16 a standard patrolling officer would have access to an
17 irritant spray, handcuffs and batons and then obviously
18 their array of unarmed defensive tactics.

19 Q. Or it may be that an officer does not have a baton but
20 has a spray --

21 A. Yes.

22 Q. -- and that would also be a factor which they would
23 consider when determining what to preclude?

24 A. Well, certainly going to preclusion, if one officer
25 didn't have their baton in their possession at the time,

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1 so therefore it's an instant preclusion, it's a tactical
2 option that's not available to them. They would have to
3 explain why it wasn't available when they should be
4 carrying it.

5 Q. Thank you.

6 Again, even at this stage, where we're talking about
7 the profiled offender behaviour moving to 2, maybe 3,
8 again is this relevant information for a reasonable
9 officer to factor into the National Decision-Making
10 Model and the risk assessment?

11 A. Yes, because they are looking at the level of threat,
12 going back to the NDM, we categorise or we talk about
13 categorising risk into three sections: the person;
14 objects involved in the situation; and the location, the
15 place, so P-O-P, "POP". So, the person: you're looking
16 at their demeanour, their build, their make-up. In
17 relation to objects, we're looking at the possession
18 of -- the believed possession of the knife. And then
19 the place: we're looking at an open area which, as
20 I said on Friday, is quite a difficult position to deal
21 with individuals and try and contain them. So all of
22 those three elements and then the -- what that person is
23 doing, the non-compliance, the resistance levels, is all
24 pushing into the NDM and being assessed as we go forward
25 through the incident.

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1 Q. And as well as that process being carried out, could you
2 help us, what would a reasonable officer be doing in
3 terms of providing feedback to ACR and other officers?

4 A. As I said, I would hope that some or other, one of the
5 other officers would be transmitting information where
6 possible but, as I said, certainly the first officer
7 engaged is unlikely to be doing anything until such time
8 as they have a, what you might class as a natural gap in
9 the situation. The situation developed ever so quickly,
10 and the focus on feeding back to others would be
11 negated, would be sort of pushed to one side, because
12 the officers are fully engaged in the situation and in
13 the -- dealing with the level of threat that they're
14 perceiving within that incident.

15 Q. Thank you.

16 Well, moving on now, I'd like to ask you some
17 questions about a reasonable response if sprays are
18 used, CS or PAVA, and the subject simply fails to react
19 to the use of that spray and then walks away from
20 officers.

21 A. Yes. Both of the two irritant sprays have slightly
22 different effects and also have slightly different
23 reasons as to why they may be ineffective. On average
24 we talk to officers, or we train officers, in the fact
25 that approximately 1 in 10 of the population, which

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1 rises when we start looking at intoxication and mental
2 ill health, but on average, a normal individual,
3 approximately 1 in 10 of the population are not affected
4 by either CS or PAVA. They work differently. PAVA
5 needs to be targeted at the face to be fully effective,
6 so again if you don't get them in the face with the PAVA
7 it's less effective. CS however affects the respiratory
8 system and if you get it in the proximity of the upper
9 body and the chest you tend to get a result from that
10 irritant spray.

11 So there's lots of reasons why either or wouldn't
12 work or might not work, but they both -- a lot of that
13 depends upon target acquisition, being able to hit the
14 target that you're aiming at. It doesn't matter about
15 how much you get on them, basically as long as you get
16 something on them it will work. But you take into
17 consideration, if you get no effect whatsoever from
18 either or, and considering they were both discharged in
19 this situation, you would start to look at the reasons
20 why that individual wasn't affected. So if you're happy
21 that you've hit the target and you've got the irritant
22 onto the individual, you start thinking then: is this
23 person 1 of 10 that isn't responsive, or is it something
24 else like intoxication, drug intoxication, or some
25 sort of mental health episode that's preventing this

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1 individual from showing any signs of irritant or of --
2 effect from those sprays.

3 Q. Can I just go through some of that again. You've talked
4 about different factors and the percentage of the
5 population who are not affected. Is weather also an
6 important factor?

7 A. Again, that would be whether I hit the target. If it's
8 a really windy, nasty, horrible day and I spray and it
9 ends up halfway down the street, it's quite common for
10 officers to miss targets, therefore that part of the
11 assessment is: did I get the target I was after? If
12 not, do I re-apply, do I try again? Possibly a bit
13 closer or from a different direction. So that has to be
14 factored in. But if I'm happy that I've hit the target,
15 and I've got the substance on to the individual, then
16 the assessment moves to: why is the person not
17 responding to it?

18 Q. And we've heard some evidence that with PAVA you're
19 aiming for the eyes or the face area; is that correct?

20 A. Yes, that's correct.

21 Q. And with CS it can be more in the vicinity --

22 A. Yes, you're still hopefully aiming for the eye, but with
23 CS you can still get a desired effect by hitting the
24 upper torso and the body because of the design of what
25 it is; as soon as it hits the body it starts to

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1 biodegrade and basically it's breathed in by the
2 individual.

3 Q. So that would include if an officer had struck the
4 shoulder area or the upper chest area?

5 A. Yes, certainly with CS, yes.

6 Q. Yes. Then you've mentioned that an officer,
7 a reasonable officer, would be thinking about the
8 reasons why that subject is not affected, if they've
9 sprayed them, and you mentioned intoxication or mental
10 health?

11 A. Yes, correct.

12 Q. So at this stage if the reasonable officer is asking
13 themselves: what is the reason why these sprays haven't
14 had an impact? What sort of things would a reasonable
15 officer be considering?

16 A. Well, if you're looking at the fact of, have I hit the
17 target, yes or no? If you think no, you have an inkling
18 that the weather may have taken it away, then I'd be
19 looking at reapplication, so I'd be looking at
20 re-spraying. If I'm happy that I've hit the target then
21 I would certainly then be looking at the reason why and
22 I would be starting to go down the line of: this person
23 is either intoxicated, because alcohol can reduce pain
24 barriers, et cetera, drugs, exactly the same, or
25 a mental ill health episode, certain psychotic --

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1 antipsychotic medications can affect pain receptors, can
2 change how people respond to that sort of irritation.

3 Q. If a reasonable officer has been considering these
4 factors and takes the view that perhaps the person, the
5 subject, is intoxicated, drink or drugs, or is having
6 a mental health crisis, what would the response be by
7 that reasonable officer?

8 A. After, after spraying, so after discharge of the spray
9 and you've made that thing, that would then preclude
10 that as a tactical option again, so you wouldn't re-use
11 it, and you would be looking at then changing to some
12 other form of control or some other form of defensive
13 skill.

14 Q. Right, well, before we move on to other defensive
15 controls, in terms of identifying perhaps a medical
16 emergency, either because the person's intoxicated or
17 they're having a mental health crisis, what would be the
18 response by a reasonable officer be?

19 A. Well, I mean, now adding that ineffective irritant spray
20 to the mix, in relation to ABD, I would now be looking
21 at: do I have sufficient -- you know, does it -- is
22 everything okay with this individual? With what I've
23 seen and what I've heard and what I'm witnessing,
24 you know: is this person acting rationally, reasonably,
25 are they responding to commands, have they responded to

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1 the irritant? And I think with that now -- where we are
2 now I would now be starting thinking that this person is
3 suffering some form of, some form of disorder, we're not
4 sure what, but I would certainly be now thinking that at
5 this point everything's not well and we need to try and
6 deal with this individual.

7 Q. And you said before that a reasonable officer dealing
8 with that would be trying to obtain medical assistance?

9 A. I think that would be certainly -- it should be in the
10 factor of the thought process. Whether it's feasible
11 for the officer to actually sort of request that at that
12 time, because they're still actively engaged with the
13 individual, but I think it should factor into their
14 thought processes that at whatever time we manage to
15 either keep this person contained or control this
16 individual in some way, we're going to be looking at
17 medical assistance for them. It might not be available
18 at that particular time or I might not be in a position,
19 a practicable position to do it, but at some point when
20 it is practical I am going to summon medical assistance.

21 Q. If a reasonable officer was able to access their radio
22 and to transmit over the radio, or if that reasonable
23 officer was able to hit their emergency button, is that
24 the sort of moment at which that information or that
25 assistance, medical assistance, could be obtained?

