

Transcript of the Sheku Bayoh Inquiry

Tuesday, 7 February 2023

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(10.00 am)

LORD BRACADALE: There are some technical problems, I'll have to rise and see what's happening.

(Pause)

LORD BRACADALE: I am sorry about that. There was a problem with the AV system which is now resolved.

Good morning, Mr Kapadia.

THE WITNESS: Good morning.

MR DEV KAPADIA (affirmed)

LORD BRACADALE: Ms Thomson.

Questions from MS THOMSON

MS THOMSON: Thank you.

Q. Good morning.

A. Good morning.

Q. What is your full name, please?

A. My full name is Dev Kapadia.

Q. How old are you, Mr Kapadia?

A. I am 58.

Q. And what is your occupation?

A. I am Procurator Fiscal Depute.

Q. You were sent some questions by the Inquiry team.

A. Yes.

Q. What we call a Rule 8 request, and you responded to those questions in writing.

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1 A. I did.

2 Q. What we call a Rule 8 response, which is effectively
3 your statement to the Inquiry.

4 A. Yes.

5 Q. To your left, Mr Kapadia, there is a blue folder and if
6 you open that up there should be a copy of your Rule 8
7 response within. It has got the Inquiry reference
8 number 218. And if we turn to the final page of that
9 document.

10 MS THOMSON: Sir, I'm sorry, but there appears to be
11 a difficulty with the live transcription. I am advised
12 that it has stopped.

13 It is working. Sorry for the interruption.

14 Q. Do you see a copy of your Rule 8 response within the
15 folder, Mr Kapadia?

16 A. I do.

17 Q. If we turn to the very last page, we see that it's -- if
18 we can scroll to the very bottom, please, it's dated
19 21 December of 2022.

20 A. Yes.

21 Q. And although your signature has been redacted on the
22 screen, I believe that the copy in the folder will have
23 your signature on it.

24 A. Yes.

25 Q. You have helpfully incorporated all of the questions

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1 that you were asked into this document, so it's
2 a composite of both the questions you were asked and
3 your responses. If we look at the penultimate
4 paragraph, that's paragraph 45, it states:

5 "I believe the facts stated in this witness
6 statement are true to the best of my recollection."

7 A. Yes.

8 Q. And you go on to confirm your understanding that the
9 statement may form part of the evidence before the
10 Inquiry and be published on the Inquiry's website.

11 A. Yes.

12 Q. Did you answer the questions you were asked truthfully?

13 A. Yes.

14 Q. Did you do your best to give as full and accurate
15 responses as you could, within the confines of your
16 recollection?

17 A. I did.

18 Q. You can look at that at any time if you would find it
19 helpful to do so. I'm going to take you to some of the
20 paragraphs. If there are other paragraphs you would
21 find it helpful to go to, please let me know and we'll
22 bring them up on the screen.

23 Let's begin with paragraph 1 of -- I'll simply call
24 this your statement, by way of shorthand.

25 A. Okay.

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1 Q. The question you were asked was your position in the
2 Crown Office and Procurator Fiscal Service on 3 May
3 2015, how long you had been in that position, your
4 duties and responsibilities. You have explained that:

5 "On 3 May 2015 [you] held the position of Senior
6 Procurator Fiscal depute in COPFS based in the
7 Dunfermline office. At that time [you] had been in the
8 role as a senior depute for ... 6 years [although you]
9 had been in the Service since January 2000"--

10 A. That's correct.

11 Q. -- "as a Procurator Fiscal Depute."

12 So as at May 2015 you had about 15 years' experience
13 in the service --

14 A. That's correct.

15 Q. -- six as a Senior Depute.

16 A. Yes.

17 Q. If we can scroll down a little, please, you go on to
18 explain what your role involved:

19 "My role as a senior court depute was to make
20 decisions on reports received from the Police
21 ([otherwise known as] marking cases), other reporting
22 agencies and then decide on appropriate action, to
23 prepare and [conduct] criminal prosecutions in court
24 both at summary and solemn level, to mentor and provide
25 advice and support to colleagues when required, to deal

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1 with search warrant applications and other legal
2 requests, and give advice and instruction to reporting
3 agency and other external organisations as appropriate."

4 You go on to explain that you were:

5 "...also an on-call depute as [you] had the relevant
6 experience. [You] dealt with on-call requests
7 appropriately, giving advice and direction as necessary
8 to the calling police officer, bearing in mind not to
9 interfere with operational matters in the jurisdiction
10 of the Police service of Scotland."

11 A. That's correct.

12 Q. So your responsibilities were wide-ranging.

13 A. Yes.

14 Q. You've outlined some of the key responsibilities at that
15 time which included decision-making around whether to
16 prosecute a case that was reported to you by the police
17 or another agency --

18 A. Yes.

19 Q. -- preparing and presenting cases in court, and dealing
20 with applications for search warrants.

21 A. That's correct.

22 Q. I'd like to ask you some questions about your role as
23 an on-call depute, specifically. Should we understand
24 that the on-call depute system allows access to the
25 fiscal outwith ordinary working hours?

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- 1 A. That's correct.
- 2 Q. So that would be evenings, possibly overnight and also
3 weekends?
- 4 A. Yes. It starts at 5 o'clock on Friday afternoon,
5 carries over into the weekend, until quarter to 9 in the
6 morning, and then you resume your duties at quarter past
7 5 in the evening and so on until 9 o'clock on Friday
8 morning when the on-call period ends.
- 9 Q. So is the on-call period Friday to Friday?
- 10 A. Yes.
- 11 Q. A week at a time?
- 12 A. That's correct.
- 13 Q. And is this some sort of rota system within the fiscal
14 service?
- 15 A. It is, yes.
- 16 Q. One of the questions you were asked was how often you
17 had been on call, and you say elsewhere in your
18 statement that you would be on call six or eight times
19 a year.
- 20 A. Yes.
- 21 Q. That you had been on the rota since 2003 and so you
22 estimated that you had perhaps been on call about 60
23 times in total.
- 24 A. It's a rough estimation, but yes, based on how often
25 you'd be on call during the year. Sometimes it's less,

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1 sometimes it's more. Sometimes you have to step in at
2 the last moment, if somebody has to pull out,
3 for example.

4 Q. Okay. You explain in your statement that you deal with
5 requests from police officers --

6 A. That's correct.

7 Q. -- out of hours. How would a police officer who needed
8 to contact the on-call fiscal get in touch with you?

9 A. The system now is that the -- a police officer has to
10 obtain the permission of an inspector before they're
11 allowed to make that call, and the call comes in from
12 force control. It depends on whether they've got your
13 phone number or not, but, for example, if I'm on-call
14 for Central and Fife, the call comes in from east
15 overview, they say they've got a police officer and then
16 they patch the officer through and you then speak
17 directly to the police officer. In Tayside, the police
18 officers contact you directly.

19 Q. What was the position in 2015?

20 A. The -- looking from my on-call sheet, there was a call
21 from force control, so they would have called me to say
22 "We've got a police officer on the line" and then
23 a couple of minutes later, got a call from the --

24 Q. So that system was already in place --

25 A. Yes.

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- 1 Q. -- back in 2015.
- 2 What sorts of requests might you expect to get as
3 an on-call depute?
- 4 A. The requests have changed, no longer deal with homicide
5 calls, that's now dealt with by specialist homicide
6 deposes, but in general, it's usually about drugs,
7 serious assaults where police are looking for clothing,
8 weapons, sexual offences, for example, electronic
9 equipment, phones, laptops, and that, I would say,
10 encompasses the majority of phone calls.
- 11 And drugs, sorry.
- 12 Q. Sorry. Are these the sort of things that you might deal
13 with during office hours as well?
- 14 A. Yes.
- 15 Q. You said, you mentioned drugs, the police might want to
16 seize drugs.
- 17 A. Yes.
- 18 Q. What sort of call might you get in relation to drugs?
- 19 A. It's usually with large amount of drugs where police
20 have got information that drugs might be on the move
21 from, say, a safe house or somebody's carrying drugs,
22 and it's in relation -- it's in relation to the large
23 supply of drugs, if I can put it that way.
- 24 Another area is where there are dirty drugs,
25 somebody has died as a result of ingesting drugs and the

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1 police might call you to say "We believe that this
2 person died as a result of ingesting drugs, and there is
3 a need to try and find the source of those drugs to try
4 and take them off the street to prevent any further
5 supply and anybody else being harmed by them".

6 Q. In either of these situations, what are the police
7 asking you to do, what's the nature of the request that
8 they're making of you?

9 A. They would be requiring a search warrant under the
10 Misuse of Drugs Act, and they would be asking you to
11 make an application to the on-call sheriff, the -- my
12 job would then be to prepare the search warrant, draft
13 the search warrant, usually send it back to the police
14 officer to check that the details are correct,
15 particularly in relation to the premises, because it's
16 quite important to get the address on the search
17 warrant. There can be mistakes elsewhere which are not
18 that important, but it is very important to make sure
19 that the address to be searched it, in fact, correct.
20 Thereafter, to contact the on-call sheriff to explain
21 the situation and then the on-call sheriff would then
22 contact the police officer, because the drugs warrants
23 are required to be sworn on oath by the police. And
24 then the sheriff will either grant or not grant the
25 search warrant, it comes back to you, you then give it

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1 to the police to then execute.

2 Q. All right. So these calls you can receive during office
3 hours too, but when these sorts of things happen out of
4 hours, the police would contact the on-call fiscal --

5 A. Yes.

6 Q. -- for assistance with the request for a warrant.

7 If a sudden or unexpected death occurs out of hours,
8 the sort of death that might be reported to the fiscal,
9 would that be brought to the attention of the on-call
10 depute?

11 A. It would depend on what the cause of the death was.
12 When we were -- when I was certainly dealing with
13 deaths, you usually got -- and they were almost always
14 in relation to homicides, but I can't remember when that
15 stopped.

16 But I virtually got no calls about deaths unless it
17 related to some adulterated drugs, if I can put it that
18 way.

19 Q. Okay. You mentioned earlier there being a homicide
20 team --

21 A. Yes.

22 Q. -- that also provided an on-call service.

23 A. Yes.

24 Q. Would they receive calls about sudden and unexpected
25 deaths?

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- 1 A. Yes.
- 2 Q. All right. So we may hear evidence that Mr Bayoh's
3 death, which occurred on Sunday 3 May 2015 --
- 4 A. Yes.
- 5 Q. -- was notified to the on-call fiscal, but that wasn't
6 yourself, it was someone else?
- 7 A. It wasn't me.
- 8 Q. All right, and is a possible explanation for that, that
9 there was a different fiscal --
- 10 A. Yes.
- 11 Q. -- on-call for homicides and other reportable deaths?
- 12 A. Yes.
- 13 Q. Before we move on from this particular response to
14 a question asked of you, you say at the bottom part of
15 what we can see on the screen that:
- 16 "[You] dealt with on-call requests appropriately,
17 giving advice and direction as necessary to the calling
18 police officer, bearing in mind not to interfere with
19 operational matters within the jurisdiction of the
20 Police service of Scotland."
- 21 A. Yes.
- 22 Q. Can you help us to understand what you mean by
23 "operational matters" and why you shouldn't interfere
24 with them?
- 25 A. I don't have any direct control over the police,

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1 I cannot tell a police officer what to do and what not
2 to do. If the police are in the course of
3 an investigation, they have their own procedures to
4 follow, and I would have very little influence over how
5 they go about conducting their investigation. I can
6 provide helpful hints, but the police are under no
7 obligation to take my advice, and they would have their
8 own procedures to follow. So that is just what I would
9 call operational matters.

10 Q. So it's respecting the parameters of your role --

11 A. Yes.

12 Q. -- and also understanding the parameters of their role?

13 A. Absolutely. We have separate functions, and part of my
14 function is to have an overview of what the police can
15 or cannot do, and that is in relation to search warrants
16 where, if I feel that there is insufficient information
17 given to me, then I would not -- I would say to the
18 police that I wasn't -- I'm not approving this
19 particular warrant, I'm not going to take it to
20 a sheriff.

21 Q. And what would happen thereafter would be an operational
22 matter for --

23 A. How they then conduct the search, what methods they use
24 is entirely up to the police, and I would have no
25 influence over that.

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1 Q. All right. Well, perhaps we'll return to that later,
2 but for present purposes that would be an example of you
3 not looking to trespass on the function of the police.

4 A. Yes.

5 Q. Can we go to paragraph 22, please. You've already told
6 us a little about the process that you follow when you
7 receive an application for a warrant, in particular
8 a drugs warrant.

9 A. Yes.

10 Q. There is some further information in this paragraph, so
11 I'd like to go through it with you and ask you a few
12 questions.

13 You begin by explaining that:

14 "Generally speaking the police will crave a warrant
15 to secure evidence where the occupants of the property
16 will not freely allow police access. The purpose of the
17 search warrant might be to seize drugs, electronic
18 equipment, stolen property, clothing, firearms or other
19 weapons."

20 You mention there a situation where the occupants of
21 the property will not freely allow the police access.

22 A. Yes.

23 Q. Should we understand, then, that in a situation where
24 the occupants are quite happy for the police to come in
25 to carry out a search, there wouldn't be a need for the

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1 police to seek a warrant?

2 A. Generally speaking, it depends on who the occupants are,
3 what control they have over the property and whether
4 they are freely allowing the police to enter the
5 property.

6 On occasion where I've got a call from the police to
7 say that the occupants have said that we can go in and
8 look for whatever it is they're looking for, I would
9 explain to the police officer that as long as the
10 occupants were aware that they had the right to refuse,
11 so they were making a free choice, then there would be
12 no need for a warrant. But in the majority of
13 instances, it's always safer to go in with a warrant
14 than not.

15 Q. You go on:

16 "The procurator fiscal's role is to assess the
17 intelligence, its quality and the necessity to use force
18 to secure whatever evidence the police reasonably
19 believe is likely to be in the property. Once it passes
20 that threshold, the procurator fiscal will draft the
21 search warrant and submit it to the sheriff with the
22 relevant details and it will then be a matter for
23 the sheriff whether or not there is sufficient
24 information or intelligence to grant a warrant. For
25 search warrants which require to be sworn on oath or

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1 affirmed (mainly firearms and drugs), the deponing
2 officer will have to address the sheriff directly about
3 the veracity of the intelligence."

