

Transcript of the Sheku Bayoh Inquiry

Tuesday, 29 August 2023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(10.00 am)

(Delay in proceedings)

(10.21 am)

LORD BRACADALE: Good morning, Mr McEwan. Will you raise your right hand and say the words of the oath after me.

CHIEF SUPERINTENDENT GARRY MCEWAN (RETD) (sworn)

LORD BRACADALE: Ms Grahame.

Questions from MS GRAHAME

MS GRAHAME: Thank you. Good morning.

A. Good morning.

Q. You are Garry McEwan?

A. I am.

Q. What age are you?

A. I am 52.

Q. You retired from Police Scotland on 15 April 2021?

A. That is correct.

Q. And what was your rank when you retired?

A. I was a national policing commander at that time.

Q. Can you give us a little bit of an idea what that involved?

A. So there was a number of local policing divisions across Police Scotland as well as a number of national divisions, there were fewer national divisions as there were local policing divisions and I was the national

Transcript of the Sheku Bayoh Inquiry

1 policing commander when I retired for Criminal Justice
2 Services division, which had responsibility for custody
3 being one, as well as other sort of operational and
4 non-operational roles across Scotland.

5 Q. Thank you. How many years' service did you have when
6 you retired?

7 A. 31 years.

8 Q. When you were involved with the death of Mr Bayoh --
9 that was in May 2015, as you will know -- what was your
10 rank at that time?

11 A. So I was a Chief Superintendent local policing commander
12 so when Police Scotland was created in April 2013 they
13 separated the country into a number of policing
14 divisions, and Fife was a single policing division and
15 they appointed local policing commanders and I was lucky
16 enough to be appointed the commander of Fife.

17 Q. Right. So were you the Chief Superintendent and the
18 commander of the whole -- of the Fife region?

19 A. Yes. So pre-Police Scotland Fife was a constabulary, it
20 was a police force in its own right, so in I think it
21 was October 2012 they began the transition from a single
22 police organisation in Fife constabulary towards the
23 single service for Scotland.

24 Q. And that would have obviously included the Kirkcaldy
25 area?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. Can you explain to people listening the type of -- what
3 your role involved at that time, in May 2015?

4 A. Yes, so as the local policing commander Fife was not
5 unique but unusual insofar as it was coterminous with
6 the local authority, so it was a single Fife council
7 and a single Fife police division, so the police and
8 their partners were very closely aligned together. So
9 my role as policing commander was to take oversight of
10 policing in Fife, serious crime, disorder, take
11 responsibility for the staff, the police officers and
12 the police staff across Fife, as well as -- I seen it
13 certainly as trying to build relationships with local
14 communities across the whole of Fife.

15 Additional to that it was then -- one of
16 the benefits of a national service was that it then had
17 the opportunity to learn from other policing commanders
18 that were located in other areas across Scotland so we
19 had a forum there that we could all engage with one
20 another and cascade best practice across our different
21 policing divisions.

22 Q. What was the name of that forum?

23 A. The Police Commanders Forum, so it sat every four weeks,
24 I think it was, chaired by the Chief Constable or the
25 Deputy Chief Constable and that was an opportunity for

Transcript of the Sheku Bayoh Inquiry

1 probably 15/16 of us, including the Chief Constable and
2 the Deputy, just to sit and talk about best practice and
3 share good practice and identify areas in which we can
4 improve.

5 Q. I was going to ask you how many commanders there were at
6 that time.

7 A. I think there was 13, from memory, they have changed it
8 slightly since then but I think it started off as 13.

9 Q. Thank you. Can I ask you to look at a blue folder you
10 have in front of you, I know you have watched a little
11 bit of evidence of the Inquiry. We will come on to
12 that. You will know that we try and provide all of the
13 people coming to give evidence with hard copies of
14 documents that we think might assist them when they are
15 giving evidence. Now, as you will have seen, things
16 come up on the screen in front of you so when I am
17 referring to say a statement and a paragraph, it will be
18 on the screen so everyone in the room can see it.