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1 A. It could be obtained or it could be requested. However,
2 as I said, taking your attention away from the
3 individual to make that rational -- that physical
4 opening of opening the radio, you know, radio and then
5 formulating what your request is, I don't think at that
6 position the officers were in a practical position to do
7 it. And when we talk about the emergency button, the
8 emergency button is there predominantly to summon
9 assistance that the officers require to deal with the
10 situation. At that point I wouldn't suggest that the
11 medical assistance would have been a priority for them
12 when they hit the emergency button, the priority would
13 have been "can we have more units here, can we have more
14 help?" They may have had time to add the medical
15 assistance, but at that point they're still trying to
16 control and contain the subject.

17 Q. Right.

18 And presumably the same would be the situation in
19 relation to giving feedback to the ACR or other
20 officers?

21 A. Yes, as I say, I think certainly the two, the two
22 initial officers were not probably in a position at that
23 time to provide feedback, whether the supporting
24 officers were in a position, possibly, but, as I said,
25 I would have hoped that somebody arriving on scene would

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1 have given an update at some point.

2 Q. So it wouldn't necessarily require to be the first
3 officers at the scene who could provide that feedback?

4 A. It may not have been, depending on how engaged they were
5 with the subject.

6 Q. So, any other officers, reasonable officers, arriving at
7 the scene could equally observe what was happening and
8 feed back --

9 A. Yes.

10 Q. -- to ACR?

11 A. Yes.

12 Q. Thank you.

13 Then moving on, if the subject -- so having been
14 sprayed, that having had no effect, and having continued
15 to walk away from the officers, is further engaged by
16 other officers but then chases and strikes a female
17 officer to the back of the head, and as she withdraws
18 caused that -- that strike causes her to fall to the
19 ground, forward onto the ground. So again, thinking, if
20 we can go back to the profiled offender behaviour,
21 please, which was 4.6, I'd like to -- and we may need to
22 go further down here -- I'd like to know in your view
23 what category would a reasonable officer put that
24 type -- sorry, if you can carry on -- put that type of,
25 or how would a reasonable officer characterise that type

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1 of behaviour? So a strike to the rear of the head
2 causing the officer to fall onto the ground.

3 A. I think you've got to be looking at a minimum of
4 a level 5, you're looking at assaultive behaviour,
5 whereby an individual has been -- an officer has been
6 struck. You could even, depending on the perception of
7 the officers at the time, and certainly PC Tomlinson
8 talks about his perception in relation to PC Short,
9 could be looking at a level 6 whereby serious injury or
10 life-threatening injury, whereby she's been struck to
11 the floor.

12 Q. So again very much dependent on the circumstances?

13 A. And also to the officers' perception of the level of
14 force being applied by the subject, and the level of
15 injury potential to the officers concerned.

16 Q. Thank you.

17 Then looking at the reasonable officer response,
18 4.7, I'd like you to help the Chair by understanding the
19 type of level of response that would be appropriate to
20 that type of behaviour. Keep going, keep going.

21 Thank you.

22 A. Just up a bit, sorry, okay, yeah, lovely.

23 So as we've already said, the defensive tactics that
24 we've talked about, level 4 is already probably on the
25 table, officers are already considering and using

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1 elements of that with the incapacitant sprays. You've
2 now, as I said, matching that level or going one above,
3 based on the perception of the particular officer using
4 the force, you could well be looking at a level 5
5 whereby you're using a tactical option that you know or
6 believe could cause serious injury or could cause
7 potential death.

8 Q. Do we see at level 5 the reasonable officer response
9 that:

10 "This is a level of force that has the potential to
11 cause serious injury or even death when it is applied."

12 A. That's correct, yes.

13 Q. And:

14 "It may, in certain circumstances, where there is
15 a serious risk of severe injury or life threatening
16 risk, be a deliberation choice of option, but in all
17 circumstances must be proportionate to the perceived
18 threat and degree of imminent danger."

19 A. Yes, and, as I said, that would be the, you know, the
20 perceived level of threat by the officer applying that
21 level of force, but they may well decide to use either
22 a tactic or something outside of their training or they
23 may use a tactic or something within their training
24 whereby they are aware that its application could cause
25 serious injury or possibly death.

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1 Q. And so when it says "perceived threat", the belief, or
2 the perception of the individual reasonable officer is
3 an important factor?

4 A. Yes, very much so. If they believed that an officer had
5 been stabbed, for example, and then that that officer
6 was open to further, further attack by the subject, then
7 again, you know, lethal force at that point could be,
8 could be not just justifiable but in their minds
9 applicable to the situation.

10 Q. Again, can you tell us at this stage what a reasonable
11 officer would do in terms of feeding back to ACR or
12 other officers?

13 A. Again I think if you're at this point in a situation,
14 feedback at this point is, to that particular
15 individual, is pretty irrelevant. They're dealing
16 specifically with the threat faced in front of them, or
17 the threat faced by their colleague or the member of the
18 public. So their sole focus will be on the processing
19 of what's happening in front of them and dealing with
20 that particular problem. What you tend to find with
21 feedback, you know, in radio transmissions, it comes at
22 a natural break or a natural time within the situation
23 whereby some degree of control has been achieved by the
24 officers on scene, and at the position where we're
25 talking about, where PC Short has been knocked to the

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1 ground, the officers do not have any control, or very
2 little control, over that situation at that time.

3 Q. I want to ask you about, in this situ -- scenario that
4 we're talking about, what if anything is a reasonable
5 officer doing in terms of the NDM and the risk
6 assessment at this stage?

7 A. They're using the NDM, as I said on Friday, but it's now
8 a more reactive process. You're still running the
9 process in your mind, in your cognitive processes, but
10 you're not, how shall we say, considering every single
11 element of that decision-making process. You're very
12 much reacting and responding to the visible cues that
13 are happening in front of you, and you've got very
14 little time to process that information. So yes, you
15 are process, you are conducting an assessment of the
16 level of risk, how that level of risk has increased or
17 decreased, and what options are open to you, but to
18 rationally then be able to explain that, it's quite
19 difficult in those circumstances. Again, I spoke about
20 the post-incident management, this is where this is very
21 important to allow officers to fully process their
22 thought processes at a later stage when they are in
23 a much better position to rationally go over their
24 thought processes rather than in the heat of the moment
25 or very shortly after an incident when the effects of

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1 stress and the effects of the incident and the outcome
2 of the incident are still fresh in their mind.

3 Q. Thank you.

4 And what, if anything, is a reasonable officer
5 thinking about medical emergencies and mental health
6 crises and intoxication at this point?

7 A. I would suggest it's in there, but it's not, it's
8 nowhere near at the forefront of their thought
9 processes, they're purely dealing with the threat they
10 perceive in front of them, and until such time as that
11 threat is diminished or has been negated, they're not
12 really going to concentrate or consider anything else
13 that they may have considered previously, as I said,
14 until such time as that level of control or that level
15 of, you know, sort of passiveness comes across the
16 situation.

17 Q. Now, before I leave this scenario, could I just ask you
18 about another situation of perception. You've touched
19 on it a moment ago. Where officers have arrived at the
20 scene, other officers follow on very shortly afterwards,
21 and one of those officers perceives the scene or
22 believes at that point that a colleague has been
23 slashed.

24 A. Yes.

25 Q. And so at that moment, where the one officer has

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1 a belief that their officer has been injured, I'd like
2 to ask you particularly what a reasonable officer would
3 do with that belief, what actions they would take?

4 A. I think based on the original information, if an officer
5 then arrives and honestly believes that another officer
6 has been injured with a weapon, with a knife, that, to
7 some degree should cement, even if they haven't seen the
8 weapon, cement to that officer that the weapon is
9 present within the incident, so the person is in
10 possession of the knife, whether they see it or not.
11 They've already carried out serious assaultive behaviour
12 on another officer, who, you know, to some degree could
13 be life-threatening injuries, so you are including all
14 of this in the mix of the level of threat, and you are
15 considering what you may have to do to prevent any
16 further injuries to that individual or possibly to
17 yourself or your colleague who you've arrived with. So
18 at that point a reasonable officer may well be
19 considering basically any option that's open to them to
20 deal with that particular situation, and that would
21 include possibly causing serious injury or possibly
22 fatal injury to that individual to prevent that attack
23 from continuing.