4 You explain there, Mr Kapadia, that it would be your
5 role to assess the intelligence and the quality of that
6 intelligence.

7 A. Yes.

8 Q. Can you help us to understand how you go about that
9 task?

10 A. The police, when they receive intelligence, it's graded
11 according to where the information has come from and how
12 reliable that information is, and they have a grading
13 system which I'm sure the police can explain it better
14 than I can. If it's just gossip, then that would be the
15 lowest quality of intelligence. They would still record
16 it, but there would not be intelligence that I would
17 find satisfactory enough to proceed with grant -- with
18 approving a warrant to go to a sheriff.

19 Q. So you carry out an assessment of the quality of the
20 intelligence, looking at both the information itself and
21 the source --

22 A. Yes.

23 Q. -- of the intelligence, and you explain in your written
24 answer that you also consider the necessity to use
25 force --

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1 A. Yes.

2 Q. -- to secure the evidence that the police believe will
3 be in the property. For the benefit of members of the
4 public who are following your evidence, do we take it
5 from that, that if a warrant is granted it will
6 authorise the police to use force?

7 A. Yes, it does.

8 Q. And that would be to use force to enter the property?

9 A. Yes.

10 Q. And any locked cupboards or safes within the property?

11 A. Yes.

12 Q. And to seize anything of evidential value that was
13 found --

14 A. Yes.

15 Q. -- within the terms of the --

16 A. That's correct.

17 Q. -- warrant?

18 Sorry, could we scroll up a little bit, please.

19 Thank you. Perfect. The bottom paragraph on the
20 screen, you explain about assessing the intelligence,
21 its quality and the necessity to use force. You go on
22 to say:

23 "Once it passes that threshold, the ... fiscal will
24 draft the search warrant ..."

25 So should we understand, then, that you will assess

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1 the intelligence according to the grading system that
2 you have described and also you will take into account
3 that if the warrant is ultimately granted --

4 A. Yes.

5 Q. -- it is giving the police the power to use force to
6 enter someone's home, potentially, and to seize
7 evidence~--

8 A. That's correct.

9 Q. -- and that's a consideration that you weigh in the
10 balance when deciding whether or not to present
11 a warrant to a sheriff?

12 A. If there's enough evidence or enough intelligence for
13 the police to reasonably suspect that there might be
14 firearms or drugs within a property, then that would be
15 enough for the warrant to be granted. How much force
16 the police then use to enter that property will be --
17 depend upon the circumstances. For example, somebody at
18 the property might say "Well, you don't have to use
19 a battering ram to come in, if you've got a warrant,
20 you know, I'll open the door for you". Others might
21 barricade themselves in, drug dealers, or houses where
22 drugs are stored, generally have some sort of barricades
23 behind them, and it will require quite an amount of
24 force for the police to enter, which might give the
25 occupants a little bit more time to dispose of the

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- 1 drugs, if they're so inclined to do so.
- 2 Q. You said in your response to the question I asked "If
- 3 the police have reasonable ground to suspect...", is
- 4 that the test, is that the threshold you refer to in
- 5 your written response?
- 6 A. Yes.
- 7 Q. So you're assessing intelligence --
- 8 A. Yes.
- 9 Q. -- according to the grading system with a view to
- 10 reaching your own independent view --
- 11 A. Yes.
- 12 Q. -- independent of the police as to whether the
- 13 intelligence is such that the officers have a reasonable
- 14 ground to suspect --
- 15 A. Yes.
- 16 Q. -- that there is evidence within a particular property.
- 17 A. Over the years I find that the police's self-assessment
- 18 of their intelligence is perhaps higher than
- 19 an independent person might ... might think.
- 20 Q. So, can the police be optimistic, shall we say --
- 21 A. Yes.
- 22 Q. -- in their applications? But at the end of the day,
- 23 what I understand from your evidence is that you, in
- 24 applying this test, you have a gatekeeping function?
- 25 A. That is pretty much in a nutshell, yes.

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1 Q. So the police cannot approach a sheriff directly, they
2 have to go via you as the gatekeeper.

3 A. Yes.

4 Q. They will have made their own assessment as to whether
5 the intelligence they have forms a reasonable ground --

6 A. Yes.

7 Q. -- to suspect that there is relevant evidence at that
8 particular property, but you will carry out that
9 assessment yourself --

10 A. Yes.

11 Q. -- objectively, and if you agree with the police then
12 you will proceed to prepare the warrant and place it
13 before the sheriff.

14 A. That is correct.

15 Q. And if not, then you won't.

16 A. Yes.

17 Q. If we could scroll down a little, please. Just at the
18 top of the page there you say that:

19 "For search warrants which require to be sworn on
20 oath or affirmed..."

21 That would include a drugs warrant?

22 A. Yes.

23 Q. "...the deponing officer will have to address the
24 sheriff directly about the veracity of the
25 intelligence."

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- 1 I wanted to ask you a little bit about that. Am
2 I right to understand that a warrant for drugs would be
3 a warrant made under the Misuse of Drugs Act?
- 4 A. That's correct.
- 5 Q. And, as you allude to here in your written answer, in
6 that situation, as well as making an approach to you as
7 the fiscal and on the assumption that you have
8 authorised the placing of a warrant application before
9 the sheriff --
- 10 A. Yes.
- 11 Q. -- the police would still require to persuade
12 the sheriff --
- 13 A. Yes.
- 14 Q. -- themselves as to the quality of the information.
- 15 A. The information that the police provide me in a written
16 application would contain the intelligence that the
17 police would have to present to the sheriff and swear on
18 oath that that is true, as far as they're concerned.
- 19 Q. And you refer to that being necessary for warrants for
20 drugs or for firearms.
- 21 A. Yes.
- 22 Q. If the police were seeking a warrant for, let's say,
23 stolen property, or a murder weapon --
- 24 A. Yes.
- 25 Q. -- would the police require to swear an oath or be

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- 1 affirmed in the same way or would you --
- 2 A. No.
- 3 Q. -- simply convey that the information to the sheriff?
- 4 A. No. Those are Common Law Warrant which are made by the
- 5 Procurator Fiscal directly to the sheriff and the
- 6 discussions regarding the information, intelligence
- 7 about the subject matter, is between the sheriff and the
- 8 Procurator Fiscal, not the police. Occasionally the --
- 9 if the sheriff wants to ask the police a question
- 10 directly, they may do so, but the warrant is from the
- 11 Procurator Fiscal to the sheriff, it's a Common Law
- 12 Warrant, and it does not require to be deponed or
- 13 affirmed by a police officer.
- 14 Q. Returning then to the situation with a drugs warrant
- 15 where a police officer does require to address
- 16 the sheriff directly, you've explained that the
- 17 information that would be laid before the sheriff is the
- 18 same as the information that the police would have made
- 19 available to you --
- 20 A. Yes.
- 21 Q. -- and earlier in your evidence you said that you would
- 22 draft the warrant --
- 23 A. Yes.
- 24 Q. -- there would be a little bit of backwards and forwards
- 25 making sure that the address was correct --

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1 A. Yes.

2 Q. -- and so on. What part does the sheriff then play when
3 receiving the warrant application and hearing from the
4 officers as to the quality of the intelligence they have
5 and their request for the warrant?

6 A. That process has now changed. The previous process was
7 that during office hours you would accompany the police
8 officer into chambers where the sheriff would put the
9 officer on oath and the officer would then essentially
10 give the same information given to the
11 Procurator Fiscal.

12 Since the creation of the electronic warrants, that
13 is now all done remotely. The application would come
14 into the Procurator Fiscal, I would then send that to --
15 during office hours, to the sheriff clerk who then
16 passes it to the sheriff, the sheriff then contacts the
17 police officer directly, and then the next thing you
18 would know that either the warrant's been granted and
19 has come through, or it's been refused. So you don't
20 have any further part to play in that.

21 Prior to the electronic warrants, you drafted the
22 warrants at home, it was then printed out at home on the
23 office printer, which you got as part of the on-call
24 kit, the police came to your house to collect the
25 warrant and then went to the sheriff's house to present

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1 the warrant and be put on oath, and then they would have
2 the signed warrant.

3 Q. What was the situation in 2015, how were things done
4 then?

5 A. It was, I think, physical and hard copy warrants, where
6 you would then prepare the warrant, print it out, sign
7 it, police would come and pick up the hard copy, and
8 then take it to the on-call sheriff.

9 Q. In either situation, what test would the sheriff apply
10 in deciding whether to grant or refuse the warrant?

11 A. Essentially, it's a matter for the sheriff as to whether
12 the sheriff accepted that there was sufficient
13 intelligence or sufficient evidence there to reasonably
14 suspect that there was drugs or a weapon or whatever it
15 was that you were looking for, within that property.

16 Q. So it's essentially the same test as the one that you
17 would apply --

18 A. Yes.

19 Q. -- when exercising your gatekeeping function?

20 A. Yeah.

21 Q. Before we move on, at the very bottom of the blue text
22 on the screen, you say:

23 "If the drugs are suspected to be in a private
24 property, unless there is an element of urgency, the
25 police will require a search warrant to enter the

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1 premises and carry out a search."

2 A. Yes.

3 Q. We have already spoken about the possibility of

4 a householder consenting to a search.

5 A. Yes.

6 Q. We've discussed warrants and you've introduced here the

7 concept of urgency --

8 A. Yes.

9 Q. -- and the possibility of search without warrant --

10 A. Yes.

11 Q. -- if the situation is urgent. Can you tell us

12 a little more about that?

13 A. It depends upon the circumstances. If the police

14 believe that there is a risk of evidence being destroyed

15 or drugs being flushed down the toilet, then they ...

16 then they can -- it would have to be justified at

17 a later stage, they can enter the property to prevent

18 the destruction of any evidence or the disposal of

19 drugs. But they would have to be extreme circumstances.

20 The ... the only way I could give you

21 an explanation, if the police have intelligence, say

22 a car is on its way to deliver drugs, somehow the driver

23 of the car suspects that they're being followed, they

24 stop, go straight into a house which is not known to the

25 police and the police believe that the drugs are about

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1 to be destroyed, then I think they would be justified
2 for them to go into that house and try and recover what
3 they can.

4 Q. In a situation where the police don't have a search
5 warrant, or other lawful ground to carry out a search,
6 such as the householder's consent, or urgency of the
7 type that you have described, what would be the
8 consequences if they were to search a property
9 regardless and seize evidence?

10 A. The likelihood is that the search and recovery of the
11 evidence would be deemed inadmissible and -- in later
12 court proceedings.

13 Q. I would like to ask you a few questions about
14 record-keeping when you're on call. Do you keep records
15 of the calls that you receive on call, any advice you
16 give, any decision that you might make?

17 A. Yes.

18 Q. How are they recorded?

19 A. They are, these days it's recorded on a laptop, in the
20 past it used to be recorded on pieces of paper or
21 a notebook.

22 Q. And what was the position in 2015?

23 A. They would be recorded in a notebook.

24 Q. Can I take you please to paragraph 8 of the statement,
25 and the second paragraph in blue text. You say:

Transcript of the Sheku Bayoh Inquiry

1 "Insofar as on-call warrants are concerned, if
2 a written application is received from the police, this
3 and any search warrant applied for is retained in
4 electronic or paper form (the latter much less so now,
5 in the age of electronic warrants) in line with the
6 [Crown Office] data retention policy."

7 A. Yes.

8 Q. And if we can scroll down, please, if we can stop there,
9 please, and look at the final substantive paragraph, you
10 say:

11 "In cases where the application is refused during
12 the initial telephone call, for example in a case such
13 as this, there is no copy of an application (unless the
14 police have pre-prepared one -- and retained it
15 themselves) or a warrant as there is no need to prepare
16 one."

17 A. Yes.

18 Q. "The only record I would have had was the hand written
19 note I took during the telephone call, which I would
20 have taken to the office and put in a folder holding my
21 on-call notes and subsequently destroyed securely.
22 I also have secondary notes from when I prepared my
23 on-call claim form at the end of the on-call week and
24 submitted electronically and retained in an electronic
25 folder on my COPFS laptop."

Transcript of the Sheku Bayoh Inquiry

1 A. Yeah.

2 Q. Can you explain how information makes its way into your
3 on-call claim form.

4 A. The -- whatever calls I receive during the week or
5 certainly in 2015 would have been, would have been in
6 a notebook. The -- if the matter proceeds to a warrant
7 application being, say, approved by me, and they're on
8 to the sheriff, police are required to submit a written
9 application, so that will come in, in a typewritten
10 form, on a standard police search warrant application
11 form, which you would then keep and you would then also
12 have a copy of the warrant. So you would have a full
13 record of the -- not only the conversation, but the
14 information which was given to you by the police at the
15 time.

16 If the warrant is refused or the application is
17 refused by me, there is no written application submitted
18 by the police, either because they haven't already done
19 so, or because they know even putting that forward would
20 be essentially futile, because the application has been,
21 has been refused.

22 So no, I would not then have a copy of whatever
23 information that the police were planning on submitting
24 in the event of, of my saying "Yes, there is enough
25 information there for me to apply for a warrant to

Transcript of the Sheku Bayoh Inquiry

- 1 the sheriff."
- 2 Q. So in that situation, you would have your handwritten
- 3 notes --
- 4 A. Yes.
- 5 Q. -- that you took at the time of the call.
- 6 A. Yes.
- 7 Q. And back in 2015 they would have been handwritten
- 8 notes --
- 9 A. Yes.
- 10 Q. -- rather than computerised --
- 11 A. Yes.
- 12 Q. -- records.
- 13 A. And then I would have taken them to the office and put
- 14 them in the on-call folder and then at the end of the
- 15 week submit my on-call claim form.
- 16 Q. When you submit the on-call claim form, is that in
- 17 respect of the additional time that you've worked out of
- 18 hours and you make a claim in respect --
- 19 A. Yes.
- 20 Q. -- of that time, a financial claim? And should we
- 21 understand, then, that when you make that claim, you
- 22 have to explain that you spent five minutes doing this
- 23 or half an hour doing that --
- 24 A. Yes.
- 25 Q. -- to justify the financial claim that you're making?