19 But if at any time you remember something or you
20 need to refer to the document, please feel free to use
21 them as any stage, they are for your use?

22 A. Okay, thank you.

23 Q. I am going to go through a number of statements that you
24 have given since 2015. We will just check that we've
25 got everything that we need. The first thing in your

Transcript of the Sheku Bayoh Inquiry

1 folder should be PS03136?

2 A. That is correct.

3 Q. We will put that on the screen so everyone can see it.

4 Is this -- was this an operational statement

5 effectively?

6 A. Yes.

7 Q. We have heard of these. Right. So it seems to be on

8 a sort of pro forma style but it is still a statement

9 that you prepared yourself, is it?

10 A. I did that, yes.

11 Q. Can you tell us when you prepared this?

12 A. So --

13 Q. I don't see any dates on it. We can scroll down to the

14 bottom of the first page.

15 A. I think from memory -- there was a date maybe on the

16 original but from memory it was about June into July of

17 2015.

18 Q. Okay. If I tell you the next statement in your folder,

19 PIRC 00181, is dated 24 June 2015, and as I understand

20 it -- we will come on to that -- as I understand it this

21 was a statement that you gave to PIRC?

22 A. Yes.

23 Q. If we can just scroll down this page, you will see it

24 was given in Randolphfield Police Office, Stirling,

25 24 June 2015, 10.05 in the morning. And I think

Transcript of the Sheku Bayoh Inquiry

1 during -- in the body of this statement it says you had
2 previously given another statement to PIRC?

3 A. Yes, so that makes sense, so this statement, the first
4 statement will have pre-dated the statement of 24 June.

5 Q. Right. So the one that is on the screen at the moment,
6 PIRC 00181, says:

7 "I have already provided a statement to PIRC~..."

8 And that would be prior to the date you were
9 speaking to them on 24 June, and that prior statement
10 would be the one we looked at first.

11 A. Yes.

12 Q. Which is PS03136?

13 A. Yes.

14 Q. Thank you. So that would have been prepared at some
15 point between 3 May 2015 and you going to speak to PIRC
16 on 24 June 2015?

17 A. Yes.

18 Q. So in that sort of timescale. In relation to the first
19 statement that you wrote yourself, were you doing your
20 best to give a true and accurate account of your
21 involvement with the events on 3 May?

22 A. Yes, absolutely.

23 Q. Then is that -- can that also be said of the second
24 statement that we have just looked at, the one you gave
25 to PIRC on 24 June; were you doing your best to give

Transcript of the Sheku Bayoh Inquiry

1 PIRC an accurate account and a true account of what you
2 had been involved in?

3 A. Yes. They were more in response to direct questions, so
4 they were more focused but yes they were absolutely
5 truthful, from my recollection.

6 Q. So the first statement was really your recollection
7 unprompted and the second statement that you gave to
8 PIRC was more in response to questions?

9 A. That is correct.

10 Q. Then can we look at a third statement, PIRC 00182, and
11 that should also be in your folder. This is a statement
12 that was taken on 23 January 2018 and that was given to
13 Investigator Garry Sinclair at Stirling Police Station
14 in the presence of Investigator Ross Sinclair?

15 A. That is correct.

16 Q. They are, again, from PIRC?

17 A. Yes.

18 Q. Can you -- when you gave this statement can you explain
19 why it was effectively three years after the events?

20 A. Really, what PIRC explained to me was that there was
21 just further information. I'm guessing, assuming that
22 it was because, you know, they had had a chance to
23 triangulate with other statements, so there was maybe
24 just more additional information they were looking for
25 from me and that was the basis of this statement.

Transcript of the Sheku Bayoh Inquiry

1 Q. Thank you. Again, were you doing your best -- although
2 it was three years later, were you doing your best to
3 give an accurate and true account --

4 A. I certainly was.

5 Q. -- of your recollection?

6 A. Yes.

7 Q. I think in your Inquiry statement, which we will come to
8 in a moment, at paragraph 8 you say that you were doing
9 your best to give a true and accurate account but your
10 memory was better in 2015 than it was in 2018.