24 Q. What if anything would that officer be doing about
25 feeding back or sharing that information with ACR or

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1 other colleagues?

2 A. Again I think at that point, you know, being realistic,
3 they're so focused on the risk and the threat in front
4 of them, once they're in there, then it's very difficult
5 for them to consider anything else other than the
6 particular situation that's in front of them.

7 As I said, you know, the effects, one of the big effects
8 of stress is this -- about this narrowing of focus, this
9 fixation on one particular incident or situation. So as
10 the officers' heart rate increases, their level of
11 threat perception increases, their ability to think
12 about external or other, other factors is quite
13 difficult, and virtually sometimes impossible to --
14 other than dealing with the particular threat that they
15 faced at that particular time.

16 Q. So what would you expect the reasonable officer to, in
17 that situation, to do in relation to seeking medical
18 help for their colleague?

19 A. As I said, I think that it would be an option at that
20 time, dependent on the decision-making process, but
21 officers would probably realistically do one of three
22 things. They would either run straight in and try to
23 assist their colleague by either dealing with the
24 individual or trying to administer help and assistance
25 to their colleague, or they may well freeze to some

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1 degree and sort of be fixated in the situation, trying
2 to come up with a solution to the problem that they
3 face, because it's quite a dilemma, shall we say, of
4 what you're faced with. So one of those three things
5 I would have expected a reasonable officer to do.

6 I wouldn't imagine that medical assistance would be
7 immediate until such time as they assessed what the
8 problem was with the officer.

9 Q. What about even shouting to the colleague who they think
10 is injured, would you expect anyone to do that?

11 A. Yeah, I might expect some verbal communication, but, as
12 I said, it's not unusual for officers to forget or not
13 to communicate and just go into physical, physical mode,
14 go into physical actions rather than looking at
15 cognitive communication. It's unusual, but it does
16 happen.

17 Q. Thank you.

18 So to go back to the situation we were talking about
19 a moment ago, where the subject has chased and struck
20 an officer to the back of the head, that officer has
21 fallen to the ground, and then is -- has stamped, or had
22 more than one stamp, on that officer who is on the
23 ground. Again, how would you describe that level of
24 subject behaviour, given the categories we've looked at?

25 A. If that was the case, and there were stamps, or the

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1 subject was now stamping on an unprotected officer on
2 the floor, it shows a level of ongoing serious
3 assaultive behaviour. Not only are we just looking at
4 one attack here, we're looking at a sustained ongoing
5 attack. The risk to an unprotected officer on the floor
6 being stamped or kicked is very serious, internal
7 injuries, et cetera, head injuries, so we're looking at
8 possibly life-threatening injuries in that situation.
9 So if that was the case, and an officer was being
10 stamped on the floor, then I would expect a reasonable
11 officer to do anything within their capabilities to
12 prevent that from happening or to stop it from
13 reoccurring. So, you know, again virtually I think it
14 would be a case of just thinking that they could do
15 would be feasible and reasonable for them to stop that
16 attack from occurring.

17 Q. So their reasonable response would be up to level 5?

18 A. Yes, could well be.

19 Q. Can I be clear, do you see much distinction or any
20 distinction between a subject striking an officer to the
21 back of the head so that she falls to the ground and
22 stamping on that officer?

23 A. When we talk about injury potential, certainly within
24 training, we talk quite a lot about what we call
25 secondary injuries, so it's not the fact that the

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1 officer's been struck to the head, obviously that could
2 cause serious issues, but in them then being knocked to
3 the floor, the secondary risk of injuries of, again, to
4 head injuries, facial injuries, et cetera, you know,
5 greatly increases just the fact that they've been
6 punched, so you have to look at the injury potential
7 across the board. Again, once they're on the floor, if
8 they are being then kicked and stamped, again dependent
9 on the areas of the body that are being, being struck,
10 you know, there's potential for ruptured spleens,
11 kidneys, et cetera, if they're being kicked in the back
12 or the sides, the head's exposed, and we're looking at
13 compounding injuries from that attack.

14 Q. And knowing or considering those secondary or compound
15 injuries or risk of injury to that officer, there really
16 is only the level 5 response there?

17 A. At that point, if that's the perception and the honest
18 held belief of the officer who's about to apply that
19 force, then I would suggest that is about all they've
20 got available to them. I mean, it may well be,
21 you know, from a level 4, it may be I decide to use
22 a baton strike, however, the target area of that baton
23 strike, as described by PC Tomlinson, may be known to me
24 to have a serious risk of injury, or possibly fatality,
25 doing a baton strike from level 4, but I'm using it on

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1 a target area or I may hit a target area, I may not be
2 being deliberate, but I may hit a target area that
3 I know may cause serious injury or possibly death.

4 Q. So bearing in mind the possibility of preclusion and
5 minimum force, in response to that scenario, of that
6 subject behaviour, what would a reasonable officer
7 consider would be an appropriate response?

8 A. I think you've got -- you take out the incapacitants
9 because they've been used, tried and failed,
10 communication skills, tried, failed, you're really
11 looking at either one-on-one, hand-to-hand restraint or
12 basically wrestling and fighting, or taking out your
13 baton and using your baton to try and dysfunction and
14 take the person's ability to attack the officer away
15 from them.

16 Q. Let's look at those two alternatives, removing the
17 subject from the officer, would that be a possibility?

18 A. If you could, yeah, could be basically putting yourself
19 in a position of danger to basically now go one-on-one
20 with that individual to protect the officer on the
21 floor, that could be going in and, you know, starting to
22 basically trying to fight with that individual
23 one-on-one, trying to restrain them, trying to wrestle
24 them off the person, pull them away, or it could be
25 drawing your baton and using your baton because you

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1 think you've got a better -- an opportunity to prevent
2 and stop the attack with that than you have by
3 one-on-one physical altercation.

4 Q. And how could the baton be used by a reasonable officer?

5 A. Strikes, strikes to various parts of the body. I would
6 suggest that where incapacitant has been ineffective,
7 that would indicate to me personally that the pain
8 threshold or the pain receptors of the individual are
9 pretty much switched off, therefore dependent upon what
10 we would call pain compliance techniques or strikes to
11 motor nerve points on the body, the upper arms, the
12 legs, et cetera, are most likely to be ineffective.
13 Therefore my target areas are being reduced, my ability
14 to deal with that individual may be nothing other than
15 trying to knock that person over or give them such a --
16 such a blow that it would prevent them from continuing
17 that attack. So I think, you know, what we talk about
18 within training, of dysfunction and distraction
19 techniques, they would be unlikely to work on
20 an individual who has shown a total lack of response to
21 irritant spray. Not impossible, but certainly very
22 improbable that they would work.

23 Q. But a reasonable officer might consider precluding them
24 as something to attempt because they might not --

25 A. They may do, yes, and again it would be for them to

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1 explain that preclusion, but certainly from, you know,
2 my opinion as a reasonable officer I would be precluding
3 them because I would have, I would have seen that
4 they're unlikely to work because of the response to the
5 irritant spray.

6 Q. So if I can just go back over one or two things, before
7 I move on.

8 What about a strike to the back of the knees, to the
9 back of the legs?

10 A. Again it depends on some form of dysfunction, all that
11 would tend to do would -- might unlock the knee joint,
12 it might cause the person to fall to their knees, it
13 would not deal with the situation of the person stamping
14 or attacking the other officer. Again, as I said, it
15 depends on striking motor -- you know, a small target,
16 shall we say, and it's quite difficult to apply that
17 sort of tactical choice in that sort of heightened,
18 stressful situation.

19 Q. Would the reasonable officer response include a baton
20 strike to the head?

21 A. It could, in these circumstances, as I said, with the
22 perception of the officer, honest held belief of
23 imminent death or, you know, serious injury to their
24 colleague, then it could justify or make that decision,
25 that tactical decision to strike to the head.