Transcript of the Sheku Bayoh Inquiry

- 1 So there would be a record, you would call that
2 a secondary note saved within your actual claim form?
- 3 A. Yes.
- 4 Q. And I believe you explain in your statement that the
5 handwritten notes that you would have prepared back in
6 2015 will have been long since destroyed --
- 7 A. Yes.
- 8 Q. -- and so the only record that is now available, in
9 relation to on-call work that you did in 2015, will be
10 your claim form.
- 11 A. That's correct.
- 12 Q. Mr Kapadia, I'd like to move on to ask you some
13 questions about a call that you received on 4 May of
14 2015, when you were the on-call depute. I know that you
15 say in your statement that you don't recall which
16 officer it was --
- 17 A. Yes.
- 18 Q. -- who phoned you, but we'll hear evidence from
19 a DC Robert Finch that he phoned you and I don't think
20 that you would dispute that.
- 21 A. No, I can't dispute that, if -- I recognise the name
22 from my time working in Fife, and he was a detective
23 constable in Fife Constabulary.
- 24 Q. If we can turn to paragraph 9, please, at the bottom of
25 the screen, you explain the only notes that you have in

Transcript of the Sheku Bayoh Inquiry

1 relation to this call come from the on-call claim
2 form~--

3 A. Yes.

4 Q. -- as we've discussed, and you say:

5 "This was a call from the police on 4 May 2015 at
6 16:46 hours lasting [approximately] 5 minutes which
7 notes 'TC ...'"

8 Would that be telephone call?

9 A. Telephone call, yes.

10 Q. "'Drugs search warrant -- search of property "connected"
11 to death of Sheku Bayoh'".

12 A. Yes.

13 Q. Is that the only record that you now retain in relation
14 to the telephone call that you received on 4 May 2015?

15 A. It is.

16 Q. Do you actually remember this call, or do you require to
17 rely on the note within your submission form?

18 A. I don't -- I don't recall that, the telephone call, no.

19 Q. Can you assist us whether you had had any earlier calls
20 in relation to the death of Mr Bayoh? He had passed
21 away the previous day.

22 A. I had not received any calls the previous day, no.

23 The -- I think the only two calls which are listed, one
24 was from force control, which would have been the
25 introductory call, and a few minutes after that, the

Transcript of the Sheku Bayoh Inquiry

1 call from the police officer.

2 Q. So was this your first involvement in any way in the
3 police investigation following the death of Mr Bayoh?

4 A. Yes.

5 Q. And was it, indeed, your only involvement?

6 A. As far as, as far as I recall, yes.

7 Q. You say:

8 "This was my only involvement in the matter, where
9 it would appear that I was called by the police with
10 a request to apply to the sheriff with a search warrant
11 under the misuse of drugs act 1971 for a property which
12 was connected [to] the death of Sheku Bayoh.

13 "From recollection it was for a minute amount of
14 cannabis and a grinder, and it seemed to me at the time
15 that the link to the death was somewhat tenuous in that
16 the information I had was that the property to be
17 searched was 'connected' [in inverted commas] to the
18 death. I did not have any details about the death or
19 how it had come about or any indication that the death
20 had resulted from the drugs from that property."

21 Can we scroll down a little, please? Okay. Before
22 I ask you any questions, can we look briefly at what you
23 say in paragraph 18 of your statement.

24 A. Yes.

25 Q. You say:

Transcript of the Sheku Bayoh Inquiry

1 "[Your] understanding was that the police had
2 advised [you], briefly, of the death of an individual
3 and wanted a warrant for a property for a small amount
4 of cannabis and (possibly a grinder) and the property
5 appeared to be connected to the death. I refused the
6 police application because (from ... recollection) it
7 did not appear that the death resulted from the drugs or
8 that there was any previous intelligence of drug dealing
9 at the property. It did not appear to me that a search
10 warrant was proportionate under those circumstances."

11 I want to ask you a few questions to help us all to
12 understand why you refused --

13 A. Okay.

14 Q. -- the application.

15 Firstly, can we be clear about what the application
16 related to. You refer to cannabis, a minute or small
17 amount of cannabis. Do you know what quantity of
18 cannabis?

19 A. No. But it would not have been -- it would not have
20 been significant. For example, saying that there are
21 dealer quantities of drugs in that property. Because
22 otherwise I would have then asked further questions
23 about what intelligence that the police had in relation
24 to drug dealing from that property.

25 Q. So this small or minute amount, should we understand

Transcript of the Sheku Bayoh Inquiry

1 that it would be what might be thought of as a personal
2 amount, not a --

3 A. Yes. Not a dealer level.

4 Q. Not a dealer level, all right, and if we were to hear
5 evidence that the police assessed it to be half a gram
6 or a gram, would that fit with your understanding of --

7 A. Yes.

8 Q. -- what a small amount is?

9 A. Yes.

10 Q. There's reference there to a grinder.

11 A. Yes.

12 Q. What's a grinder?

13 A. It's, I think what people use to grind cannabis, to
14 consume it. I've only ever seen them in productions in
15 plastic bags, so that is what I would assume, that
16 they -- is meant by "grinder".

17 Q. Okay. I'm maybe asking the wrong person that kind of
18 question.

19 A. Yes, you're certainly asking the wrong person.

20 Q. So let's move onto safer ground. Can you help us to
21 understand why you've thought the link between the
22 property and the death was tenuous?

23 A. The -- from my recollection and practice, if the -- they
24 were saying that Mr Bayoh had obtained or -- obtained
25 drugs or consumed drugs in that property, but it had no

Transcript of the Sheku Bayoh Inquiry

1 bearing on the death, so that is what I meant by
2 a "tenuous connection" between the property to be
3 searched and the death. The example I gave you earlier
4 on that if somebody had obtained drugs from a property
5 and as a result of which had died, then there would be
6 a direct connection between the property to be searched
7 so that the police would have grounds to go and recover
8 any drugs for evidential purposes, and also for the
9 health and safety of the general public so that the
10 drugs were not further distributed to anybody else.

11 Q. Okay. You say that it didn't appear that the death had
12 resulted from the drugs. By that do you mean the
13 cannabis --

14 A. Yes.

15 Q. -- found within this property?

16 There's mention in your statement to you not being
17 aware of any previous intelligence of drug dealing at
18 that property. How did you know that? Did that
19 information come from the police? Is that the sort of
20 enquiry they would make before calling you?

21 A. No, that's based on the fact that I refused the warrant.
22 If the police say that there was a history of drug
23 dealing from that property or a known drug dealer lived
24 at that property, that would all be intelligence that
25 the police would give you in support of the application

Transcript of the Sheku Bayoh Inquiry

1 to get a search warrant to search that property to say
2 that numerous individuals attended that property at
3 various hours of the day to buy drugs, and that would
4 help build a bigger picture in terms of whether or not
5 the police had reasonable cause to suspect that there
6 was drugs inside that property.

7 Q. And that intelligence was absent in this case?

8 A. Yes.

9 Q. You said that it didn't appear that a search warrant was
10 proportionate in all the circumstances.

11 A. Yes.

12 Q. Can you help us to understand what you mean by that, not
13 proportionate?

14 A. I meant by simply the amount of drugs that the police
15 said that they were -- either had or were looking for.
16 Because if the police requested a search warrant every
17 time they stopped a person who had half a gram, a gram
18 or a couple of grams of cannabis, then the system would
19 break down and it would not be proportionate in terms of
20 the eventual outcome as to whether or not the police
21 would be granted powers in terms of a search warrant to
22 force entry to a property, to go and find a small
23 cigarette or crumbs of cannabis.

24 Q. Thank you. Can we look at paragraph 35, please, where
25 you explain a little more about your reasoning:

Transcript of the Sheku Bayoh Inquiry

1 "The officer I spoke to was looking for a drugs
2 search warrant for a property, as I have noted
3 'connected' to the death of the deceased, where I took
4 the view that the connection was tenuous. I was being
5 formally asked to apply for a search warrant, which was
6 normal except the amount of drugs to be recovered was
7 very small."

8 If I can pause there, you said at the very beginning
9 of your evidence that ordinarily when the police apply
10 for a search warrant for drugs it's for more substantial
11 quantities --

12 A. Yes.

13 Q. -- or it's for what you called "dirty drugs".

14 A. Yes.

15 Q. How common is it, in your experience, whether any
16 officer on call, for an officer to make an application
17 for a warrant for a minute or a small quantity of
18 cannabis?

19 A. I would say it was quite rare.

20 Q. "I was being formally asked to apply for a search
21 warrant, which was normal except the amount of drugs to
22 be recovered was very small. Normal practice would be
23 to ask what intelligence the police had about the
24 individuals and their connections to drugs or [to] the
25 onward supply of drugs. If, prima facie, there was

Transcript of the Sheku Bayoh Inquiry

1 enough information available to me to apply for [the]
2 search warrant, the police officer would be requested to
3 submit a written application which would contain [the]
4 full details of the property to be searched, the
5 occupants of the property, what intelligence the police
6 had about the individuals and ... the property e.g., the
7 property was a 'known' safe house to store drugs, or
8 that the occupier was a 'known' dealer and there were
9 recent reports of individuals regularly attending to buy
10 drugs."

11 And is that precisely the sort of intelligence
12 information that was missing from the picture here?

13 A. Yes.

14 Q. You continue:

15 "If the written application and information
16 reflected what I had been told over the phone and it was
17 necessary to do so, then I would take steps to draft a
18 warrant and submit it to the on-call sheriff at any time
19 of the day or night. An example of the necessary
20 urgency would be if the police had received a tip-off
21 that drugs were about to be moved from a property, or
22 a dealer had been arrested in possession of drugs and
23 his [or] her associates might go to the house concerned
24 and remove drugs or paraphernalia, for the dealer (or
25 [indeed] for themselves!)"

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. So here are you giving an illustration, having explained
3 the reasons for refusing this particular warrant, you're
4 giving an example of the type of case where you would
5 not only be willing to put a warrant before the sheriff
6 --

7 A. Yes.

8 Q. -- but you would be willing to do so in the middle of
9 the night.

10 A. Yes. I've occasionally got calls where a car has been
11 stopped on its way to deliver drugs and if the courier
12 does not go to where he's supposed to be -- or he or she
13 is supposed to be delivering the drugs, then suspicions
14 might be raised, and if there are other drugs at the
15 property where the courier has come from then the
16 opportunity to search that property might be lost
17 because the person might be in custody, somebody might
18 get suspicious and go straight to the house to remove
19 drugs, cash or any other paraphernalia that might be
20 incriminatory.

21 Q. You explained earlier in your evidence that in
22 a situation possibly of that sort, urgency in and of
23 itself could potentially justify a search without
24 warrant, but it is always better to be safe than sorry
25 --

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. -- and if time permits --

3 A. Yes.

4 Q. -- then a warrant should be sought.

5 A. Yes.

6 Q. Can we go to paragraph 29, please. There are in fact
7 two paragraphs with 29, so if we could go up a little
8 bit, please, there we are, you were provided,
9 Mr Kapadia, with an extract from DC Finch's statement --

10 A. Yes.

11 Q. -- and asked to comment. So DC Finch in his Inquiry
12 statement says:

13 "I've written in my daybook ... 'Relating to
14 investigation? Putting pen through it. No wanting to
15 bother Sheriff 1700. Spoke to A/N -- PF. Operational
16 matter From prosecution point of view -- nothing will be
17 done'.

18 "I have been referred to my notebook at pages 2 and
19 3: 'Monday 4 May 2015 ... 1700. Spoke to PF
20 DEV KAPADIA. Not authorised to approach JP/Sheriff for
21 warrant. Prosecution would do nothing. Operational
22 matter...'"

23 If we scroll down a little further, you were invited
24 to comment on these entries and you say:

25 "I don't recall using these words, but accept that

Transcript of the Sheku Bayoh Inquiry

1 was the tenor of my response, ie that the connection
2 between the property was tenuous, as described to me,
3 and that any offence regarding the cannabis and the
4 grinder was de minimis and would not reach the threshold
5 of prosecution in court for any offences relating to the
6 drugs themselves. The on-call facility is not designed
7 to be available for small amounts of drugs which, at
8 best, would be marked for non-court disposals, such as
9 fiscal fines or warning letters. On that basis I would
10 not bother a sheriff for a de minimis matter."

11 A. Yes.

12 Q. I want to ask you a few questions around what is said in
13 DC Finch's Inquiry statement and his daybook and your
14 response --

15 A. Yes.

16 Q. -- just to help us all understand your decision-making
17 here.

18 You refer to the -- or any offence around the drugs
19 as being "de minimis".

20 A. Yes.

21 Q. Just for the benefit of any members of the public who
22 might be listening to your evidence, what do you mean by
23 an offence that's de minimis?

24 A. That technically it is an offence, but the quantities
25 involved are so small that they would not be marked for

Transcript of the Sheku Bayoh Inquiry

- 1 court prosecution.
- 2 Q. And is that what you mean when you say "Would not reach
3 the threshold for prosecution"?
- 4 A. Yes.
- 5 Q. You say, too, that the on-call facility is not designed
6 to be available for small amounts of drugs which would
7 at best be marked for non-court disposals.
- 8 A. Yes.
- 9 Q. Why is a call of this sort perhaps not what the on-call
10 facility is designed for?
- 11 A. Because from my understanding that it was a small amount
12 of drugs and associated grinder which in itself is not
13 unlawful to have, but the grinder itself might contain
14 traces of cannabis, and so what was being presented to
15 me was, yes, technically an offence, depending upon the
16 circumstances, it might be looked upon at the lower end
17 of the scale in terms of how somebody marking a case
18 with the report of, say, a gram of cannabis might -- it
19 might result in a warning letter or a fiscal fine,
20 something of that nature. It certainly would not reach
21 the threshold of being prosecuted, at the lower ends in
22 the Justice of the Peace Court, for example.
- 23 Q. So even at the lowest end of the criminal justice
24 system, this case was unlikely to ever make its way into
25 court?

Transcript of the Sheku Bayoh Inquiry

1 A. No.

2 Q. Okay.

3 You say:

4 "On that basis I would not bother a sheriff --

5 A. Yes.

6 Q. -- for a de minimis matter."

7 How would you have anticipated a sheriff would have
8 reacted if they'd been bothered out of hours for
9 something like this?

10 A. It would have depended upon which sheriff was on call
11 that week, but the responses would have ranged from
12 fairly ... expletive, depending on who the sheriff was,
13 to a polite "No".