11 A. Yes.

12 Q. Is that -- can the same be said today?

13 A. Yes. I mean, that is -- the truth of the matter is,
14 yes, it was fresher in my mind. The original statement
15 compared to the final statement, the final statement is
16 more detailed because of the type of questioning I was
17 given, but yes, they all in principle were absolutely
18 based on truth and the best of my recollection.

19 Q. Thank you. Just so that everyone knows, you didn't use
20 a notebook in 2015. That wasn't your practice. Is that
21 correct?

22 A. I did have a notebook but I only used them -- or I used
23 the notebook at that time, just with the sort of the
24 rank that I was at, for misconduct investigations that
25 I would be leading on. So I didn't use it as a matter

Transcript of the Sheku Bayoh Inquiry

1 of routine but I used it for sensitive enquiries.

2 Q. But that didn't include this enquiry?

3 A. No.

4 Q. And you have not had any access, because they are not
5 available, to any day books that you may have used?

6 A. No, I did have a day book that I would use but I didn't
7 use that for this enquiry because I wasn't at my desk
8 when this one -- this was at Kirkcaldy so I never used,
9 I never put any entries in my day book.

10 Q. All right. Thank you. Can we now look at your first
11 contact with this Inquiry. SBPI 00075. So this
12 is -- they are called Rule 8 requests that come from the
13 Inquiry, which are a series of questions, and then you
14 are allowed to read through that and respond in writing.
15 And they are called responses to Rule 8 requests.
16 Effectively this would be your first statement to this
17 Inquiry detailing specific questions --

18 A. That is correct.

19 Q. -- and answers. There were nine questions sent to you.
20 Can we look at the last page, please. Of this -- it's
21 on the screen. It is page ... if we can go up to --
22 I just want to show the signature, so at the end -- we
23 will start there actually, if we leave it there. You
24 will see at the bottom of that page it says:

25 "I believe the facts stated in this witness

Transcript of the Sheku Bayoh Inquiry

1 statement are true. I understand that this statement
2 may form part of the evidence before the Inquiry and be
3 published on the Inquiry's website."

4 And you understood that to be the case?

5 A. That is correct.

6 Q. Although we have a redacted version on the screen, you
7 signed that --

8 A. I did, yes.

9 Q. -- on 28 June last year?

10 A. Yes.

11 Q. Thank you. You do understand that this will be
12 published on the website as part of the overall
13 evidence?

14 A. I am happy with that, yes.

15 Q. Thank you. If we could look at your Inquiry statement,
16 this is the second time you have been in contact with
17 us, that was SBPI 00258. You will see your name at the
18 top, it was taken by a member of the Inquiry team on the
19 Tuesday, 13 December last year. Do you see that?

20 A. Yes.

21 Q. Then if we look at -- it is 46 pages, and
22 201 paragraphs. If we look at the last page, again we
23 will see -- you will see that you've signed the last
24 page and all the preceding pages. It is redacted on our
25 screen so it's at paragraph 01. There we are. It says

Transcript of the Sheku Bayoh Inquiry

1 again:

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

6 Signed by you, I think on 3 February this year?

7 A. Yes.

8 Q. I know that you have listened to -- you have told us you
9 have listened to some of the evidence in the Inquiry?

10 A. Yes, not a lot to be honest with you but a couple of the
11 relevant witnesses to me, yes.

12 Q. I think in your Inquiry statement you make reference to
13 having listened to some of the evidence of
14 Joanne Caffrey, one of the experts. Is that right?

15 A. Yes.

16 Q. And to having watched the evidence of Kadi Johnson?

17 A. Yes.

18 Q. Then I think you have also made reference to reading
19 some of the statements from the Johnson family?

20 A. Yes.

21 Q. And as a core participant, you have access and your
22 lawyers have access to various statements that have been
23 disclosed?