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- 1 Q. What if the initial strike to the head caused the
2 person, the subject, to stop stamping but then further
3 strikes to the head were applied?
- 4 A. Each strike should be assessed for its effectiveness and
5 whether or not it has achieved the goal that it was set
6 out to do. So if the first strike did stop the attack
7 and possibly distance the individual from the officer to
8 prevent them from re-attacking, then further strikes at
9 that time, further strikes would be -- to the head would
10 be, I think, would be difficult to justify.
- 11 Q. Right, but again it would depend on the particular
12 circumstances?
- 13 A. It would, but the other thing to remember as well is
14 that, although I've said that each individual strike
15 should be, should be assessed, it's very common in these
16 sorts of circumstances for officers to deliver multiple
17 strikes, because they've locked in on their course of
18 action, and I've dealt with numerous cases where
19 officers have, you know, been asked how many times they
20 hit a subject and they might say, "oh, two or three
21 times", and the footage shows multiple strikes, but
22 they've got no recollection of how many times they've
23 struck them or the fact that after two or three strikes
24 they may have achieved their goal, but at that point
25 they hadn't taken in that recognition that the strike

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1 Certainly for one or even two officers the sort of
2 tactic or the solution that -- within the police that we
3 look at within training is to use multiple officers to
4 try and gain that level of control, so that they can be
5 placed in handcuffs or other forms of mechanical
6 restraint. Various techniques are taught to control on
7 the arms and the head, but initially the control phase,
8 that we may call it, can be quite messy and quite
9 sort of frantic, as officers struggle to try and take
10 hold of various limbs or try to prevent the individual
11 from regaining their feet, trying to use the ground as
12 a stable platform to work against.

13 Q. And you're calling that the control phase?

14 A. Yes, people quite often call it restraint. The
15 terminology I like to try and use is restraint is not
16 achieved until full control of the individual has been
17 achieved, so restraint is when they are unable to,
18 you know, move out of the position or have been placed
19 into handcuffs or limb restraints, et cetera. Up until
20 that point, there is a phase of control where we're
21 trying to gain control of both the individual and their
22 limbs, their head, their legs, et cetera, so that they
23 can be placed in that position of restraint.

24 Q. So during this control phase, the officers are
25 attempting to gain control, and there's both the process

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1 of them restraining the individual plus the individual
2 struggling against that restraint?

3 A. Yes, so there's the attempt to restrain and then there's
4 the resistance, the level of resistance against the
5 officers achieving their goal in that particular
6 situation.

7 Q. Thank you. You've talked about multiple officers. Are
8 there guidelines or recommendations about the number of
9 officers should be --

10 A. We look at using officers to overpower an individual.
11 It may look quite over the top, but it's actually the
12 safest methodology to control or attempt to control
13 an individual on the floor. So to safely restrain
14 an individual, we would be looking at a minimum of three
15 officers, preferably four and possibly even five or six.

16 Q. Right. Minimum of three, possibly up to five or six?

17 A. Yes.

18 Q. You also talked about the location of those officers,
19 you talked about arms and head. Can you tell us
20 a little bit more about that?

21 A. Yes. The resistance from individuals comes from their
22 ability to be able to utilise their major muscle groups,
23 so the muscles in their legs, the muscles in their upper
24 body, the head as a fulcrum, like the hips, is something
25 that if you control the head it's quite difficult for

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1 an individual to move their body without moving their
2 head. So we look at controlling both arms, at least one
3 officer controlling the legs and an officer controlling
4 the head.

5 Q. When you say "controlling the head", what is
6 a reasonable officer doing to control the head?

7 A. Initially, you know, without putting a finer point on
8 it, they're grabbing the limb and trying to prevent the
9 limb from moving around. That could be used by using
10 their body weight against that limb, lying across it or
11 sitting across it, holding on to it with their hands,
12 possibly wrapping their arms around it.

13 Q. So they'll -- a reasonable officer will seek to control
14 the limbs, and in relation to the head, what will the
15 reasonable officer do?

16 A. Again, the control would either be by holding the head
17 in a position whereby it's secured against the ground,
18 this prevents the individual from banging their head on
19 the floor and sustaining secondary injuries, or cradling
20 the head, similar to a rugby ball, by basically placing
21 your hands around it, depending on the position of the
22 individual on the floor.

23 Q. So if we're considering a scenario where there are three
24 officers involved in a restraint, in relation to the
25 lower limbs, the legs, what would a reasonable officer

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- 1 be expected to do?
- 2 A. Initially they would attempt to control the leg by lying
3 across them, and then getting themselves in a position
4 as close to the ankles as possible, which makes it more
5 difficult for the individual to engage their major
6 muscles, so you slide down the legs and hopefully wrap
7 your arms around the ankles to prevent them from being
8 able to lift their legs or pull their legs up towards
9 them.
- 10 Q. And to what extent would a reasonable officer use their
11 own body weight for that process?
- 12 A. That would be the primary control feature in that point.
13 Yes, you'd basically lie straight across their legs and
14 then move yourself down towards the ankles by using your
15 upper body weight to prevent them from lifting you up.
- 16 Q. What about the arms: what would a reasonable officer do
17 to gain control of the arms?
- 18 A. As I said, they could be pinned by holding on to the
19 arms and pushing down by using your upper body weight,
20 they may be actually laying across and wrapped up with
21 the officer's arms, whereby you lie at the side of them
22 and you cradle the arm and wrap the arm into a position
23 where they can't move it.
- 24 Q. When you say the word "lay", if a reasonable officer
25 would lay on the subject, can you describe to us --

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1 A. They'd actually be on the ground with them, preferably
2 not, but it can happen where you're actually lying on
3 the ground next to them, or possibly even to some degree
4 over the top of them.

5 Q. As they're lying over the top of them, what weight would
6 you expect a reasonable officer to be using?

7 A. At some point during the restraint, it's very common and
8 very likely for the officers to have their body weight
9 actually on the person. During training we talk about
10 minimising the time that this occurs to the best of
11 their ability, but, as I said, this frantic phase of
12 initial control is quite difficult and it is very common
13 for officers to actually apply force with body weight at
14 that initial control phase.

15 Q. For a reasonable officer who's bearing in mind the
16 principles of preclusion and minimum force and suchlike,
17 what would they do to guard against putting their body
18 weight on the subject?

19 A. As I said, there's different -- we show them different
20 techniques of being able to try and control the limbs.
21 Unfortunately sometimes if somebody is particularly
22 strong or the level of resistance that they're offering
23 is negating the officer being able to gain control of
24 that limb, their only option may be to use their body
25 weight as the control measure in that initial

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1 circumstance, to actually get hold of and control that
2 particular limb.

3 Q. Are there any restrictions given in relation to the
4 amount of time an officer is -- a reasonable officer is
5 able to use their body weight in that way?

6 A. There's no specific timeframe within the training, but
7 officers are advised and guided to keep the -- any time
8 whereby weight is applied to the individual to the
9 minimum possible.

10 Q. What are reasonable officers advised about the risks
11 associated with that?

12 A. We start to look at the breathing mechanism and we start
13 to discuss the situation around positional asphyxia or
14 restraint asphyxia, this is a well known terminology
15 within police training and has been since sort of the
16 late 1990s. We look at the requirement of the
17 individual for oxygen and how a violent struggle can
18 increase that requirement for oxygen, and thereby any
19 restriction placed upon that individual, how that
20 impacts on their ability to take that level of oxygen
21 in. So it really looks at the balance of the
22 requirement v the requirement to restrain the
23 individual. And in closing on that one, what we
24 actually look at is that there may come a time during
25 a restraint whereby if officers cannot gain control of

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1 an individual, there has to be a consideration to
2 disengage from the individual, because it becomes unsafe
3 to continue that attempt for that prolonged period of
4 time.

5 Q. Is there any guidance or otherwise information available
6 to a reasonable officer about when that moment of
7 disengagement would arrive?

8 A. Not in relation to sort of timeframes, there is no
9 sort of set timeframe within the training, it's really
10 a judgement call for the officers as to whether or not
11 they believe they can control the individual. I have
12 seen situations whereby, you know, very large, very
13 strong individuals, even with five or six officers, it's
14 been, you know, difficult, if nigh on impossible for the
15 officers to restrain that person, and other tactical
16 options then have had to be considered, so in those
17 situations it may be the case where the restraint has
18 been attempted, has failed, and they'll disengage and
19 then use irritant sprays or, you know, nowadays that's
20 when a taser may be deployed after a restraint has been
21 attempted. So yes, there is that option to disengage.