14 Q. Mr Kapadia, did you yourself feel bothered by the police
15 calling you about a matter of this sort out of office
16 hours?

17 A. Yes, to a certain extent, I would not have expected to
18 be called for that. I've had other calls in respect of,
19 say, small amounts of stolen property, or a minor
20 assault, where the police think that they might want
21 a search warrant to go and get stuff, but it would
22 depend upon the circumstances, but yes, I've had very
23 few calls where the drugs are minor and there's no other
24 evidence of dealing. That's not to say that somebody
25 who's been caught with a small amount of drugs is not

Transcript of the Sheku Bayoh Inquiry

1 a drug dealer, even the presence of no drugs sometimes
2 might invite a warrant, for example, if they're simply
3 carrying a large amount of cash or if they've got -- or
4 if they've been stopped and a phone has been found or
5 a "tick list" has been found, it might give you further
6 information about larger amounts of drugs.

7 But in this case, no, it was just a small amount of
8 drugs and nothing else.

9 Q. What would you have expected the police might have done
10 here as an alternative to picking up the phone to you
11 out of hours?

12 A. Just seizing the -- seizing the drugs and perhaps
13 submitting a report, a standard prosecution report.

14 Q. If the police had seized the drugs, and we might go on
15 to hear that in fact they did seize the drugs, without
16 a warrant, either because they haven't sought one or
17 because it has been refused or not put before a sheriff,
18 what would be the basis of their authority to seize the
19 drugs?

20 A. Well, the actual seizing of the drugs would be that it
21 is unlawful to be in possession, and I would not expect
22 the police to be leaving behind any drugs that they
23 find, regardless of the amount. If they've stopped
24 somebody, under the Misuse of Drugs Act and found, let's
25 say, half a gram or a crumb of cannabis, I wouldn't

Transcript of the Sheku Bayoh Inquiry

1 expect them to be giving it back to that person and say,
2 you know "On your way", I would be expecting them to --
3 I would expect them to seize it, so that that person no
4 longer had possession of something they were not
5 entitled to be in possession of.

6 Q. Can we look at paragraph 30, please. You were asked
7 whether you recalled saying words to the effect of
8 "putting a pen through it".

9 A. Yes.

10 Q. We saw that in DC Finch's Inquiry statement, when we
11 looked at paragraph 29, and you said -- and you were
12 also asked what does that mean and why was it the case
13 in this matter, and you said in your written response:

14 "It meant that if the police reported someone for
15 being in possession of a small amount of cannabis,
16 depending on the amount, the accused's previous
17 convictions, and circumstances, there would likely be no
18 further action. Although I no longer have any notes,
19 I would have said that if it appeared to me from the
20 information provided that the quantity of drugs was so
21 small that it would not merit prosecution and any
22 further action would be disproportionate."

23 When you spoke with DC Finch do you recall whether
24 you explained your reasoning to him? Or, I appreciate
25 your memory of the events of 2015 is perhaps poor, would

Transcript of the Sheku Bayoh Inquiry

1 it be your practice to explain your reasoning?

2 A. Oh, I would certainly explain my practice -- or explain
3 my reasoning as to why I'm saying that, you know, I
4 perhaps would have not quite used legalese terms, but
5 I would have told them it was rubbish and the matter
6 would not be taken -- taken any further.

7 Q. If we can look at paragraph 33, again in both the
8 DC Finch's Inquiry statement and in his notebook he has
9 used the words "operational matter" in a context that
10 suggests that that's something that you might have said
11 to him, and you were asked whether you recalled saying
12 that the matter was an operational one and what did that
13 mean. You said:

14 "Again I don't specifically recall saying this but
15 it is something I would say because I don't have the
16 power or authority to prevent or advise the police what
17 to do in terms of reporting an offence through a ...
18 (Standard Prosecution Report) but I can tell them what
19 the likely outcome would be in terms of marking a case,
20 and therefore reporting a de minimis matter such as
21 a few crumbs of cannabis or the tail end of a 'joint'
22 would be a decision for the police and 'an operational
23 matter'."

24 Can I ask you, Mr Kapadia, at any point is it up to
25 the police to decide whether someone is prosecuted or

Transcript of the Sheku Bayoh Inquiry

1 not?

2 A. No, it's not up to the police to decide, because the
3 prosecution -- prosecution decision rests upon the
4 Procurator Fiscal, once the police report has been
5 received, and that effectively starts the ball rolling
6 in terms of criminal procedure from a crime being
7 detected. It doesn't mean that every crime that's
8 detected is always reported to the police, the police
9 sometimes have discretion as to whether they take
10 matters forward or not.

11 So, in the example I've given, that if you've got
12 a 16 or a 17-year-old being searched under the Misuse of
13 Drugs Act and a tiny crumb of cannabis had been found in
14 the pocket, it would be a matter -- an operational
15 matter for the police as to how they deal with the
16 matter, whether they arrest that person, whether they
17 report that crime, or whether they simply deal with it
18 by way of a police warning or whatever other means that
19 they have at their disposal to deal with it -- such
20 matters. I can't stop the police from reporting the
21 matter, if they were insistent on doing so, the paths
22 that they have, and I then have to take a decision in
23 terms of whether or not a prosecution, or any other form
24 of fiscal action, is merited.

25 Q. So the decision-making isn't for the police, it's for

Transcript of the Sheku Bayoh Inquiry

- 1 the fiscal, and the most the police can do is submit
2 a report to the fiscal?
- 3 A. Yes.
- 4 Q. But they cannot influence the decision that the fiscal
5 will make?
- 6 A. No, they cannot do that. On the other hand, I could
7 give them subtle hints that, you know, there's no point
8 in wasting their time and resources in going through --
9 going through, drafting up an SPR and submitting it,
10 because the eventual outcome would be just as I was
11 telling you, it would be a waste of everybody's time.
- 12 Q. And was your statement to DC Finch that this was rubbish
13 an example of that sort of hint?
- 14 A. Yes. Yes.
- 15 Q. Would it be a good use of time for the police to report
16 something like this to the fiscal?
- 17 A. At that time, from the information that I had, no.
- 18 Q. Would it in fact be a waste of time?
- 19 A. Yes.
- 20 Q. In these circumstances, would you have expected the
21 police to go on and charge the householders -- caution
22 and charge the householders with possession of
23 a controlled drug?
- 24 A. That would be entirely a matter for the police, it's
25 an operational matter, I would not have interfered with

Transcript of the Sheku Bayoh Inquiry

1 that.

2 Q. Okay. So this is exactly the sort of area that you

3 wouldn't trespass on?

4 A. Yes.

5 Q. If they had been cautioned and charged, would you have

6 expected a report to be submitted on the back of that?

7 A. Not everyone who's cautioned and charged is a subject of

8 a police report. The police might, having done all

9 that, not submitted a report, but generally speaking,

10 yeah, once somebody's charged with an offence then, yes,

11 I think the police would then submit a report.

12 Q. To your knowledge, was a report ever submitted in this

13 case?

14 A. I've no idea.

15 Q. Can we go to paragraph 38, please. So you had refused

16 the warrant --

17 A. Yes.

18 Q. -- or refused to put an application for a warrant before

19 the sheriff, I should say, and you were asked, did you

20 expect the herbal matter to be seized, and you replied:

21 "If the police had found the herbal matter, I would

22 expect them to seize it, regardless of the amount, as it

23 is a controlled substance under the Misuse of Drugs Act

24 1971. I would also expect the police to be dealing with

25 very small quantities by way of a police warning rather

Transcript of the Sheku Bayoh Inquiry

1 than wasting resources for very minor matters."

2 And you explained earlier in your evidence that, in
3 a situation of this sort, even if there were no warrant,
4 no urgency and no consent --

5 A. Yes.

6 Q. -- you would still expect the police to seize the drugs
7 --

8 A. Yes.

9 Q. -- because giving them back --

10 A. Yes.

11 Q. -- would be illegal, essentially.

12 A. Absolutely.

13 Q. At paragraph 39 you were asked whether you expected the
14 herbal matter to be tested, and you replied:

15 "I would expect the police to presumptively test the
16 herbal matter, but as I have said, the reporting of the
17 same is an operational matter for the police."

18 And again, you reiterate the point that:

19 "For minor amounts, it would be pointless to report
20 it through a [Standard Prosecution Report] because in
21 practice very small amounts are unlikely to be
22 prosecuted and at best an accused might be given
23 a warning letter or a fiscal fine at the very bottom end
24 of the range of prosecutorial disposals available."

25 A. Yes.

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1 Q. And, if we can look at paragraph 40, please, again you
2 anticipated the police seizing the cannabis and the
3 grinder and that they wouldn't be left in situ.

4 This may be an operational matter for the police, so
5 please tell me if it's something you're not able to help
6 with, but do the police have the discretion in cases
7 like this to issue a warning?

8 A. I believe so. I'm not entirely familiar with the ...
9 what guidance the police have, in terms of their own
10 internal processes, but it is entirely a matter for the
11 police in how they deal with these matters, and would
12 not expect them to expect an input from the
13 Procurator Fiscal as to what to do with it.

14 Q. So in the same way that they cannot influence your
15 decision-making around, say, whether to prosecute a case
16 or not, it wouldn't be within your gift to tell the
17 police "This is rubbish, what you should be doing here
18 is issuing a warning".

19 A. I can't tell them what to do. I could suggest that
20 that's an option that they might take, and it's entirely
21 a matter for them whether they take that advice or not.
22 And it wouldn't bother me either way what they decided
23 to do, because, as I say, it's -- I would be trespassing
24 on their function.

25 Q. After you concluded your call with DC Finch, having told

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1 him that the application was not going to be put before
2 a sheriff, did you ever hear anything more about this?

3 A. No, I don't -- I don't believe so, and certainly if I'd
4 got any calls, I mean -- this was -- looking back,
5 an ongoing matter, and it would have gone into, let's
6 say, the next day, during the course of the day they
7 would have contacted somebody about the -- about what
8 they were doing and why they were doing it.

9 Q. Thank you.

10 A. From an on-call point of view, no.

11 Q. Thank you, can you bear with me just a moment?

12 A. Sure.

13 (Pause)

14 MS THOMSON: No further questions, thank you.

15 LORD BRACADALE: Are there any Rule 9 applications? No.

16 Thank you very much, Mr Kapadia, for coming to give
17 evidence to the Inquiry. I'm going to adjourn now, and
18 you'll then be free to go.

19 THE WITNESS: Thank you.

20 (The witness withdrew)

21 LORD BRACADALE: We'll take a 20-minute break at this point.

22 (11.13 am)

23 (A short break)

24 (11.35 am)

25 (Proceedings delayed)

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1 (11.42 am)

2 LORD BRACADALE: Good morning, Mr Finch. Would you say the
3 words of the affirmation after me, please.

4 DC ROBERT FINCH (affirmed)

5 Questions from MS THOMSON

6 LORD BRACADALE: Ms Thomson.

7 MS THOMSON: Good morning, detective constable.

8 A. Morning.

9 Q. What is your full name, please?

10 A. Robert Finch.

11 Q. How old are you?

12 A. 41.

13 Q. How many years' police service do you have?

14 A. 15.

15 Q. There should be to your left a blue folder. Would you
16 mind opening that up and having a look inside. You
17 should find inside that folder, the operational
18 statement that you prepared on 11 May 2015. That's PIRC
19 reference 00143.

20 Do you have that?

21 A. Yes, I do, yeah.

22 Q. And we'll come to your Inquiry statement shortly, but
23 within your Inquiry statement, you do say that that
24 original statement is accurate at that time to the best
25 of your knowledge and your original statement is the

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1 best and most accurate piece of information you can
2 provide the Inquiry. Would that be fair?

3 A. Yes.

4 Q. You should also have within the folder a copy of your
5 police notebook from 3 May -- sorry, 4 May 2015, which
6 is PS03199. Is that there?

7 A. Yes.

8 Q. And your daybook, which is PS18485?

9 A. Sorry, that's not my writing, that's somebody else's
10 daybook.

11 Q. Oh, okay. Well, I wasn't intending to take you to it,
12 so we'll see how we get on.

13 A. Okay.

14 Q. If we need to try and hunt it down, then we will.

15 In any event, we've got your notebook and there
16 should also be your Inquiry statement, which is the
17 Inquiry reference 189.

18 A. Yes.

19 Q. Now, if it would help you to refer to any of these
20 documents at any point, then you're welcome to do that.
21 I'll be putting paragraphs up on screen, if there's
22 anything you would like me to bring up, then just say so
23 and we'll do that.

24 If we can begin by looking at your Inquiry
25 statement, and it's going to come up on screen now, so

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1 you don't have to go to the folder if you don't want to.
2 Can we go to the very last page of the statement, it's
3 27 pages long, and we see that it was signed by you on
4 15 November 2022. Your signature has been redacted, but
5 your signature should be on the hard copy --

6 A. Yes, it was, yeah.

7 Q. -- within the folder. You saw that?

8 A. I noticed that, yeah.

9 Q. If we can look at the final paragraph, paragraph 145,
10 you say that you believe the facts stated in the
11 statement are true and you confirm your understanding
12 that the statement may form part of the evidence before
13 the Inquiry and published on our website.

14 When you gave that statement, did you tell the truth
15 and do your best to give a complete and accurate account
16 of events?

17 A. Yes, I did.

18 Q. Can we return to the beginning of your statement,
19 please, just to put your evidence in context. At
20 paragraph 3, you explain that you joined the police in
21 2007, you were a police constable until 2013, and you
22 joined the MIT, which we've heard is the major incident
23 team; is that right?

24 A. Major investigation team.

25 Q. I beg your pardon, major investigations team in

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1 November 2013.

2 When you joined the MIT -- is it called the MIT for
3 short?

4 A. Yeah, I would call it the MIT as an abbreviation.

5 Q. When you joined the MIT, was that as
6 a detective constable?

7 A. Yes. I think until you do the course you're technically
8 an acting detective constable.

9 Q. I see. You've been with the MIT since November 2013,
10 and you were a detective constable with the MIT in May
11 of 2015?