24 A. That is correct.

25 Q. Thank you. I'd like to turn to 3 May 2015 and ask you

Transcript of the Sheku Bayoh Inquiry

1 some questions. As I am going through these I might put
2 part of a statement up on the screen so you can refer to
3 it and I will be able to ask you more questions about
4 the detail.

5 A. Okay.

6 Q. So you've told us in your Inquiry statement you were
7 a local policing commander at the time, in May 2015.
8 You have briefly touched on that role, but can you tell
9 us what your responsibility was in relation to, say, the
10 area of Kirkcaldy and what involvement you had in that
11 area?

12 A. So the command structure in Fife was the local commander
13 and, as I say, I would be responsible for a great deal
14 of partnership working but also for delivery of the
15 policing plan for the area that I was in charge of and
16 then supporting me in doing that were three deputies and
17 those deputies were responsible for operations, for
18 people and for CID and they would, you know, form part
19 of my command team.

20 Fife, for those that know the area -- as I say, it's
21 the third biggest local authority, it is quite a big
22 area and quite well populated and there are various
23 towns within Fife and Kirkcaldy is one of those towns.
24 The structure that would underpin my deputies were
25 a local area commander that would take charge of each of

Transcript of the Sheku Bayoh Inquiry

1 the key towns, so Kirkcaldy, Glenrothes, Dunfermline,
2 St Andrews, and they would then report up through my
3 deputies into me around ongoing matters. I would chair
4 a morning meeting every morning between 9.00 and quarter
5 past, where the local area commanders, the
6 Chief Inspectors from across Fife, my deputies if they
7 were available, and we would hold a meeting either in
8 face or via teleconference where I would be appraised of
9 ongoing events and situations and crimes and any other
10 important issues that I needed to be aware of and then
11 take whatever decisions were needed at that point.

12 Q. Where were you based?

13 A. So my main office was in Glenrothes at the main
14 headquarters in Detroit Road and that was where I would
15 primarily base myself. But myself and my deputies
16 agreed that at least once a week we would naturally go
17 to one of the other towns and be present at their
18 meetings and then dial in at that point just to try and
19 ensure a bit of visibility amongst staff.

20 Q. How often were you in Kirkcaldy?

21 A. Quite a lot, to be fair. I was a detective constable,
22 a detective sergeant at Kirkcaldy, a uniform inspector
23 at Kirkcaldy. That tended to be one of the busiest
24 towns in Fife so I spent a lot of my career in and
25 around that area.

Transcript of the Sheku Bayoh Inquiry

1 Q. So you're quite familiar with the location, the place?

2 A. Yes.

3 Q. And also the officers in Kirkcaldy police office?

4 A. Not a lot of the younger ones. I would recognise faces
5 but not know everybody's name. As new recruits started
6 I would always have -- as they were going through the
7 training I would meet them and we'd have a sort of
8 commander session where it would be me and the staff but
9 then I wouldn't sort of have that personal contact with
10 them on a daily basis, that would be the responsibility
11 of the sergeants, inspectors and ultimately the
12 Chief Inspector.

13 Q. All of those that you have named, the ranks, they would
14 be lower than your rank?

15 A. Yes.

16 Q. In paragraph 20 of your Inquiry statement, if we can go
17 to that, you were asked about the command structure on
18 3 May in relation to the incident involving Mr Bayoh but
19 you say there:

20 "I had responsibility for Community Impact, staff
21 welfare and to ensure sufficiency of resource was
22 available to assist with this enquiry as well as
23 maintaining a proportionate policing response for all
24 other policing matters that were ongoing. Policing
25 'Business Continuity' if you like."

Transcript of the Sheku Bayoh Inquiry

1 I am quite interested in what you said here, because
2 we've heard that other officers were also involved with
3 things like welfare for the officers, and I am
4 interested was there an overlap between the role you had
5 or an oversight role with other officers doing the work
6 on the ground if I can say?