22 Q. So that option is there, and factors that may be
23 relevant, would that include the number of officers that
24 were involved in this restraint or arriving to be
25 involved in the restraint?

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1 A. Officer number is an important factor, so is the skill
2 level of the officers, their ability to apply the
3 techniques as they've been taught to them in training.
4 So it's -- there's a lot of factors that can lengthen or
5 shorten a control phase of a planned restraint, yes.

6 Q. Before I move on, because I have a number of questions
7 in this regard, you did use the words "next to them"
8 when you were talking about -- I was asking about lying
9 on the subject, and you also talked about not just over
10 the top to control the arms, but you said "next to them"
11 and I'm wondering if I can ask you to explain that?

12 A. Depending on the position of the individual, we talk
13 about two positions when a person is on the floor,
14 either prone, face down, or supine, which is face up.
15 During a ground restraint, a person can end up in either
16 of these two places, or even on their side, so there's
17 various options.

18 If we look at the prone position, which is normally
19 the preferred position where we want to try and turn the
20 subject to, because it makes it easier and safer for the
21 officers to restrain in that position, you may think of
22 the person having their arms out to their sides and the
23 officer basically being between the arm and the body
24 with their body weight over the top of the individual's
25 shoulder blade, holding on to the arm in this sort of

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1 position here (indicated) with the arm here.

2 Q. So that would be one arm --

3 A. Yeah.

4 Q. -- being held on to by the officer?

5 A. One officer.

6 Q. And that would be them lying next to them, in line with

7 their body, not lying over their body?

8 A. Yes, basically sort of lying slightly sort of 45 degrees

9 to the subject's body in the gap between the

10 outstretched arm and the side of the torso.

11 Q. What would -- if there are only three officers involved

12 in the restraint, what about the other arm, what

13 happens?

14 A. An officer on each arm; one officer on the legs.

15 Q. And the head?

16 A. As and when a fourth officer arrived, that would --

17 I would expect that fourth officer to go to that

18 location, go to the head, control the head and then also

19 take control of the planned restraint from there,

20 because they're in the best position to see what is

21 going on and communicate with the subject, but also

22 communicate with the officers involved.

23 Q. So while there were -- if there are three officers

24 available for the restraint, you would envisage that one

25 would be on either arm and one would be covering the

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- 1 legs?
- 2 A. In ideal circumstances, yes, that's the three major risk
3 points of the individual being able to assault or resist
4 the officers, so you want both arms controlled and you
5 want the legs controlled.
- 6 Q. And is that in accordance with the training that's given
7 in relation to restraint?
- 8 A. It is, yes. Yes.
- 9 Q. If a fourth officer arrives to assist, that officer
10 would go to the head?
- 11 A. That would be as per the training, yes, best practice
12 would be to go to the head. It may be the case that the
13 officer on one of the arms or the legs may be struggling
14 so they may go to support them, or they may actually be
15 in a position at that stage whereby the fourth officer
16 arrives that they're able to place the individual into
17 handcuffs, so the fourth officer may well come in and
18 apply handcuffs and assist in that process with the
19 other three officers.
- 20 Q. If we're talking about, say, a fourth officer at the
21 head, I think you talked about that person being in
22 charge of planning the restraint; what do you mean by
23 that?
- 24 A. It's not so much planning, it's then taking control of
25 what's happening, because being at the head of the

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1 individual, you can look down the body, you can see how
2 the other officers are reacting, how they're managing to
3 control the individual limbs, so it may be the case of
4 you then say to one of them: can you get a handcuff on?
5 Are you okay with that, with the legs? Yes? No? And
6 start to communicate between the officers to sort of get
7 that individual into a position where you can handcuff
8 them.

9 Q. If there are only three officers involved in a restraint
10 at that stage, who would be in control of that then?

11 A. It would be a matter of, for the officers to sort of
12 sort out between themselves. Nobody's in direct
13 position to clearly take control of that situation,
14 therefore it would be a matter of them communicating
15 between themselves, possibly one of them attempting,
16 saying: I'm putting, I'm going for handcuffs, one of
17 them saying: I've got the legs, I'm secure on the legs,
18 and then it gives the other officers information around
19 where they're at within the phase of the restraint.

20 Q. During that phase of the restraint, would you expect
21 those officers to be sharing updates about who's got
22 control of the legs or what's happening at their end?

23 A. Hopefully between themselves, yes. As I said, what
24 you've got to remember, they're all concentrating on
25 their own jobs, but you would hope that somebody would

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1 be shouting: I've got the legs, I've got the arm,
2 et cetera, I've got a cuff on, things like that, that's
3 the sort of communication I would be expecting.

4 Q. And then they would all know what was happening?

5 A. Hopefully, yes.

6 Q. And we've heard some mention of a safety officer. Have
7 you heard of that?

8 A. Yes, that was brought in certainly within England some
9 time ago whereby, this person at the head, it followed
10 an inquiry in London whereby recommendations around
11 restraints of individuals came up with the process of
12 somebody taking overall charge and responsibility for
13 the restraint process, and it was decided, as we went
14 through the training and looked at the tactics we were
15 already deploying, that this person would be best
16 situated at the head, as I said, for the purposes of
17 being able to monitor the individual, communicate with
18 them, monitor their breathing, see what sort of
19 condition they're in, but being able to control and then
20 direct the restraint from that position.

21 It can sometimes be a completely independent
22 individual who has no involvement in the actual
23 restraint, specifically in sort of a custody environment
24 and things like that, it sometimes would be the custody
25 officer who is standing back, not actually being

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1 involved in the control of the individual, but is
2 directing the officers as to what they want to happen,
3 ie: somebody get in there, get a handcuff on there,
4 I want leg -- I want limb restraints on the legs,
5 et cetera, and actually directing, but also asking for
6 feedback from the head officer in relation to the
7 condition of the individual on the floor.

8 Q. Do you know if training or that set-up existed in
9 Scotland in 2015?

10 A. I'm not fully aware if they used the terminology "safety
11 officer", and I couldn't find anything within the
12 training materials, however, it was pretty standard
13 practice across, across the board, by 2015.

14 Q. Right, thank you.

15 Do you remember the name of that inquiry that made
16 those recommendations?

17 A. It was, I think it was about 2008 or 2009, it was a long
18 time ago, but I was involved in that inquiry
19 investigation, yeah, but it was a long, long time ago.

20 Q. All right.

21 What difference, if any, does it make if the subject
22 is prone?

23 A. The prone position in itself isn't an issue. A lot of
24 people will say that prone restraint in itself is
25 dangerous. It's not an opinion I hold, and I disagree

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1 with it. We can sleep on our fronts, we can lie on our
2 fronts without any problem whatsoever. The issue
3 becomes either whether it be a prone position or
4 a supine position, is when pressure is applied to the
5 individual which prevents one or more of the breathing
6 mechanisms from operating. I'm not a medical expert but
7 I've spent many years researching this. In essence, in
8 reality, we need three things to be able to breathe: we
9 need an unobstructed airway, we need to be able to take
10 oxygen in, our chest needs to be able to expand, and our
11 diaphragm needs to be able to rise and fall. If any one
12 of those three activities are restricted, then that
13 affects our ability to breathe, or affects the ability
14 or the amount of oxygen we can take in.

15 So looking at those sort of, those elements, any
16 restriction on an individual's body, ie locking their
17 shoulders, placing weight across the abdomen, placing
18 weight across the chest, placing weight across the back,
19 can impede the breathing mechanisms of the individual.

20 So these are all highlighted during training, and
21 although we, you know, it may occur, again, we go back
22 to this analogy that we look at the minimum amount of
23 time required to achieve the goal that the officers are
24 trying to achieve, and understanding the risks to the
25 subject if that type of pressure is applied at any time

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1 during the control or restraint phase.

2 Q. You mentioned earlier this morning that a CS spray can
3 have an impact on a person's respiratory cycle --

4 A. Yeah, again, it inflames the respiratory tract and by
5 its nature, causes coughing and a difficulty in
6 breathing, so again, if a person has been sprayed with
7 an irritant spray, whether it be PAVA or CS, again,
8 that's a risk factor towards understanding the reduction
9 in oxygen intake for that individual.