12 A. Yes.

13 Q. You were also at that time a crime scene manager. And
14 if we can look briefly at paragraph 11, you explain that
15 you completed a five-day CSM -- is that crime scene
16 manager --

17 A. Yes.

18 Q. -- course at Tulliallan and that was in February 2015.

19 So you were a detective constable and you had
20 received training in crime scene management in the
21 February of 2015, so relatively recently before the
22 events of May 2015.

23 I'd like to move on to ask you questions now about
24 4 May of 2015, and that was your first involvement in
25 the investigation following the death of Mr Bayoh, and

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1 you explain elsewhere in your statement that you were on
2 a rest day on 3 May?

3 A. Yes.

4 Q. And returned to duty on 4 May. And you were deployed on
5 that day as a crime scene manager, and this was in fact
6 only your second ever deployment as crime scene manager.
7 Tell us a little about what your role as a crime scene
8 manager involved?

9 A. So I would be briefed and deployed by a senior
10 investigating officer. My responsibility would be to
11 direct and co-ordinate crime scene staff in order to
12 examine and search and record scenes, whether it's
13 scenes of serious crime or serious incident, not
14 necessarily crime, and I would be responsible to the
15 staff at that scene to ensure their health and safety
16 and wellbeing, so that they can function to the best of
17 their ability.

18 Q. If we can go to paragraph 23, please. You were shown
19 your daybook, I think, when you gave this statement, and
20 although the daybook that is in the folder today appears
21 to be --

22 A. Yeah.

23 Q. -- the wrong one, can you confirm that when you gave
24 this statement to a solicitor from the Inquiry team, you
25 had sight of your own daybook?

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1 A. That's correct.

2 Q. And it was the right one?

3 A. Yes.

4 Q. So when we see extracts from your daybook in here, in
5 the body of your statement, you have seen the daybook
6 and satisfied yourself that it was your daybook and in
7 your writing?

8 A. Just for absolute clarity, I think at the time that I
9 gave the Inquiry statement, I had the daybook in front
10 of me and Mr Bruce hadn't been provided a copy at that
11 point, but I referred to it throughout, giving that
12 statement, and very soon after that, I provided a copy
13 to the Inquiry team.

14 So I don't think it's quite accurate that Mr Bruce
15 showed it me. I think I was referring to it whilst
16 I was providing that statement.

17 Q. I see. In any event, when you gave the statement you
18 had a copy of --

19 A. Yes.

20 Q. -- your daybook in front of you. We seem to have the
21 wrong one in the folder today. I gather the right one
22 is now being printed and if we need to take you to it,
23 we will.

24 A. Okay.

25 Q. By way of convenient shorthand, I think, the passages

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1 from the daybook that you were looking at when you gave
2 the statement have been copied over into your
3 statement --

4 A. Yes.

5 Q. -- and it was the correct daybook that you were looking
6 at, at that time. All right.

7 So returning to paragraph 23:

8 "My daybook ... states that I've been told I'd be
9 getting deployed. I'd scribbled some ideas of what would
10 be needed to kick off. I refer to page 3 of my daybook:
11 '8.30... Instructed by DCI Hardy -- will require to
12 assist as CSM for death in Kirkcaldy yesterday."

13 So this details your first involvement in the
14 investigation following Mr Bayoh's death and that was at
15 8.30 on the morning of 4 May?

16 A. Yes.

17 Q. Can we look briefly at paragraph 25, please, just in
18 terms of who else was involved by this point in time and
19 the hierarchy. You have explained DSU. What does "DSU"
20 stand for, please?

21 A. Detective superintendent.

22 Q. Should that be DS -- okay, DS, detective superintendent:

23 "... Pat Campbell was in charge of the enquiry at
24 that time. I was also briefed by DCI -- that's
25 detective chief inspector --

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1 A. Yes.

2 Q. -- Keith Hardie. I don't recall any direct briefing
3 from DSU Campbell. DI Stuart Wilson became involved and
4 he was more involved in daily tasking and briefing.
5 I don't know what Stuart's role was, maybe Deputy Senior
6 Investigating Officer."

7 At paragraph 26, again you've referred to your
8 daybook and stated, "1000", I think that would be the
9 time, 1000 hours?

10 A. Yes.

11 Q. "... Briefing -- [Operation] Birnie -- DSUP Campbell.
12 PIRC -- lead enquiry."

13 So you have attended a briefing at 10 o'clock in the
14 morning of the 4th. What would be the purpose of
15 a briefing?

16 A. To explain the known circumstances at that time, and to
17 allocate actions to individual officers for that day.

18 Q. If we can look at paragraph 29, please, this is another
19 extract from your daybook and you confirm at
20 paragraph 30 that the information in fact came from the
21 briefing and from DCI Keith Hardie:

22 "Function, back to Dick's watched boxing.

23 Deceased became paranoid, end up at Saeed home
24 address, purple/white pills out of sock, flushed by
25 Sayed -- had a fight and stormed off -- 0500 approx

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1 Deceased went home 0700 -- black male carrying knife
2 cops attend -- restrained, PAVA, CS -- no effect, baton
3 strike, possibly to head, H/C ..."

4 Would that be handcuffs?

5 A. Yes.

6 Q. "... H/C to rear, leg restraints -- went still
7 CPR -- ambulance -- hospital."

8 So this is the information that you were provided
9 with at the briefing. We see there "black male carrying
10 knife cops attend", what was your understanding as to
11 whether Mr Bayoh had a knife or not at the point in time
12 that the police arrived?

13 A. I don't think it was clarified further than that. That
14 was -- I think the sentence there "black male carrying
15 knife", that's a reference to what was reported by
16 members of the public. That's how the call was, came
17 into police.

18 Q. We've heard in fact that Mr Bayoh may have been
19 handcuffed to the front, you've recorded it here
20 "handcuffs to the rear", does anything turn on that? Is
21 that of any significance?

22 A. I don't have any recollection to clarify that,
23 I'm afraid.

24 Q. If we can move on to paragraph 31:

25 "There's a locus at Hayfield Road where he'd [that's

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1 Mr Bayoh] been restrained. I was told the deceased's
2 address at ... Arran Crescent ..."

3 And then there is a reference to Martyn Dick's
4 address:

5 "... a friend of the deceased. Officers themselves
6 had equipment that had been seized."

7 So is this a discussion around the different loci
8 that the police were looking to?

9 A. Yeah, that was forming part of the briefing.

10 Q. Okay, okay. And at paragraph 32, you refer to your
11 daybook again, and there's an entry that someone has now
12 returned to the Saeed's home address. Can you explain
13 that to me, please, "Said H/A"?

14 A. Yes, "H/A" stands for home address. "Said" is a poor
15 spelling of the witness Saeed. It was explained that
16 that address was no longer under police control, it had
17 been examined and returned to the occupier, which
18 I believe was Mr Saeed.

19 Q. I see. At paragraph 34, you were told -- I think this
20 is still in the context of the briefing --

21 A. Yeah.

22 Q. -- "that the priorities were the post-mortem and to
23 progress the loci that had been secured."

24 There is a separate crime scene management briefing,
25 and you at that point were tasked to progress the loci

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1 at Martyn Dick's home address and Arran Crescent, which
2 was the deceased's home address, that was your task or
3 tasks for the day.

4 What does it mean to progress a locus?

5 A. So I think the briefing by DCI Stuart Houston went into
6 more specific about what was expected of us that day,
7 but it was to -- my understanding was to photograph the
8 addresses and to conduct an initial assessment, to
9 establish if there's any evidence that's relevant to the
10 investigation.

11 Q. Tell me about an initial assessment, what does that
12 involve?

13 A. So it would involve a thorough walk-through of
14 an address, in a methodical order, a visual examination
15 of what's at that address.

16 Q. What are you looking for?

17 A. At that time, I think there was mention obviously of the
18 knife, so we were looking if there was any obvious knife
19 set that was missing a particular knife. And there was
20 mention, I believe, of fights and disturbances. We were
21 looking to see if there was anything that would indicate
22 that that has occurred. And in general, just anything
23 that would indicate Mr Bayoh's movements and events that
24 evening going in, leading into the morning.

25 Q. Okay. Can we look at paragraph 36, please, where you

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1 explain the procedure, I think, after a locus has been
2 seized by the police. You say:

3 "Generally, hypothetically for this one and from
4 experience from other incidents, we would ensure they
5 had alternative accommodation and contact details ..."

6 So "they" being the householders?

7 A. Occupiers, yeah.

8 Q. Occupiers:

9 "... the moment we could return that locus back to
10 them they would be contacted."

11 So it's you who would be taking the householder's
12 contact details?

13 A. No, not necessarily. No, not necessarily myself. It
14 would be -- it was a large inquiry team that day, so
15 I would expect and anticipate that somebody has their
16 contact details and will keep them updated throughout
17 the day.

18 Q. That's fine. I beg your pardon, that is entirely my
19 fault, I meant "you" as in the police.

20 A. The police, yeah.

21 Q. It is the police who would be taking contact details for
22 the occupiers, they would ensure they had alternative
23 accommodation and that the police held their contact
24 details so they could be notified when they could get
25 entry to their home again:

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1 "They would most likely be contacted to provide
2 a statement to the enquiry team at some point, but I
3 can't give specifics on this one because my task that
4 day was purely to process the addresses. I don't know
5 if it was from the briefing but I did have an awareness
6 at the time that Mr Bayoh lived with his partner and his
7 infant child, that gave me a huge sense of empathy so
8 I do recall that."

9 A. Yeah.

10 Q. I appreciate this was a large inquiry, there were
11 a number of police officers at each of the loci, and
12 I don't believe that you yourself were responsible for
13 seizing Martyn Dick's address or the address at
14 Arran Crescent, that had been done by colleagues before
15 you arrived at either address. Is that correct?

16 A. Correct, yes.

17 Q. But just as a generalisation, as you've offered some
18 information to the Inquiry about the procedure where
19 an occupier is asked to vacate when their home address
20 is seized, they provide their contact details, so you
21 can let them know when they can come back, I wanted to
22 ask just a couple of questions around that. In
23 particular, I wanted to know what would happen if the
24 occupier needed to get back into their house for
25 something.

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- 1 A. Yeah.
- 2 Q. Would they, in the ordinary course of things, be allowed
3 to come back into their house for something?
- 4 A. Yeah, we would facilitate that, or to give you
5 an example, if they wanted to collect clothing or
6 a particular item, and it wasn't deemed relevant to the
7 investigation, we would facilitate that. We'd either
8 supervise entry or collect those belongings on their
9 behalf.
- 10 Q. Okay, so if it wasn't relevant to the inquiry, you would
11 either supervise their return to the property to collect
12 the items or you would do it on their behalf?
- 13 A. Yes.
- 14 Q. You mentioned clothing, what about things like car keys?
- 15 A. It would depend on the investigation, if that vehicle
16 wasn't relevant to the investigation, then yes.
- 17 Q. Pet food?
- 18 A. Absolutely, yeah.
- 19 Q. Breast milk?
- 20 A. Yes.
- 21 Q. A breast pump?
- 22 A. Yes.
- 23 Q. Medicine?
- 24 A. Yes, but if it wasn't relevant to the investigation.
- 25 Q. You can think of any reasons why people might not be

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1 allowed to access these things if they weren't relevant
2 to the investigation?

3 A. If there was potential that other evidence could be
4 disturbed or disposed of, which, as I said, we would
5 either collect on their behalf or supervise the
6 collection of that, those belongings or property.

7 Q. Okay. And if the things that the householder hoped to
8 get from the house weren't relevant to the inquiry and
9 there was no risk of other evidence being disturbed or
10 disposed of, would you anticipate any problem with them
11 being able to get these things back?

12 A. No. No.

13 Q. Can we look at paragraph 37, please, where you explain
14 your role on 4 May. Your role was to liaise with
15 forensic and scenes of crime staff, co-ordinate them and
16 complete a plan that comes from the forensic strategy
17 meeting:

18 "I was a conduit between the forensic examination
19 team and the SIO."

20 That's the senior investigating officer?

21 A. Yes.

22 Q. "I was assigned two loci eventually. I was asked to do
23 an initial assessment at each of them. I was to task
24 the Scenes of Crime Officer ... to take general
25 photographs of the locus, to do an initial assessment

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1 and see if there was any evidence relevant to
2 the enquiry."

3 So that was your role on the day.

4 At paragraph 38, in terms of what you were looking
5 for, and I asked you some questions about this a moment
6 ago, you say:

7 "I wasn't given specific information about what may
8 be relevant but from memory it was passed that Mr Bayoh
9 had possession of a knife. It was passed that there
10 were potential drugs, there was mention of these purple
11 and white pills that had been flushed down the toilet.
12 My understanding was we were looking for any loci with
13 an obvious knife set with one missing, we were looking
14 for any controlled drug or substance or legal high, and
15 there was also mention of fights between witnesses and
16 the deceased, so we were looking for any evidence of
17 disturbance within those loci. Also looking for generic
18 things like clothing, anything indicative of people's
19 movements such as receipts or mobile phones. I don't
20 remember any of that being specifically said, these are
21 just things that I would generally be aware of at any
22 crime scene or any locus that we have secured as part of
23 an enquiry."

24 So you've explained why you might be looking for
25 a knife, why you might be looking for drugs. You also

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1 mention clothing, why might clothing be relevant to
2 the inquiry?

3 A. CCTV, if any colleagues are capturing on CCTV, we have
4 got clothing as a visual cue of what to look for. Not
5 in this particular case, but clothing, if there has been
6 a fight or a disturbance, that clothing may be ripped or
7 damaged that would corroborate a struggle has taken
8 place.

9 Q. Whose clothing were you looking for or interested in?

10 A. It was, in this particular case, it was just note any
11 clothing out that was visible for CCTV. My
12 understanding, at that time, was the relevant clothing
13 at the time had been seized already, so it was more
14 a focus on a jacket or a coat that might help CCTV
15 movements.

16 Q. I want to ask you some questions now about your
17 attendance at Martyn Dick and Kirsty MacLeod's home
18 address.

19 If we can go to paragraph 51, please. And here you
20 explain that you arrived at their address at 2 o'clock
21 in the afternoon. You met two scene examiners,
22 Gordon Young and Judith Harley. You met them in the
23 street, you grouped in the street before entering
24 together.

25 Again, you confirm Martyn Dick's address had earlier

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1 been secured prior to you starting duty, so you weren't
2 involved in the decision to seize his house or the
3 actual seizing of his house?