7 A. So -- and I think it is in my statement at some point,
8 we put -- the structures go in place and then I wouldn't
9 expect to know and hear about every issue with the
10 staff. I would expect to hear if there was any
11 significant problems with the staff, I would want to
12 know about that. But I wouldn't know, you know, the
13 day-to-day -- you know, the example I think I give in my
14 statement is if a member of staff needs a new pair of
15 boots after this incident then I wouldn't expect
16 somebody to come to me to ask for my permission, that
17 would just get done. So I would empower my sergeants
18 and inspectors to make these decisions and they were
19 all, you know, well experienced and trained to do that.

20 Q. So when you talk about a significant problem that you
21 would expect to hear about, can you give us an example
22 of what --

23 A. In a general sense?

24 Q. Just in a general sense.

25 A. So trying to sort of not compare it to this incident but

Transcript of the Sheku Bayoh Inquiry

1 of a similar significance a member of -- one of my
2 officers in Methil, so in Levenmouth, which is another
3 area of Kirkcaldy -- Fife sorry -- was very badly
4 assaulted one evening, like very badly assaulted so
5 I was phoned and told through the night of that
6 significant injury and then the following day I went out
7 and visited the family, the police officer's family. So
8 it is really significant things I would be expected to
9 be told about.

10 Q. You were responsible for community impact. Could you
11 explain what that is?

12 A. So again that is -- this is particularly in relation to
13 this Inquiry, so for me one of the really important
14 aspects of this Inquiry was the impact that it was going
15 to have on local communities but as well as national and
16 arguably worldwide communities. You know, we've seen
17 how incidents such as this can really transform across
18 a nation and can result in significant impact. So I was
19 really keen to get a really close temperature check of
20 how this incident may impact on the local as well as
21 national community.

22 Q. When you use the word "impact" what sort of things are
23 you referring to?

24 A. So it could be anything. I mean, impact, there could be
25 a really negative impact, there could -- as we've seen,

Transcript of the Sheku Bayoh Inquiry

1 across the world, and, you know, across the UK where,
2 you know, incidents can lead to looting, can lead to
3 disorder, can lead to protests and demonstrations, so
4 you need to understand how a community is feeling about
5 a certain policing action or activity. So it's to try
6 and understand that and that is where it's important
7 that you have people in the community that can help you
8 pressure test that.

9 Q. Thank you. Can I ask you about paragraph 24 of your
10 Inquiry statement. Here you were asked about -- this
11 section is called, "Understanding of the incident", and
12 you say you were:

13 "... sitting in [your] office in Glenrothes Police
14 Headquarters, and CI Chris Stones gave me a call on the
15 phone."

16 We have heard his name before I think he was on the
17 phone with Inspector Kay at one point:

18 "My recollection is that the briefing was simple.
19 There were multiple calls of a male in possession of
20 a knife. At the point of contact between the police and
21 the male, the male had fallen unconscious and was taken
22 to hospital.

23 "Chris was brief and from the tone in his voice,
24 I could tell it was a bit of a different conversation.
25 I could sense the worry in his voice. I sensed

Transcript of the Sheku Bayoh Inquiry

1 I needed to ask for more detail. I asked the ethnicity
2 of the individual and he said he was a black man. That
3 detail was important to know because it played a part in
4 my later decision to declare a critical incident.
5 I said I'll jump in the car and head down to Kirkcaldy
6 and asked for a further update as it progressed for the
7 next hour or so."

8 I would like to ask you a little bit more about this
9 paragraph. If we can go back up the screen, please.
10 First of all you say that you could sense the worry in
11 his voice. Had Chief Inspector Stones not volunteered
12 to you at that stage that the male was a black male?