10 Q. And if a reasonable officer was aware that the subject
11 had been sprayed with CS and/or PAVA spray, is that
12 a factor that they would bear in mind when they're
13 considering those risks to the subject?

14 A. They certainly should be, yes.

15 Q. Thank you.

16 And what difference, if any, would it make to what
17 you've said already if the subject is struggling very
18 forcefully and seeks to even bench-press officers from
19 him?

20 A. Any physical exertion from the individual increases
21 their requirement for oxygen, so as their heart rate
22 goes up, their respiration rises, their requirement for
23 oxygen is increased. So after or during a struggle,
24 a person needs far more oxygen against when just lying
25 peacefully on the floor, for example. So they, as they

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1 need more oxygen, it's not about the fact that they
2 can't breathe, it's a fact that they can't breathe
3 sufficiently to take enough oxygen in for what their
4 requirements are, therefore asphyxiation.

5 Q. And that's the positional asphyxiation that you were
6 talking about?

7 A. Yes, because the asphyxia's being caused by the position
8 that the person is in and they're unable to escape from
9 that position, so it's not so much the position, it's
10 the fact that they can't escape to increase their
11 ability to take in oxygen.

12 Q. Thank you.

13 When we're considering a reasonable officer, what
14 difference would it make to a reasonable officer if the
15 subject remains non-verbal throughout the restraint? So
16 you've talked about a safety officer communicating with
17 the subject, but what difference would it make to
18 a reasonable officer and their actions if the subject
19 said nothing?

20 A. It's -- they possibly wouldn't be talking, and I've
21 dealt with a number of cases like this, but you will be
22 expecting to hear some form of noise coming from them,
23 they will be probably shouting, groaning, moaning,
24 et cetera. One of the other risk factors that we point
25 out to officers is a person who's very verbal and very

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1 resistive going quiet, or somebody who's very quiet
2 suddenly becoming resistive or increasing their level of
3 resistance. Obviously if a person is talking to you or
4 shouting back, whether it be abusive, et cetera, it is
5 an indication to breathing but not particularly
6 a sufficient level of breathing. It can sometimes --
7 you will quite often hear officers saying, "Oh, they're
8 breathing, they're okay"; that's not the case. They're
9 breathing, they're replying, but is the level of oxygen
10 that they require, are they able to take that in
11 sufficiently? That's where the problem is. And after
12 a prolonged -- or a prolonged restraint or an active
13 period, that person's requirement for oxygen is far
14 greater.

15 Q. Is that something that reasonable officers would know
16 about?

17 A. Yes, it should form part of the training, yes.

18 Q. And what difference, if any, would it make -- and you
19 may have already answered this -- but what difference
20 would it make if the subject was making roaring noises
21 and maybe said something similar to "Get off me"?

22 A. As I said, it would indicate a breathing response,
23 because we can't talk unless we breathe in, so it would
24 indicate to the officers that they were breathing. As
25 I said, my caveat would be is: are they breathing

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1 sufficiently for their requirements? And that is,
2 you know, a judgement of the officers looking at the
3 individual, their pallor, their level of resistance,
4 whether they've become passive, et cetera, but taking
5 all those risk factors into consideration.

6 Q. Thank you. When we look at the restraint itself, what
7 techniques would -- may a reasonable officer use as part
8 of the restraint?

9 A. If they're struggling to control the individual, they
10 may well decide to try and utilise techniques such as
11 pressure point control, whereby they're applying
12 pressure or strikes to certain parts of the body to try
13 and take the resistance out of the individual. A simple
14 analogy would be, say, possibly if anybody's ever
15 suffered a dead leg, so they may strike to the major
16 muscle groups of the legs, they may strike to the major
17 muscle groups of the arms to try and take the level of
18 lock or resistance out of the arms so that the arms can
19 be moved into a position whereby they can be handcuffed.

20 Q. Would those strikes include possible baton strikes?

21 A. They could do, using the baton in what we call a closed
22 position whereby you're using it as a sort of jabbing
23 tool or it may be the fact that the baton has been
24 extended and the baton is used again to strike those
25 major groups, those nerve clusters around the body that

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- 1 we talk about to actually encourage a dysfunction,
2 a dead leg, a dead arm, so that the person can be moved.
- 3 Q. So a reasonable officer could take account of that and
4 adopt those techniques during restraint?
- 5 A. They could, but I would suggest with the other
6 conversations we've had around this particular incident,
7 you have to look at the ineffectiveness of some of those
8 similar techniques already, and whether or not they
9 would be a precluded suggestion. It doesn't mean
10 I wouldn't use them, but I may be thinking are they
11 actually going to be effective, but I may still then
12 attempt them to see if they will assist in the restraint
13 of the individual.
- 14 Q. Reasonable officers may take the view that they should
15 try and see if they fail or succeed or they may
16 say: I've tried other things and those wouldn't be
17 successful?
- 18 A. Yes, they could consider either, really, either trying
19 them to see if they will work or the fact that: I've
20 considered them, I've precluded them because I don't
21 think they will work.
- 22 Q. So again, preclusion and the principle of that is
23 something that reasonable officers would bear in mind?
- 24 A. Yes.
- 25 Q. And then if an officer was using a technique perhaps

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1 with their baton on the arm of a subject maybe that
2 wasn't trained as part of the OST training, in terms of
3 what a reasonable officer might do in those situations,
4 is that something they'd avoid or something they
5 would --

6 A. As I said, just the fact that a technique or something
7 that an officer tries isn't trained, it doesn't, it
8 shouldn't preclude it to whether or not it's reasonable
9 in the circumstances and was necessary based on the
10 perception of the officer.

11 Sometimes some services show restraints by using the
12 baton to actually pin, pin a limb, pin an arm, pin a leg
13 across a muscle group, but, as I say, the idea of
14 dysfunction/distraction works on the application of
15 pressure or strikes to a certain part of the body. How
16 that pressure is applied, you know, it could be
17 different in the circumstances that the officer finds
18 themselves.

19 Q. Thank you.

20 Moving on, I'd like to ask you about when the
21 subject is on the ground, either prone or supine. The
22 struggle, that control phase that you've been
23 discussing, has continued for around 4 minutes, and
24 during which the officers have managed to secure
25 handcuffs and leg restraints, and the subject is then

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1 turned on to his side and officers see that he's
2 unconscious or appears to be unconscious.

3 So I'm interested in your views on what tactical
4 options would be open to reasonable officers at that
5 moment in time?

6 A. So we're talking about the restraint process now taking
7 that length of time, so the person at that point would
8 be classed as restrained because they'd been placed in
9 handcuffs and they've also been placed in limb
10 restraints. The side restraint position, going back to
11 the amendments and the updates that we talked about, the
12 safety officer, that was something that we brought in
13 again to increase the ability of the individual to
14 breathe and a position where we know they can be safely
15 held, whilst still allowing the diaphragm to rise and
16 fall and the chest to expand. So that's sort of what
17 we'd class as the conclusion of that restraint process
18 when we've got to that sort of positioning.

19 Q. Is that the conclusion of the control phase?

20 A. The control phase would have been, basically finishes
21 once the handcuffs and the limb restraints go on and
22 then we've got them into a safe position that we know we
23 can control, that we can put them in that position, we
24 can hold them in that position and that will ease their
25 breathing and we can now monitor and everybody can take

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1 a breath at that point.

2 Q. Thank you.

3 A. So we get to that stage and that's basically the end of
4 what we would class as the restraint phase. One thing
5 with this particular incident, Mr Bayoh was handcuffed
6 to the front. Even in handcuffs to the front a person
7 can still resist at that point with the handcuffs in
8 that position. Best practice is handcuff to the rear,
9 but again, there's a number of times when you'll see
10 restraints -- the officers are unable to get the limbs
11 into that position, because of the level of resistance
12 from the individual, so they will get on handcuffs
13 however they can and it will quite often be to the
14 front.