4 A. Correct.

5 Q. "[His] address had earlier been secured prior to me
6 starting duty and that he was the friend of the
7 deceased. The deceased had been in the address at some
8 point in the early hours of 3 May. I remember there was
9 at least one officer on locus protection, I was happy
10 that it was sufficient to maintain the integrity of the
11 address."

12 You were aware that the address had already been
13 secured. Were you told on what authority the address
14 had been secured?

15 A. Yeah. I was told that it was permission granted by the
16 occupier.

17 Q. When an occupier grants permission for their home to be
18 seized, and subject to this initial assessment and
19 photographing and so on, would you expect that to be
20 recorded in some way, so there couldn't be any dispute
21 about it in the future?

22 A. I can tell you how I would capture such permission.

23 Q. Yes.

24 A. I would build that to within the witness statement to
25 make it clear that we've explained, you know, that

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1 they're under no obligation to do so, it had been
2 explained why, you know, the purpose of doing that and
3 what we're looking to achieve and the fact that if they
4 become uncomfortable at any point, they can withdraw
5 that permission. And I would -- like I say, I would
6 capture that within the body of a signed statement from
7 that witness.

8 Q. Now, if the locus was secured before the witnesses'
9 statements were taken, if it had been thought
10 appropriate to ask them to go back to the police
11 station, for example, to give their statement, how might
12 you capture that information?

13 A. Probably by means of a paragraph within my notebook and
14 ask the witness to sign that.

15 Q. So you would record in your notebook, then, that the
16 witness understood that they were under no obligation to
17 allow you to seize and presumably enter and move around
18 --

19 A. I'm not aware of any set of guidelines around that, but
20 that's certainly how I would approach it.

21 Q. And why do you think that would be an important thing to
22 do? Why is that your practice?

23 A. To withstand future scrutiny that, you know, we've
24 demonstrated a level of fairness and explanation to the
25 witness.

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1 Q. So this would be an audit trail, if you like, or paper
2 trail --

3 A. Yeah.

4 Q. -- that would confirm that you had ensured that the
5 witness realised they were under no obligation, you
6 would have explained the purpose, what you were hoping
7 to achieve, and that they could withdraw their
8 permission. And you would capture that either in
9 a statement or if the statement was being taken later in
10 a paragraph in your notebook, which you say you would
11 have them sign?

12 A. Mm-hmm.

13 Q. Okay. When you go to a locus as a crime scene manager
14 and you're aware that colleagues have already seized
15 that locus, and they tell you that they have the
16 householder's permission, do you rely on what you were
17 being told or would you ask to see what's written in the
18 notebook or what's been embodied within a statement?

19 A. So, on this occasion, it was a major investigation and
20 I was directed to that address by a senior investigating
21 officer, so I have to be satisfied that the SIO is
22 content with permission being granted, and that,
23 you know, there's a clear record of that. I believe it
24 was recorded on HOLMES, the HOLMES system, this inquiry,
25 so there should be a clear record of that. But I'm

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1 satisfied if I'm instructed by an SIO that they've given
2 that level of scrutiny and -- prior to instructing me.

3 Q. So it wouldn't perhaps be your place to say, "Before
4 I go through the front door, I'd like to see the
5 notebook, I'd like to see the statement --

6 A. Yeah, I didn't have any contact with those officers, so
7 it was purely on the instruction from the SIO.

8 Q. I'd like to ask a few questions about scene entry logs,
9 if we can go to paragraph 53, please, you say:

10 "There was no scene entry log at that scene.
11 A scene entry log is a legal document that logs any
12 activity in that address, any persons going in and out.
13 I don't know why there wasn't a scene entry log.
14 I don't think there was any reason provided to me as to
15 why a scene entry log hadn't been started. I thought of
16 adding retrospective entries. There is a specific
17 section at the start of the scene entry log to record
18 any persons that have entered the locus prior to the
19 scene entry log being started, but I don't recall
20 filling that in. That was simply information that
21 wasn't available to me."

22 So you describe a scene entry log as "a legal
23 document that logs any activity at the address, persons
24 going in and out", you don't know why there wasn't
25 a scene entry log when you arrived at Martyn Dick's home

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1 address, would you have expected there to have been
2 a scene entry log up and running by the point that you
3 arrived?

4 A. Yeah, I think so. I don't know if there was some
5 confusion that, you know, we were investigating a death
6 rather than a crime. So I don't know if there's
7 confusion there. I'm speculating. But I would have
8 expected a scene entry log to be started the previous
9 day and maintained.

10 Q. Did you do anything about the fact that there wasn't
11 a scene entry log?

12 A. Yeah, immediately instructed the officers to start one.

13 Q. If we can now turn to paragraph 62, please -- or, sorry,
14 59, I beg your pardon. This is an extract now from your
15 notebook:

16 "Attended Dick/MacLeod home address

17 Instructed officers to commence scene entry log at
18 1358

19 Entered -- full forensic protection. Still photos.
20 No sign of disturbance."

21 So here you record your instruction that the scene
22 entry log has to be commenced. The paragraph that we
23 referred to a few moments ago made mention of the
24 possibility of retrospective entries, you considered
25 making retrospective entries, but didn't. Can you

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1 explain, please, what retrospective entries are and why
2 you didn't make retrospective entries on this occasion?

3 A. Yeah, so within a scene entry log, there are a number of
4 pages that are coloured yellow, and that is an area in
5 which we can record officers that have been within that
6 -- or that we know that have been within that locus or
7 other persons beyond officers that have been within that
8 address prior to the scene log being started.

9 To give you an example, if officers need to rush in
10 for preservation of life to give CPR, they wouldn't have
11 time to start a scene entry log. So that's an area
12 where we can record who has been in, what action they've
13 taken. The white pages then move on once the scene
14 log's up and running, that becomes a log of who enters
15 and why and also persons responsible for maintaining the
16 address.

17 Because in this instance, the log was started the
18 previous day, there was an unknown number of officers
19 that had been assigned locus protection duties that
20 I didn't have that information available at that time.

21 Q. When you say the log was started the previous day, do
22 you in fact mean the log hadn't been started the
23 previous day and that --

24 A. Sorry. When the locus protection had commenced the
25 previous day, there had been any number of officers

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1 between then and 2 minutes to 2, when the log was
2 started, I didn't know who those officers were.

3 Q. So was it simply an impossible task to --

4 A. Yeah.

5 Q. -- try to ascertain that information and make the
6 retrospective entries?

7 A. Yeah.

8 Q. Okay.

9 If we could go now to paragraph 52, please. Sorry,
10 62, I beg your pardon. You say:

11 "I was briefed to make an initial assessment ..."

12 And we discussed what that involves a moment ago,
13 you say you were briefed to make that initial
14 assessment, so that was an instruction from a more
15 senior officer?

16 A. Yes.

17 Q. "The best and detailed account is in my daybook. I've
18 written at page 8: 'Jacket hanging on banister.' I think
19 the process of my thinking at that time was for CCTV
20 teams to look for clothing of the witnesses."

21 Again you mentioned CCTV and the relevance of
22 clothing earlier in your evidence.

23 At paragraph 63, you record:

24 "At page 8 I also wrote 'No signs of disturbance'
25 and 'Herbal matter in jar in bed drawer.' I drew

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1 sketches of the locus. I sketched downstairs and
2 upstairs."

3 So the initial assessment you've described as
4 involving a methodical walk around, and you're very much
5 using your eyes, you're looking for things that might be
6 of relevance to the inquiry, so you've recorded here:

7 "... 'No signs of a disturbance' and 'Herbal matter
8 in jar in bed drawer.'"

9 Who was it that noticed the herbal matter during the
10 initial assessment? Was it yourself or a colleague?

11 A. I've got a vague -- it's obviously a large passage of
12 time since, my recollection is it was drawn to my
13 attention by Judith Harley, who's one of the scene
14 examiners. One of the tasks was to record the locus by
15 means of still photography, so we would always allow
16 that to be done before I would enter, just so that's
17 captured prior to any disturbance, police disturbance,
18 within that address. So, from memory, I think it was
19 Judith Harley that brought that to my attention.

20 Q. Okay. Can you describe where this herbal matter was
21 noticed, was seen to be?

22 A. Pardon, sorry? I didn't hear the question.

23 Q. Sorry, can you describe where the herbal matter was seen
24 to be? It's described as a bed drawer. Is that
25 a bedroom drawer or is it a drawer in the bed itself?

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1 A. It was within a divan bed, so there was a pull-out
2 drawer in a base of the bed. By the time I saw it, the
3 drawer was open and it was clearly sitting on top of
4 that drawer on open display.

5 Q. Okay.

6 At paragraph 66, again another entry from your
7 notebook, you say:

8 "1500-1505 Re-entered with Judith [Harley] to assess
9 herbal matter in bed drawer, main bedroom.

10 2x grinders -- trace amounts."

11 At 67:

12 "We re-entered to assess the herbal matter. The
13 drawer in the nearest bedroom was open and the jar was
14 obvious. 2 grinders."

15 So your recollection today is that it was
16 Judith Harley who had drawn your attention to the
17 substance and the grinders. And you say that by the
18 time that you saw them, they were on open display within
19 a drawer in the divan of the bed in the main bedroom.

20 Now, there's evidence before the Chair from both
21 householders, both occupiers, Martyn Dick and
22 Kirsty MacLeod, that the drawer was closed when they
23 vacated their house, when the police took seizure of the
24 house, and it must have been opened by the police. Is
25 that something that you can comment on?

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1 A. It's possible. Certainly my recollection is by the time
2 I got to the bedroom, it was open. We certainly weren't
3 doing an intrusive search, we would have opened drawers,
4 certainly in the kitchen, for the assessment around the
5 knives. But certainly, by the time I saw that, the
6 drawer was open.

7 Q. Okay.

8 A. I've got no recollection of opening that drawer.

9 Q. As you said earlier in your evidence, the locus had in
10 fact been seized the previous day. Can you say how many
11 officers had been in the house --

12 A. No.

13 Q. -- between the point in time that the locus was seized
14 and you commencing the scene log?

15 A. No.

16 Q. No. And no log was being kept so we don't know who they
17 were?

18 A. Correct.

19 Q. Okay. But your evidence is that by the time it was
20 drawn to your attention, the drawer was open?

21 A. Correct.

22 Q. And the substance and the grinders were on display?

23 A. Correct.

24 Q. And you can't assist us with anything that happened
25 before that point in time?

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- 1 A. No.
- 2 Q. You said you wouldn't have been carrying out, I think
3 you used the word "intrusive" or "invasive" search, can
4 you help us to understand the difference between what
5 you call an initial assessment and what the public might
6 think of as a search? Is there a difference?
- 7 A. Yeah. Depending on the circumstances again, but yeah,
8 you know, a structured intrusive search would be one
9 undertaken by or under the supervision of a police
10 search adviser, and would be recorded. The wording in
11 the document is "intrusive search" and that would be
12 every cupboard, every drawer is searched through
13 thoroughly. The initial assessment would have been, as
14 I've already described it, a general visual assessment
15 at that address. Potentially involving opening drawers,
16 but certainly not a thorough detailed search of the
17 contents of those drawers.
- 18 Q. Would it be fair to say that it's a question of degree?
- 19 A. Yes.
- 20 Q. And that both involve you looking for evidence?
- 21 A. I'm sorry, I don't understand that.
- 22 Q. That both an initial assessment and a structured search
23 involve you looking for things that are of evidential
24 value to your inquiry?
- 25 A. Yes, yeah.

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1 Q. And both may involve the opening of drawers?

2 A. Yes.

3 Q. Okay.

4 Can we move on to paragraph 68, please. So the
5 herbal matter and grinders had been brought to your
6 attention, and you say:

7 "From memory I think I rang DS More or DI Wilson and
8 was advised to phone the on-call Fiscal to seek a drugs
9 search warrant. I can't recall why we needed the search
10 warrant in addition to the consent."

11 If I can ask you a few questions about that, please.
12 You had been told by a senior officer that the occupiers
13 had consented to the seizure of the house. What did you
14 understand to be the scope of the consent that they had
15 given to the police?

16 A. At that point, we're carrying out enquiries into the
17 death of Mr Bayoh, so that's the scope of the search.
18 So when we've located drugs that becomes outwith that
19 scope, we've identified criminality there.

20 Q. Okay. But did you understand then that the householders
21 had consented not only to the seizure of their house,
22 but that for it to be searched for evidence relevant to
23 the investigation into Mr Bayoh's death?

24 A. Yes, that was my understanding.

25 Q. So we've heard some evidence that there might be

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1 a distinction between the seizure of a property and the
2 search of the property.

3 A. Yeah.

4 Q. And it was your understanding that the occupiers had
5 consented to both insofar as it was relevant to the
6 police investigation into the circumstances of
7 Mr Bayoh's death?

8 A. I'm basing that on the instruction from the SIO that
9 that existed, yeah.

10 Q. And, of course, what you have now encountered is, on the
11 face of it, a controlled drug, and you've explained
12 that's why there was a need to approach a fiscal for
13 a warrant, because the drug that you had found was
14 perhaps not of evidential value in terms of the
15 investigation into the circumstances of Mr Bayoh's
16 death.

17 A. Correct.

18 Q. Did I understand that correctly?

19 A. Correct.

20 Q. Okay.

21 So as we see from paragraph 68, you took advice from
22 a more senior colleague and you were advised to phone
23 the on-call fiscal.

24 You've explained now, although your statement says:

25 "I can't recall why we needed the search warrant in

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1 addition to the consent."

2 If I've understood your evidence correctly, you have
3 explained today that it was because what you had found
4 wasn't directly relevant to the inquiry itself, but it
5 was evidence of criminality of another sort?

6 A. Correct, yeah.

7 Q. What quantity of drugs are we dealing with here?

8 A. Very small. I think at one point I made a reference in
9 my daybook or my notebook that it was probably less than
10 a gram.

11 Q. Is that what the police might think of as a personal
12 quantity rather than a dealer quantity?

13 A. Yeah, definitely.

14 Q. Would you usually call the fiscal for a warrant for such
15 a small quantity?

16 A. It would depend on the situation. Not necessarily, no.

17 Q. We heard evidence this morning from the on-call fiscal,
18 whom you called, he said in his experience it was rare
19 to be called by the police, on-call or in the office,
20 for such a small quantity.