13 A. No.

14 Q. And you actually had to ask him?

15 A. So it's -- I suppose it's trying to provide a little bit
16 of context. Chris Stones, he had previously worked for
17 me so he was a very experienced police officer but for
18 a period of time before this incident he had been based
19 at the Scottish Police College and the sort of structure
20 that was in place at that time is that Chris would --
21 every probably eight or nine weeks would come and work
22 a weekend within Fife to cover -- provide on-call
23 coverage. So he was a bit detached from ongoing
24 policing matters because he was doing a really important
25 job at the Police College in training, so when I spoke

Transcript of the Sheku Bayoh Inquiry

1 to him that morning there was absolutely hesitancy in
2 his -- because it was a very unusual and clearly became
3 a very traumatic incident for all, so, yes, it was --
4 there was definite hesitancy in his voice. He was
5 nervous, he was ... yes.

6 Q. That prompted you to ask some questions?

7 A. Yes, I just felt there was more there. I just felt
8 I needed to unpick it a little bit and ...

9 Q. What made you ask if the person involved was a black
10 man?

11 A. I never asked if he was a black man, I asked what his
12 ethnicity was and he told me that he was a black man.

13 Q. Sorry, that was my mistake.

14 A. That is okay.

15 Q. What made you ask about his ethnicity?

16 A. Because I just felt there was something -- he was just
17 a little bit hesitant and it was -- it was as though it
18 was I think just a bit more serious than how it was
19 being portrayed at the time. There was something more
20 to it.

21 Q. Do you think if it had been a white man involved, he
22 wouldn't have been so -- he wouldn't have sounded that
23 way on the phone to you?

24 A. I am not sure, you would have to ask Chris to be honest
25 with you, I am not sure. It was probably -- because it

Transcript of the Sheku Bayoh Inquiry

1 was two different elements: the fact it was extremely
2 unusual but the fact also that he wasn't an operational
3 chief inspector, I think it was, rightly
4 and understandably, quite a big deal for him. It was
5 quite a major investigation.

6 Q. Right. You say:

7 "That detail was important to know because it played
8 a part in my later decision to declare a critical
9 incident."

10 Explain that to us, please?

11 A. A critical incident, you know there is a definition,
12 I can't remember it offhand but I think it is in my
13 statement now, but it's an incident that takes place in
14 the country that has a sort of a hugely significant
15 impact on the policing response and the impact is not on
16 the police, it's on the family, the wider communities
17 because of the response or the action or inaction that
18 the police have taken.

19 That is likely in my view -- or could that likely
20 impact on the trust and confidence on policing? If
21 a police officer feels that that is the case, then they
22 should be -- in my view, and as there are probably
23 guidance documents somewhere now, declare that as
24 a critical incident. The benefit of doing that is it
25 makes it a priority for the whole of the organisation,

Transcript of the Sheku Bayoh Inquiry

1 so you know the minute -- well, I'm exaggerating
2 slightly but with me declaring that a critical incident
3 the Chief Constable of Police Scotland is aware of that
4 in relatively quick time. This becomes the most
5 important ongoing enquiry within policing on that
6 particular day.

7 Q. We will come back to that in more detail, but what time
8 was this call that you had with Chief Inspector Stones?

9 A. I had a couple of calls with Chris, so again I don't
10 know exactly, probably half seven, I think it is in one
11 of my previous statement, half seven, give or take.

12 Q. From the time of that call was that when you realised
13 this was a very important matter? From -- at least from
14 the perspective of possible community impact?

15 A. It was certainly on my mind. The fact that the male at
16 that time was still alive, you know, it -- it clearly --
17 and it did get worse but it could have got worse and it
18 clearly did. But at that time that was not the case,
19 so, you know, it was fingers crossed that he would've
20 survived, was the hope.

21 Q. But significant enough for Chris Stones to discuss this
22 with you and for you to ask about it and for him to
23 discuss it with you?

24 A. Yes.

25 Q. So something -- it was on your mind that it may become

Transcript of the Sheku Bayoh Inquiry

1 a critical incident?

2 A. Yes. Absolutely. Yes.

3 Q. I will come back to that but can I ask you at that
4 stage, I think on paragraph 25 of your Inquiry statement
5 you say:

6 "The lead for the incident at that time was
7 Inspector Stephen Kay."