15 What you then -- you then look at is then the
16 assessment of the individual. If you then get to that
17 point and you believe or suspect that the individual is
18 unresponsive, is the terminology that I would use, then
19 you have to now consider: does that person now need
20 medical assistance, and if so, would that include the
21 removal of the handcuffs to administer that medical
22 assistance? The caveat to that is always bearing in
23 mind that the safety element for the officers is still
24 paramount here, because at some point, you know, this
25 person may be faking it, this person may just be,

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1 you know, not --

2 Q. Feigning unconsciousness?

3 A. Yes, feigning that unconsciousness or that
4 unresponsiveness, so you have to make that judgement
5 call in relation to whether it's safe to remove the
6 handcuffs at that time. But if you decide it is a true
7 medical emergency and that person now is unresponsive
8 then I would expect the reasonable officer to be
9 removing the handcuffs and administering first aid at
10 that point.

11 Q. When you say administering first aid, what steps would
12 a reasonable officer take or consider taking at that
13 stage?

14 A. I would obviously, you know, relating to their first aid
15 training so that, you know, adopt this A, B, C mnemonic,
16 I would be obviously checking for danger, checking for
17 responses, so I would be basically trying to ensure
18 whether or not this person is unresponsive, so I'd be
19 talking at them, I'd be looking at a physical response,
20 flicking the shoulder blades, possibly nipping the
21 earlobes to see if I have any sort of response from them
22 from a physical stimulus. If they're not responding to
23 voice commands, they're not responding to physical
24 commands, then at that point I'd be looking at them
25 being unresponsive or unconscious, I would be summoning

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1 medical assistance, calling an ambulance, et cetera.

2 Q. Thank you.

3 You've talked about taking physical steps, flicking
4 their shoulder blades or their earlobes, and what's the
5 purpose of that?

6 A. It's -- depending on the levels of consciousness of
7 an individual they may well be able to respond to
8 a verbal cue, so if I say to you, you're lying there,
9 and I say: hello; you don't respond. If I say: open
10 your eyes, you might not be able to respond to me
11 verbally, but you might be able to open your eyes, which
12 shows a level of consciousness. If you don't open your
13 eyes you may well respond if I cause a physical activity
14 to you whereby I nip your earlobes or I flick your
15 collarbone. You may move, you may open your eyes
16 because of that physical interaction, so that gives me
17 some degree or some idea as whether or not you are
18 responsive to one of those three physical, one of those
19 three things. If you're not, then under first aid
20 guidelines then you are unresponsive and that would be
21 the terminology, you know, officers would use, that
22 person is unresponsive, unconscious, and that is
23 a medical emergency.

24 Q. Right. Would you consider slapping the subject's face
25 or cheeks area?

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1 A. Not within the first aid training. You'll quite often
2 see paramedics and medical staff using what they call
3 a sternum rub where they'll use a knuckle on the
4 sternum, things like that. That's not trained within
5 police first aid, it's merely some form of physical act
6 that will cause a reaction, a physical reaction from the
7 person.

8 Q. And if the person remains not responsive, then that's
9 the moment where a reasonable officer would seek medical
10 assistance?

11 A. That's correct, yes.

12 Q. And again, seeking that medical assistance, would that
13 be getting on the radio and calling for an ambulance?

14 A. Yes, I would expect that to happen, yes.

15 Q. Thank you.

16 So moving on finally to if the subject is on the
17 ground, and we've described how they're on their side,
18 they're noticed to be non-responsive, they've then moved
19 on to their back, supine?

20 A. Yeah.

21 Q. And they're still in handcuffs and leg restraints, and
22 then officers notice that the person has stopped
23 breathing. So this is a change from unconscious but
24 breathing but now the subject has stopped breathing, and
25 this is more than four minutes later, and during that

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1 period, there has been Airwaves transmission suggesting
2 that the subject was struck to the head with a baton and
3 sprayed with CS and PAVA spray.

4 So that's been on the Airwaves transmission, the
5 radio communication, so they're now on their back,
6 they're unconscious or non-responsive, and they're noted
7 to have stopped breathing more than four minutes later.

8 So in that scenario, would you able to share with us
9 what a reasonable officer would be doing at that stage?

10 A. Having conducted the response review, as I said, under
11 the adopted A, B, C, you now shout for help or you call
12 for help, the next step would be to check the airway,
13 that the airway is open, so going back to what I say
14 about the airway having to be unobstructed, so you check
15 if the airway is unobstructed and open, you then check
16 for breathing. If you check for breathing in that
17 position and you find that the person is not breathing,
18 then you immediately commence CPR and rescue breaths.
19 So I would have expected an officer or officers on the
20 scene to conduct that process and commence CPR, if it
21 was believed the person was not breathing.

22 That update should then be sent to the ambulance
23 service because it changes the priority of the call,
24 because you've now got not just an unresponsive person
25 but an unresponsive person not breathing and it changes

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1 the priority of the call within the ambulance service.

2 I would expect that update to go out to the Area
3 Control Room and certainly to the supervisor on scene,
4 because we're now looking at a probable critical
5 incident, major incident being declared and certain
6 protocols having to be put in place.

7 Q. So at that point there may be a critical incident --

8 A. Yes.

9 Q. -- declared?

10 Is there a difference or a period of time where the
11 person is breathing -- there's a difference between
12 breathing and not breathing, but what about the period
13 in between where you're breathing one minute and then
14 not breathing the next? Is there a phase of
15 breathing --

16 A. You get various phases, you know, you get individuals
17 gasping for breath, anti-costal breathing, (indicated)
18 which is sort of short intakes of breath, so you get
19 different phases, but if that's not witnessed by the
20 officers and at the stage where they're assessing the
21 person has stopped breathing, you know, you're straight
22 into that CPR and that rescue breath formulation from
23 their first aid training.

24 Q. If there is a period of around four minutes between the
25 person noticed to be non-responsive but breathing, and

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1 then noticed to be not breathing, not responsive, so
2 around four minutes --

3 A. I thought the four minutes was from the commencement of
4 the -- the control period to the end of the restraint
5 period.

6 Q. Yes, so let me be clear about this: there is a period of
7 around four minutes during the control phase --

8 A. Yeah.

9 Q. -- up to the point where the subject is noticed to be
10 turned on to his side --

11 A. And unresponsive.

12 Q. -- and noticed to be non-responsive.

13 A. Yes.

14 Q. That's a period of around four minutes.

15 A. Yes.

16 Q. Then from the period when he's noticed to be
17 unresponsive until the period when he's noticed to be
18 not breathing, that's a period of another four minutes.

19 A. I would say if the person is unresponsive following your
20 standard protocols, that's a long period of time before
21 you assess for breathing. It shouldn't take more than
22 30 seconds to a minute to place the person on their
23 back, open and check their airway, check for breathing
24 for 10 seconds minimum, to make sure to see if they are
25 breathing, and if they're not breathing, make that

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1 decision to commence CPR.

2 Q. What would a reasonable officer be doing between the
3 period where the subject is non-responsive but breathing
4 and the later period? What monitoring would
5 a reasonable officer be doing?

6 A. Well, the officer who's done the response check, I would
7 expect them to be going straight into the CPR phase, you
8 know, checking the breathing, et cetera.

9 Other officers could be considering the calling of
10 the ambulance or updating of the ambulance, updating the
11 ACR, et cetera, but at least an officer who's done that,
12 done that initial check for the responses should now be
13 taking control or taking the lead for that first aid
14 requirement.

15 Q. So if the person is not responsive but breathing, would
16 a reasonable officer simply step back from that subject
17 and leave them lying on the ground?

18 A. As I say, somebody should be -- whoever's done the
19 check, I would expect them to be taking the lead or
20 turning to another officer and saying: start CPR, get
21 the handcuffs off, get them on their back, et cetera,
22 somebody has to take control of that position and, as
23 I said, normally if you're the individual administering
24 first aid and have done the response check, you would
25 normally, therefore, continue that process by checking

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1 the airway, checking for breathing; no breathing,
2 commencing CPR, you would normally do that, unless you'd
3 dictated somebody else to start that on your behalf
4 because you are going to get a bit of equipment or,
5 you know, grab a first aid kit or a defibrillator or
6 something like that.

7 Q. So if the person is not responsive and breathing, lying
8 on his back, would reasonable officers be content to
9 simply step back from the subject and not carry out any
10 further monitoring?