21 A. Yeah.

22 Q. Have you called the fiscal before about asking for
23 a warrant for less than a gram of cannabis?

24 A. No.

25 Q. Have you done it since?

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1 A. No.

2 Q. So this is the only time in your career that you've
3 called the fiscal to seek a warrant for less than a gram
4 of cannabis?

5 A. As far as I recall, yeah.

6 Q. Okay. Have there been other cases in the course of your
7 career where you have come across small quantities of
8 cannabis or other drugs?

9 A. I can't recall to that minute amount, no.

10 Sorry, perhaps during a drugs death investigation,
11 we've come across a grinder with trace amounts that
12 would be seized, if a person has died within that
13 property. But no.

14 Q. So will there have been other occasions where you've
15 stumbled across a small amount of drugs in the course of
16 your career?

17 A. During death investigations, yeah.

18 Q. All right.

19 How did you feel about being asked to call the
20 fiscal out of hours with a view to applying for
21 a warrant for such a small quantity of drugs?

22 A. It was an instruction by a senior officer. I felt
23 reassured at the time of day, it was not long after the
24 usual court, daily court business finishing up, so I can
25 see that it was round about 5 o'clock, so I was

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1 comforted by that.

2 Q. It was your understanding that the occupiers had
3 consented to their property being subjected to a search?

4 A. Yes.

5 Q. If that consent had already been given, was any
6 consideration given to asking them whether they would
7 consent to effectively a drugs search?

8 A. I can't comment on what the SIO's decision-making was
9 around that.

10 Q. In any event, you are acting on an instruction to
11 contact the out-of-hours fiscal, so let me ask you some
12 questions now about how that call went.

13 A. Okay.

14 Q. The fiscal you spoke with was a Mr Kapadia and we heard
15 evidence from him this morning. So he has explained to
16 us the processes and the procedures that are in place
17 when the police need to contact the fiscal out of hours
18 already.

19 Let's look at paragraph 69, which is an entry in
20 your daybook, you say:

21 "I've written in my daybook ...

22 'Relating to investigation?

23 Putting pen through it

24 No wanting to bother Sheriff

25 1700 Spoke to A/N - PF

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1 Operational matter

2 From prosecution point of view -- nothing will be
3 done'."

4 Paragraph 70, you say:

5 "I rang the PF and I've informed him of the
6 circumstances. He told us we weren't being granted
7 permission to approach the Sheriff for a warrant and it
8 was an operational matter for the police."

9 Again, if we move down just a little bit, you go to
10 your notebook, and similar information is recorded:

11 "... 4 May 2015 ... 1700. Spoke to PF DEV KAPADIA.

12 Not authorised to approach JP/Sheriff for warrant.

13 Prosecution would do nothing. Operational matter.

14 1710. Instruction by DI Wilson to recover substance
15 and caution occupiers'."

16 Can you add to that in terms of your recollection of
17 the conversation that you had with Mr Kapadia?

18 A. I don't think I can speculate. There'd have been
19 a discussion around about what's the connection and
20 relevance to the -- if any, to the death of Mr Bayoh,
21 what quantities would you estimate it to be, is there
22 other evidence within the address to indicate that,
23 you know, we're actually dealing with a supply case? Or
24 is it personal? Is there any information or
25 intelligence in the background that would indicate it's

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1 anything other than a personal amount of controlled
2 drug?

3 Q. And in this case, was there any evidence within the
4 address to suggest that it was a supply case rather than
5 personal use?

6 A. Not that I had seen, no.

7 Q. And was there any intelligence in the background to
8 suggest that the householders were supplying drugs or
9 that their property had been used in some way for the
10 supply of drugs?

11 A. No.

12 Q. Okay.

13 If we can return to paragraph 69, these are your
14 notes, of course, but you recall putting pen through it.
15 Was this you saying you were putting a pen through it or
16 was it Mr Kapadia saying he'd be putting a pen through
17 it?

18 A. That's not a term I would -- I would -- that refers to
19 the fiscal. I don't have the power to put a pen through
20 it, as that terminology mentions there.

21 Q. And what would you understand that to mean, putting
22 a pen through something?

23 A. The bottom sentence there, the prosecution wouldn't
24 progress that, it wouldn't be in the public interest to
25 do anything with that.

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- 1 Q. Okay. And why would that be?
- 2 A. Just because we're dealing with such small quantities.
- 3 Q. You've also recorded, "No wanting to bother Sheriff", do
4 you recall anything about that part of the discussion?
- 5 A. Yeah, I -- it's not a direct quote, but I think that the
6 gist was that he didn't want to disturb a sheriff at
7 that time of day based on the small amounts.
- 8 Q. "'Operational matter
9 From prosecution point of view -- nothing will be
10 done'."
- 11 "From prosecution point of view, nothing will be
12 done", that seems quite straightforward.
- 13 What did you understand Mr Kapadia to be telling you
14 when he said words to the effect of "from prosecution
15 point of view, nothing will be done"?
- 16 A. As I've said, it wouldn't be in the public interest
17 to -- for example, if a report was submitted to the PF
18 regarding those circumstances, no further action would
19 be taken.
- 20 Q. And you've recorded there "operational matter", and
21 again, in paragraph 70:
22 "[Mr Kapadia] told us we weren't being granted
23 permission to approach the Sheriff ... and it was
24 an operational matter for the police."
25 What did you understand by "it was an operational

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- 1 matter for the police"?
- 2 A. It was exactly that, it's a choice for police to make as
3 to what further action, if any, is taken.
- 4 Q. If we can scroll down a little, please. So you've had
5 the call with the fiscal, his notes are to the effect
6 that the call lasted for about five minutes, would that
7 accord with your recollection?
- 8 A. Yes.
- 9 Q. And he has given evidence that he declined to put your
10 application for a warrant before a sheriff, and told you
11 it was an operational matter. We see at the bottom of
12 paragraph 71:
13 "... Instruction by DI Wilson to recover substance
14 and caution occupiers."
15 Should we understand then that after the call with
16 the fiscal, you took further advice from DI Wilson?
- 17 A. Yes.
- 18 Q. Did you make DI Wilson aware that the fiscal was not
19 willing to put the application before a sheriff?
- 20 A. Yes, I will have done, yeah.
- 21 Q. And DI Wilson told you to recover the substance and
22 caution the occupiers?
- 23 A. Yes.
- 24 Q. Can you help us to understand the authority on which you
25 went on to recover the substance if you didn't have

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1 a warrant and you didn't have consent?

2 A. Yeah. SIO instruction. But my understanding, I'm duty
3 bound to prevent and detect crime and that -- and remove
4 that substance from the public for their safety. So
5 ultimately, I was duty bound to take action and seize
6 that.

7 Q. You were also instructed to caution the occupiers?

8 A. Yes.

9 Q. How did you feel about that instruction?

10 A. I don't recall having any feeling.

11 Q. Okay. Would it be normal police practice, can you say,
12 to caution someone for possession of less than a gram of
13 cannabis?

14 A. Yeah, absolutely, yeah, if --

15 Q. Okay.

16 A. I mean, the best example I could give you would be
17 a stop and search in the street and recovering maybe
18 a single joint. That person would be cautioned that if
19 the contents of that joint is tested and is found to
20 contain an illegal substance, they may be reported for
21 the consideration of a prosecution.

22 Q. Okay.

23 And do you know in this case whether the
24 householders were in fact reported for a consideration
25 of prosecution?

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1 A. I personally didn't report them. I couldn't -- I think
2 in my statement, it goes on to explain later on that the
3 next day, I was instructed to hand over all productions
4 and take no further part in the investigation, so that
5 was prior to an opportunity to field test that item.
6 So, in my experience, it looked to be herbal cannabis,
7 but I didn't have an opportunity to do a field test, so
8 as such I couldn't put a prosecution report in regarding
9 that.

10 Q. Would it be normal police practice to caution and charge
11 an individual for possession of controlled drugs before
12 a field test or a presumptive test has been carried out
13 to confirm they are in fact drugs?

14 A. Not caution and charge, there's a statutory drugs
15 caution, and I think that the exact wording is later in
16 my Inquiry statement.

17 Q. I think it is. Let's have a look at that now.

18 A. Okay.

19 Q. It's paragraph 83, I think. Paragraph 83:

20 "I have been referred to my notebook ... 1842

21 A/N's..."

22 Which you explain in the next paragraph is "above
23 nominals"?

24 A. Yeah.

25 Q. So that's Kirsty MacLeod and Martyn Dick.

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1 "... A/N's read drug caution verbatim:- 'I have
2 reason to believe that the substances found within your
3 home address is a controlled drug under MDA' ..."

4 Is that the Misuse of Drugs Act?

5 A. Yes.

6 Q. "... '1971. Should analysis of the substances prove
7 positive you will be reported for offences under the
8 act. I must caution you that you are not obliged to say
9 anything in reply but anything you do say will be noted
10 and may be used in evidence. Do you understand?'"

11 Both understand; neither made a reply.

12 And again you've explained the shorthand you used --

13 A. Yeah.

14 Q. -- at paragraph 84.

15 That was the caution that was read over, so should
16 we understand that they were cautioned but not cautioned
17 and charged?

18 A. Correct, yeah.

19 Q. All right. And you've explained that the following day
20 you were asked to hand over productions. We may hear
21 evidence that the PIRC began to be incrementally more
22 involved in the investigation from about that point
23 onwards. But you certainly didn't follow this up; this
24 concluded your involvement, essentially, in this matter?

25 A. Correct, yeah. Yeah.

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1 (Pause)

2 Q. Okay.

3 You've explained in your statement and in your
4 evidence that you were essentially acting on
5 instructions, both in terms of making contact with the
6 fiscal, also cautioning the householders.

7 Would you ordinarily go to a senior officer for
8 instructions in these circumstances, or would you in
9 other circumstances have your discretion?

10 A. No. On -- throughout my time in the major investigation
11 team, whenever I've been involved in an MI, you take no
12 action without explicit instruction from an SIO, whether
13 that's verbally or a typed printed action from the
14 HOLMES computer system, there is nothing done -- I don't
15 act autonomously in any aspect of an MI.

16 Q. If you had been able to act autonomously, would you have
17 done anything differently?

18 A. No.

19 Q. Okay.

20 We've heard some evidence, albeit limited evidence,
21 from Mr Kapadia this morning that the police do have the
22 discretion in at least some circumstances to issue
23 a warning to a person --

24 A. Yeah.

25 Q. -- as an alternative, perhaps, to cautioning them or

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1 submitting a report to the fiscal. Is that something
2 you've ever done?

3 A. In the areas I work at, I'm not that familiar with
4 a recorded police warning and when I did work in
5 response and in uniform it wasn't a tool available to
6 police, so I'm not overly familiar with it. I'm aware
7 that it exists and in circumstances that it can be used.

8 Q. Are you able to help us -- and please say if you
9 can't -- with whether it's a tool that might be used
10 where a person has been found to be in possession of
11 a very small quantity of cannabis?

12 A. Yeah, I'm not overly familiar with the exact guidelines
13 or whether this circumstance would fit. I want to say
14 yes, but I can't be certain.

15 Q. All right, thank you.

16 Can I move on to ask you now about your involvement
17 with the other locus, that is Mr Bayoh's home address on
18 Arran Crescent.

19 I believe you also had some involvement as crime
20 scene manager on 4 May with the Arran Crescent property.
21 What was the nature of your role at Arran Crescent? Was
22 it identical to --

23 A. Yes.

24 Q. -- the role that you performed --

25 A. Yes.

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1 Q. -- at Martyn Dick's home address?

2 So what, then, was the legal basis for you entering
3 and assessing and potentially searching Mr Bayoh's home
4 address?

5 A. Yeah, so I think when I provided my Inquiry statement
6 I was -- it was unclear. I think, having reviewed my
7 daybook, I'm content that permission was given for that
8 one as well, or certainly that's the instruction that
9 I received from the SIO, that permission had been
10 granted.

11 Q. Let's look at paragraph 90 of your statement, please.
12 This is in relation to Mr Bayoh's address:

13 "I attended [at Arran Crescent at] 7 in the evening.
14 I have been asked if I know the legal basis to search
15 this property. No, and this really jumps out to me when
16 I reviewed my statement. I can only answer that with,
17 at the time, it was SIO-led. I'd have had the firm
18 belief that we were acting lawfully and within the
19 powers of either permission from the occupier or SIO
20 policy in conjunction with the PF and the PIRC, but
21 I don't have any specific note in my notebook or my
22 daybook nor memory as to what that was, whether it was
23 a warrant, permission from the occupier, or otherwise."

24 And you said a moment ago you've clearly reflected
25 on this.

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- 1 A. Yeah.
- 2 Q. Before I took you to that paragraph, you said that you
3 were satisfied that it was permission or consent from
4 the householder.
- 5 A. Yeah. I don't have any clear recollection but I know,
6 if you refer to my daybook, I think there's a briefing.
7 On the top right of the page, there's a bullet point
8 that says, "Warrant? -- permission granted".
- 9 I think having reviewed that, because it's right at
10 the start of the briefing, it refers to both locuses.
- 11 Q. Thank you, and that's in relation to both loci, so this
12 was the daybook that was missing --
- 13 A. Yeah.
- 14 Q. -- and still will be missing from the blue folder, but
15 I believe we might now have it. Perhaps can we let
16 DC Finch have a look, and would it be possible to put
17 that on the screen?
- 18 A. Thank you.
- 19 (Pause)
- 20 Q. Detective constable, I'm going to ask for your help here
21 to see if you can help us to find that entry. I think
22 you might be able to locate it more quickly than I can.
- 23 A. Yeah. I don't see that it's paginated, but I think
24 perhaps page 7.
- 25 Q. Oh, yes. Top of page 7.

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1 A. Yeah. So the previous page is the start of the briefing
2 at 10 o'clock in the morning, and then that goes over
3 the page, "Warrant? -- permission given."

4 Q. Just for completeness, if we might go to the previous
5 page first, near the top of that, in fact at the very
6 top:

7 "1000 hours.

8 "Briefing.

9 "PIRC - lead enquiry.

10 "5 loci."

11 And then there's a discussion about the five
12 different loci, including Hayfield Road, Arran Crescent,
13 Martyn Dick's home address, amongst others.