8 He was the PIO. What does that stand for?

9 A. Police Incident Officer.

10 Q. And you established from Chris, that would be
11 Chris Stones, that Inspector Kay was on duty in
12 Kirkcaldy and he had command of that incident. Was that
13 what Chief Inspector Stones told you, that Inspector Kay
14 had command of the incident?

15 A. I can't recall any of the exact phraseology but that
16 would have been -- I mean the PIO -- experience tells
17 you that the PIO at that point in time in an ongoing
18 investigation or incident, certainly the incident, the
19 PIO is in charge. So whether Chris told me -- I am sure
20 he probably did but if not I would have made that
21 assessment.

22 Q. So from your perspective Inspector Kay being the PIO, he
23 was in charge?

24 A. Absolutely.

25 Q. Then I think in paragraph 27 you say -- if we can look

Transcript of the Sheku Bayoh Inquiry

1 at that:

2 "To explain, with a fast-moving incident such as
3 this, the initial command sits with the PIO who has
4 immediate oversight."

5 Can you explain to us what "initial command" means?

6 A. So exactly that: it's that when the call first comes in
7 and the officers first get deployed the role of the PIO,
8 especially with it being a very -- a serious number of
9 calls from independent people, my expectation in the --
10 you know, what Stevie would have done, I am sure, is
11 take oversight of that incident as it is actually
12 evolving.

13 Q. Can you explain to us what it means when an inspector,
14 a PIO, takes oversight? What does that actually look
15 like in reality?

16 A. So he may be sitting -- because we have a police
17 incident officer that at that particular time on
18 a Sunday morning would probably have oversight of
19 the whole of Fife at that time, so -- I never listened
20 to Stephen's evidence but I am guessing he probably is
21 sitting somewhere in a police building and he will have
22 a computer in front of him that will tell him every
23 incident that is ongoing across Fife. And, I am again
24 assuming, he probably got phoned or heard it on the
25 radio that this was ongoing and then Stephen would have

Transcript of the Sheku Bayoh Inquiry

1 made his assessment at that time and may or may not have
2 given instruction to the police officers, I am
3 second-guessing now.

4 But that would be the role of the PIO, is to
5 understand the incident, to provide any advice and
6 guidance to the officers, if it is required, and, you
7 know, my expectation in certain circumstances would be
8 that the PIO, if it was so serious, would attend the
9 incident to take genuine sort of grip and oversight of
10 what was ongoing.

11 Q. You say understand the incident and give guidance to the
12 officers; is that to the response team officers that are
13 attending the incident?

14 A. Yes, it may not always be required because, you know,
15 you'll have a sergeant that is on duty as well and he or
16 she may be, you know, giving that instruction, so the
17 PIO may simply be listening to that and, you know,
18 agreeing or disagreeing and then they would come in and
19 make -- I would assume they would come in and give
20 guidance. But if the sergeant or whoever was giving the
21 right instruction, then it might just be a watch and
22 listen brief.

23 Q. So in this case actually there was a sergeant with the
24 response team. Not at the front of them but arriving
25 later. If the PIO is content with the instructions

Transcript of the Sheku Bayoh Inquiry

1 being given by the sergeant, he can just sit and watch?

2 A. Yes.

3 Q. And listen on the radio, monitor the situation?

4 A. Yes.

5 Q. I think you say at paragraph 62 of your Inquiry
6 statement:

7 "It was never declared a firearms incident so the
8 command of the incident remains with Stevie Kay."

9 That is the PIO?

10 A. Absolutely, yes.

11 Q. So this is beyond the sort of initial command, it will
12 remain with him throughout, will it?

13 A. Yes.

14 Q. But you say in paragraph 62:

15 "If it had been declared a firearms incident,
16 I would have retrospectively reviewed the decisions
17 taken and determined whether the criteria for deployment
18 of firearms had been met."