11 A. Unresponsive, breathing: recovery position, so we go
12 back to the side restraint position, so I would expect
13 that if the person -- if the assessment was that they
14 were breathing then they would be placed back on their
15 side in a recovery position which allows them to
16 continue breathing in that position and it allows you
17 an ability to monitor them.

18 Q. What would that monitoring look like for a reasonable
19 officer?

20 A. Monitoring the breathing, again, continue checking
21 things like capillary refill, have they got blood
22 supply, et cetera, just doing a check to try and find
23 out the reason, which may obviously be obvious, but
24 you're looking for the reason as to why the person is
25 unresponsive to you.

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1 Q. So you wouldn't leave the subject; a reasonable officer
2 would continue to monitor?

3 A. Yes, you're now in a first aid situation, not a
4 restraint situation, and you're duty bound to monitor
5 that individual until such time as either medical
6 assistance arrives and takes over or somebody else takes
7 over from you.

8 Q. Thank you.

9 Can I ask: during that period of first aid
10 assistance, if we can call it that, either when the
11 subject is unresponsive or unresponsive and not
12 breathing, what would reasonable officers do in relation
13 to the handcuffs?

14 A. As the individual was handcuffed to the front, they may
15 not be interfering with the ability of the officers to
16 assess the person. I would suggest that if CPR was
17 required and rescue breaths, they would impede that
18 ability, so I would have expected the handcuffs to be
19 removed at that stage.

20 Q. Is that what a reasonable officer --

21 A. Yes.

22 Q. -- would do?

23 A. Yes.

24 Q. And what about leg restraints, what would a reasonable
25 officer do in relation to those?

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1 A. Again, if they weren't impeding, officers may decide to
2 leave them on but again, I would suggest that they would
3 probably be coming off as well. We're now looking at
4 somebody receiving CPR who's very likely to be going off
5 to hospital, so you want them ready for transportation
6 and ready for the ambulance service to take over that --
7 that treatment.

8 Q. When we think about first aid and what reasonable
9 officers might do, in a situation where it's been wet
10 that day, it's been raining, the weather's not pleasant,
11 would a reasonable officer consider doing anything with
12 covering the subject as he was on the ground or getting
13 a blanket, or ...?

14 A. Not at that stage. What you might consider, as I say,
15 the primary response is the delivery of the CPR.
16 Putting a blanket over them would get in the way of
17 that, would affect that, so you're basically now in
18 life-saving mode rather than, you know, comfort mode or
19 treatment mode. You're trying to save this individual's
20 life by delivering CPR. What you might consider at some
21 point is placing something underneath the individual to
22 insulate them from the floor, but at that particular
23 point, your primary concern is the life-saving delivery
24 of CPR.

25 Q. Thank you.

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1 Can I move on and ask you about the threat of
2 terrorism, threat levels in the police service at that
3 time, in May 2015.

4 Considering -- we've talked at length about factors
5 and perception of officers. If we consider a reasonable
6 officer was concerned about terrorism or the threat
7 levels in existence at that time, at what point would
8 you consider a reasonable officer to be bearing that
9 risk in mind in relation to any incident they're called
10 out to where someone is said to have a knife?

11 A. Again, at that particular time, the risk specifically to
12 police officers within the UK was severe, there had been
13 intelligence and circulations from the counter-terrorism
14 command in relation to the possibility of officers being
15 lured into situations whereby the primary objective was
16 for a lone wolf or a lone terrorist or a terrorist cell
17 to actually attack and kill a police officer on the UK
18 mainland. So that was reiterated, it had actually
19 appeared on various news media outlets, and it had been
20 disseminated within the police service across the whole
21 of the UK. So if that was in an officer's sort of
22 thought processes, it would impact on their perception
23 of dealing with certain types of calls, and to a degree
24 of, you know, giving that hesitancy in relation to: is
25 this a genuine call or is this not a genuine call? And

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1 again, looking at that intelligence based against the
2 information it may well impact on an officer's
3 decision-making process, yes.

4 Q. So is that a factor that would be part of the NDM and
5 the risk assessment process?

6 A. If that officer had that information as part of their
7 thought process, yes, it would impact and it would be
8 formulated as part of the NDM, yes.

9 Q. Thank you.

10 Then we've talked about perception of officers and
11 that being an important issue; have you heard of racial
12 threat theory?

13 A. Yes.

14 Q. When we talk about the perception of threat in
15 a reasonable officer's mind, to what extent would the
16 threat of the person's race and the perception of that
17 person's race be a factor?

18 A. It would be a factor if it had been part of the
19 intelligence provided to that officer. If the
20 intelligence says that an individual, you know,
21 a terrorist profile is of a certain racial background,
22 that, by its very nature, must implement that: if
23 I think I'm dealing with a terrorist incident that must
24 factor into my thought processes if I come across
25 an individual who meets that profile. You know, it's

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- 1 human nature to apply that thought process.
- 2 Q. So if the intelligence had linked a particular race with
3 a particular terrorist threat, then that, again, is
4 something that could have been incorporated into a risk
5 assessment by a reasonable officer?
- 6 A. I think it's reasonable to consider that would be there.
7 It must be obviously tailored with other information and
8 other intelligence around that individual or that
9 particular racial profiling, but I think it would -- it
10 would, and probably could form part of that
11 decision-making process, yes.
- 12 Q. If there is no link made within that intelligence,
13 between a particular race and a terrorist threat, or any
14 threat for that matter, would a reasonable officer make
15 that connection or include that link within their risk
16 assessment?
- 17 A. I think they would. I think they would also use that
18 type of information, not just in relation to terrorism,
19 but in general, general policing. If the intelligence
20 is of a certain ilk, it has to -- you have to bear that
21 in mind as part of that threat assessment, yes.
- 22 Q. And if there is no link made?
- 23 A. If there is no link made, then it wouldn't be a relevant
24 factor.
- 25 MS GRAHAME: Thank you.

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1 but it is part of the sort of profiling nature, if you
2 look at training in relation to behavioural detection,
3 and similar training, certainly within the police
4 service, and other organisations, it looks more at the
5 demeanour and behaviour of the individual rather than
6 taking just race or cultural upbringing in relation to
7 that particular individual. So it's a terminology that
8 is used, it's not a terminology I would use, but it is
9 a process that is referred to sometimes within policing.

10 LORD BRACADALE: Thank you.

11 You also said that absent any link to a terrorist
12 threat, the race of the subject would not be a relevant
13 consideration in the perception of threat.

14 A. It shouldn't be. It should be more around the actual
15 physical attributes and any understanding or knowledge
16 of the individual or similar individuals. Race itself
17 shouldn't be a specific risk factor.

18 LORD BRACADALE: Do you recognise a risk that racial
19 stereotypes might form part of the perception of threat,
20 despite being an irrelevant consideration?

21 A. I accept that they can in some instances affect
22 an individual's perception, but again, as I said, it's
23 not something within the training or within the police
24 service that is recognised as a risk factor.

25 LORD BRACADALE: In the training, in your experience, is

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1 training given to avoid it being a consideration?

2 A. Yes, both -- I say both within officer safety training
3 and various other training programmes in relation to
4 diversity and inclusivity within the police service, but
5 certainly within officer safety it's never used as
6 a risk factor or an impact factor in relation to threat.

7 LORD BRACADALE: Well, I may hear more about training of
8 that kind at a later hearing.

9 Are there any Rule 9 applications at this stage?

10 There are none.

11 Well, thank you very much, Mr Graves, for coming and
12 giving evidence to the Inquiry. I'm going to rise in
13 a moment and you will then be free to go.

14 THE WITNESS: Thank you very much, sir.

15 (The witness withdrew)

16 LORD BRACADALE: Now that concludes (mic not on) --

17 MS GRAHAME: (mic not on) -- take longer today, so I didn't
18 bring anyone for this afternoon.

19 LORD BRACADALE: No, but we are scheduled next to hear from
20 Ms Caffrey, is that right?

21 MS GRAHAME: On Wednesday morning, yes.

22 LORD BRACADALE: On Wednesday morning. In that case I shall
23 adjourn the Inquiry until 10 o'clock on Wednesday
24 morning.

25 (2.05 pm)

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1 (The Inquiry adjourned until 10.00 am
2 on Wednesday, 30 November 2022)
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