14 Then at the top of page 7:

15 "Warrant? -- permission given."

16 So the issue of lawful authority to enter and search
17 these loci appears to have been discussed at the
18 briefing; would that be fair?

19 A. Yes.

20 Q. And the possibility of a warrant being required appears
21 to have been raised?

22 A. I think that was my personal consideration: do I need
23 a warrant before I attend at these addresses?

24 Q. And you have written -- this is your handwriting?

25 A. Yes.

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- 1 Q. These are your notes, "Permission given". So you've
2 been provided that information?
- 3 A. Yes.
- 4 Q. That has satisfied you that there was no need for
5 a warrant?
- 6 A. Yes.
- 7 Q. You said earlier in your evidence that so far as
8 Martyn Dick was concerned, you took his having given
9 permission on authority from a more senior officer, you
10 didn't ask to see a note in a notebook or see his
11 statement. Was it the same in relation to
12 Collette Bell's home address --
- 13 A. Yes.
- 14 Q. -- at Arran Crescent?
- 15 A. Yes.
- 16 Q. So you were provided with that information by a more
17 senior officer and you didn't look behind it?
- 18 A. No.
- 19 Q. Can we go to paragraph 93, I just have a few questions
20 in relation to -- sorry, we're going back to the Inquiry
21 statement. I'm sorry. In fact, we were at
22 paragraph 90, so let's just pick up from there, please.
- 23 Paragraph 90 is where there's a discussion about the
24 lawful basis and we've explored that.
- 25 If we look for completeness at paragraph 91, you say

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1 you're certain:

2 "... that we'd have acted on clear instructions at
3 the time, whether it was for warrant permission or
4 an SIO policy. I wouldn't have done that unless
5 I thought I was acting legally and with absolute
6 fairness."

7 A. Yeah.

8 Q. If there had been any question in your mind as to
9 whether the householders had provided consent for the
10 work that you were being asked to carry out, what would
11 you have done?

12 A. I'd have queried that with the SIO.

13 Q. If we can now go to paragraph 93, please. It's 7.20 pm
14 by the time you've entered Arran Crescent. There's
15 a reference there to seizing a watch, which I think had
16 been found in a garden.

17 A. Yeah.

18 Q. "I've taken full forensic precautions", which you
19 explain by reference to your daybook to mean gloves,
20 overshoes, suit and mask. What was the purpose of
21 taking full forensic precautions?

22 A. In hindsight, it was being overly cautious. As I've
23 mentioned, it was my second ever scene. There was no
24 indication of any forensic examinations requiring to be
25 done at that locus, there was no mention of bleeding

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1 injuries. I think I was just being overly cautious.

2 Q. Had you taken those precautions when you went into
3 Martyn Dick's home address?

4 A. I can't recall without referring to the scene entry log.
5 I think I probably would have done.

6 Q. And if you had, or assuming that you did, would you have
7 worn the same clothing --

8 A. Yes.

9 Q. -- when you went into Arran Crescent or would you have
10 changed into a fresh set of clothing?

11 A. I'd have, yeah, an entirely new set of protective
12 clothing.

13 Q. Paragraph 94, you've explained that you noticed fridge
14 magnets on the floor and there were fridge magnets on
15 the footpath outside the property, a watch strap was
16 broken, and photographs were taken and there was
17 recovery by the scenes examiners.

18 At paragraph 95 you say:

19 "I don't see that I've put it in my statement, but
20 looking back now, that is indicative of a potential
21 disturbance, potentially fridge magnets were pulled off
22 a fridge and a watch strap with one side potentially
23 pulled off. There was a small flatscreen television on
24 the floor, possibly indicative of being knocked over."

25 Were there any other signs of a disturbance within

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1 Arran Crescent that you recall?

2 A. Not that I recall, no.

3 Q. Was there anything more of evidential value within the
4 kitchen that you recall?

5 A. I recall seizing three knives from the kitchen and
6 I recall, I think it was a red coloured rucksack on top
7 of either a unit or a fridge freezer with various
8 tablets inside.

9 Q. And were they all seized?

10 A. Yes.

11 Q. Okay. Where were the knives found?

12 A. I don't know if I can refer to my notebook. I think
13 they were potentially the -- one of the drawers in the
14 kitchen.

15 Q. All right. I'll see if I can help you with that.

16 If we could perhaps go to paragraph 107, there's
17 mention here of the knives:

18 "I can't remember what the knife from the incident
19 looks like now."

20 Is that a reference to the knife from Hayfield Road?

21 A. Yes.

22 Q. "I think I must've seen the knife from the incident.
23 A photograph must've been shown at the briefing because
24 the knives at [Collette Bell's address] were visually
25 similar to the knife at Hayfield Road. I've not put

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1 that in my notebook but I wrote the statement days after
2 the fact so [it's] clear in my memory."

3 That perhaps doesn't assist us with precisely where
4 the knives were recovered from.

5 It may not be important, but --

6 A. I'm certain it was a kitchen drawer, but in terms of
7 which actual drawer, I can't be certain.

8 Q. But your recollection is that the knives were within
9 a drawer?

10 A. Yes.

11 Q. Do you recall whether the drawer was open or closed?

12 A. I think it was closed. This of course will all be
13 photographed by the -- by the SOCO.

14 Q. Of course. Don't worry --

15 A. Sorry, I don't see anything. Sorry.

16 Q. No, don't worry, we can move on from that.

17 So on 4 May of 2015, you were the crime scene
18 manager both for Martyn Dick's address and for
19 Arran Crescent.

20 One final question: you have given evidence that
21 when you made your way to Martyn Dick's address there
22 wasn't a scene entry log up and running, and that was
23 the first thing you instructed to happen.

24 A. Yes.

25 Q. Was there a scene entry log set up when you arrived at

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1 Collette Bell's address?

2 A. I think there must have been, because otherwise I'd have
3 taken the same action and made the same comment in my
4 notebook and statement. So I think there must have
5 been, and from memory there was.

6 Q. All right.

7 So you've explained the tasks that you carried out
8 on 4 May of 2015. Did you have any ongoing involvement
9 in this inquiry beyond 4 May?

10 A. Very briefly. So I think the next day we were
11 instructed that -- take no further part in the inquiry
12 and to hand over all productions. There wasn't much in
13 the way of explanations as to why that was. I had
14 a brief involvement on this, I think it must have been
15 6 May, the Wednesday, I was asked to do a visual
16 examination of a vehicle that had been seized.

17 Q. All right. I don't think I need to ask you any more
18 questions about that today.

19 Before we conclude, can I ask you some questions
20 about training?

21 A. Yeah.

22 Q. We've touched on training already and you told us about
23 the crime scene managers course that you did in the
24 February of 2015.

25 Can we go back to paragraph 20 of your statement,

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1 please. If I can take you back to your probationer time
2 at Tulliallan, and you've explained:

3 "Week 1 attending police college as a new constable
4 probationer, the entire first week was dedicated to
5 diversity."

6 You go on to say:

7 "I can't remember anything specifically from it.
8 I don't recall any other training on diversity and
9 equalities."

10 Do you remember anything at all about that training?

11 A. I think that's quite badly worded. I think it's the
12 detail of it I don't recall, but I remember the nature
13 of the training in terms of being aware of diversity and
14 how to approach various issues as a police officer. So
15 it's just the exact detail I don't recall.

16 Q. Okay. Do you recall what the topics were that were
17 covered over that week-long course?

18 A. Yeah, from memory it was broken down to race, religion,
19 gender, and suchlike.

20 Q. Okay. And you say you don't recall any training on
21 diversify and equality since?

22 A. No, although since providing that statement there has
23 been an online training package released.

24 Q. Okay. Tell us about the online training package.

25 A. I haven't had the opportunity to complete that yet.

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1 Q. Okay.

2 A. I only became aware of it last week, and we had quite
3 a busy week at work last week.

4 Q. Okay.

5 Now, you told us that you'd joined the police in
6 2007; you had a week of diversity. That would have been
7 in 2007 when you were a probationer; we're now in 2023.
8 Has there been no other equalities and diversity
9 training in the intervening years?

10 A. Not that I recall.

11 Q. Do you recall whether your training back in 2007 covered
12 unconscious bias?

13 A. I don't recall that it did, no.

14 Q. You do however say in your statement at paragraph 141,
15 if we might go there, please, you say:

16 "In my opinion I don't believe I hold any biased
17 thoughts, I try every day to deal with every person with
18 professionalism and impartiality. I'm conscious of
19 unconscious bias being a factor but I don't let it
20 affect how I operate."

21 Can you help us to understand how you guard against
22 unconscious bias playing any part in how you deal with
23 members of the public?

24 A. Yeah, the very nature of unconscious bias, you're not
25 necessarily conscious of it, but as I've said there

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1 I try every day to treat people with compassion and
2 impartiality and be professional, treat people the way
3 I would expect myself or my friends or my family to be
4 treated, and that's the approach I take every day.

5 Q. You say at paragraph 142:

6 "I have been asked if, looking back now, did
7 Sheku Bayoh's race play any part in my involvement in
8 the enquiry. For me personally no, absolutely not,
9 I acted with professionalism and impartiality. I have
10 a huge amount of empathy for Sheku Bayoh's family given
11 the family dynamic. It was harrowing when I went to
12 Mr Bayoh's address and seeing the setup and being able
13 to relate to that and seeing the child who has lost the
14 father. Honestly, I personally acted with fairness and
15 race didn't play a part."

16 And you maintain that view today?

17 A. Yes.

18 Q. You go on at paragraph 144, please, to say:

19 "I've never seen any examples of discrimination by
20 police in Kirkcaldy in relation to race. I'm not aware
21 of any other police officers having racist views. I've
22 not heard any racist jokes or comments from any police
23 officers. To elaborate, that's something I've actively
24 challenged and would be disgusted by ... I can honestly
25 say that I've never encountered that."

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1 A. Yeah.

2 Q. Does that remain your position --

3 A. Yes.

4 Q. -- today?

5 Can I ask you, detective constable, whether any of
6 your decisions or your actions on 4 May of 2015 were
7 influenced to any degree by Martyn Dick's connection to
8 Sheku Bayoh?

9 A. No.

10 Q. Or by Collette Bell's connection to Sheku Bayoh?

11 A. No.

12 Q. And were any of your decisions or actions on that day
13 influenced to any degree by the fact that Mr Bayoh had
14 died following contact with the police?

15 A. I'm led by the SIO, that that's the decision-maker
16 effectively, but no.

17 Q. Thank you. Can you give me a moment, please?

18 A. Yeah.

19 (Pause)

20 Q. Just one final question. You explained that your
21 involvement came to an end on 5 or 6 May or thereabouts,
22 that you came off the inquiry, you were asked to hand
23 over productions. What was your understanding as to why
24 you'd been taken off the inquiry?

25 A. So it wasn't me personally, it was the whole inquiry

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1 team that were instructed to take no further part in
2 the inquiry. It was all a bit mysterious at the time,
3 if I'm honest, there was no explanation given and there
4 was no further instruction than that. So I don't know,
5 it wasn't elaborated upon.

6 MS THOMSON: Thank you, I've no further questions.

7 THE WITNESS: Thank you.

8 LORD BRACADALE: Are there any Rule 9 applications?

9 Ms Mitchell.

10 Detective constable, I wonder whether you would
11 withdraw to the witness room while I hear
12 an application.

13 THE WITNESS: Of course.

14 (In the absence of the witness)

15 LORD BRACADALE: Yes, Ms Mitchell.

16 MS MITCHELL: Yes, my Lord, briefly. The witness understood
17 that he was there lawfully and that they were carrying
18 out a visual inspection, but also including --

19 LORD BRACADALE: This is at Dick's house?

20 MS MITCHELL: This is at Dick's house, including opening
21 drawers, et cetera.

22 The questions that I would like to put to the
23 witness was: what was his understanding of the purpose
24 of seeking a search warrant? To ask him why he didn't
25 seize the drugs or the herbal matter and the grinder at

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1 the time that he saw them? And whether or not he told
2 Dev Kapadia that he was already in the house and had
3 seen said items at the time of requesting a warrant?

4 LORD BRACADALE: So when you say what was his understanding
5 of the purpose of seeking a search warrant, what do you
6 mean by that?

7 MS MITCHELL: Indeed. Against the background that he was
8 already -- he says he was already there lawfully and he
9 was already carrying out a visual inspection and, it
10 would appear, a physical search.

11 LORD BRACADALE: I see. I understand now. You're referring
12 to the decision to contact the fiscal.

13 MS MITCHELL: Indeed.

14 LORD BRACADALE: Right.

15 MS MITCHELL: So I appreciate it wasn't his decision, but
16 I'm wanting to explore: what was his understanding of
17 why he was doing that?

18 LORD BRACADALE: Well, it seems to me that each of these
19 items has been the subject of evidence, and I don't
20 think it would assist me further by exploring any of
21 these points further. So I won't allow an examination.

22 So if you just return to your seat for a moment.
23 Give me a moment while I consult with my assessor.

24 (Pause)

25 Could we have the witness back, please.

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1 (In the presence of the witness)

2 Questions from THE CHAIR

3 LORD BRACADALE: Detective constable, can you help me with
4 one matter.

5 You gave evidence that there had been a briefing
6 that you attended and in your book you had noted
7 "Warrant?" and then you were told that the house was
8 seized with consent, and that was the person giving you
9 the briefing that made reference to consent; is that
10 correct?

11 A. Yes.

12 LORD BRACADALE: And who was that person?

13 A. It would either have been DCI Keith Hardie or there was
14 a crime scene co-ordinator allocated, who was
15 DCI Houston. I think it was DCI Hardie.

16 LORD BRACADALE: Thank you.

17 Now, thank you very much, detective constable, for
18 coming to give evidence to the Inquiry.

19 I think that's all the evidence today, is that
20 right, Ms Grahame?

21 MS GRAHAME: That's correct, we've completed all of our
22 evidence.

23 LORD BRACADALE: Very well, I'll be adjourning in a moment,
24 and you'll be free to go.

25 (The witness withdrew)

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1 LORD BRACADALE: So, adjourning now until tomorrow morning

2 at 10 o'clock.

3 (12.57 pm)

4 (The hearing adjourned until 10 am

5 on Wednesday, 8 February 2023)

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