19 So you would have become involved in a more active
20 way if it had been declared a firearms incident?

21 A. Yes. But only because -- and it's the paragraphs before
22 that probably explain it a little bit better but my role
23 on the day, I was out not as Fife policing commander,
24 I was out on duty as the strategic firearms commander
25 for Scotland. So part of that role was to have

Transcript of the Sheku Bayoh Inquiry

1 oversight of any firearms incidents that had happened
2 through the night and/or that were ongoing, but also
3 part of my dual role that weekend was to take
4 an interest, an oversight on any ongoing issues or any
5 crime, serious crimes that had happened through the
6 night.

7 Q. Those seem to be very responsible roles, individually.
8 As a dual role at that time in the morning was that
9 quite a burden on you in terms of your capacity to deal
10 with that?

11 A. Not particularly. Because how these things -- I mean,
12 firearms incidents, there will be experts and you can
13 get the data from Police Scotland but you know you would
14 average over the course of -- so I would do that
15 firearms responsibility a week at a time, so it would be
16 once every four or five weeks and it would rotate around
17 other commanders that were trained and you would
18 probably average between five to eight firearms
19 incidents across Scotland during that week, and that
20 would require, you know, if one happened at 2.00 in the
21 morning, say on a Tuesday morning, then I would be
22 phoned at that time and my expectation or the
23 expectation would be rightly be that I would take
24 an involvement.

25 This incident was never declared a firearms incident

Transcript of the Sheku Bayoh Inquiry

1 so my role on the Sunday morning was not as a firearms
2 commander, my role was because I was out as a -- as --
3 I was out on call for other non-firearms incidents as
4 well as firearms incidents, so -- I am not explaining
5 that particularly well, but firearms, that did not come
6 into the equation on this incident. I was out as
7 a chief superintendent with oversight of any serious
8 criminality or serious incidents that may have happened.

9 Q. So that was -- if I can say that was the hat you had on
10 in relation to this?

11 A. Yes.

12 Q. Not in relation to firearms?

13 A. No.

14 Q. That had nothing to do with your role, or your
15 involvement.

16 A. It had never been declared -- it had never been
17 a firearms incident, this, so I had no involvement.

18 Q. Then in paragraph 67 you say the command remained
19 with -- here we are:

20 "Command remained with Kay when he was in the
21 canteen."

22 So I am asking who was managing the response
23 officers:

24 "The PIO Stevie Kay was still in charge of them at
25 this point, they were not now operationally deployed so

Transcript of the Sheku Bayoh Inquiry

1 line management-wise it was still with Inspector Kay but
2 they are not deployed so it's pretty self-contained with
3 all officers sitting in the canteen."

4 So this is at a later stage but he remains in
5 command of the response team --

6 A. Yes.

7 Q. -- in his role as PIO?

8 A. Yes.

9 Q. So from the initial moment he hears about it right up
10 until they are in the canteen --

11 A. Yes.

12 Q. -- he is the PIO and in charge?

13 A. Yes.

14 Q. So if I ask you a question who was in charge in relation
15 to the response team and what happened, can you tell me
16 who that is?

17 A. At that particular -- or what point in the~...?

18 Q. From the initial moment that the calls come in to the
19 canteen?

20 A. Stevie Kay is the PIO.

21 Q. He is the person in charge of that incident?

22 A. Yes.

23 Q. Right. Thank you. We've heard from Inspector Kay, we
24 heard from him in November last year, on the 23rd. He
25 talked about seeing a call card coming in, it was

Transcript of the Sheku Bayoh Inquiry

1 a grade 1 high risk incident. He talked about having
2 a computer screen and a radio on.

3 A. Yes.

4 Q. He said that:

5 "I would be listening out for ACRs and the
6 sergeant's grip and I would need more information before
7 I got involved if required."

8 Does that make sense to you from what you know about
9 a PIO; they would need more information?

10 A. It makes sense that the sergeant, you know, whoever he
11 is referring to there, if there is a sergeant on duty
12 then --

13 Q. This is Sergeant Maxwell.

14 A. -- as I touched on earlier a PIO would be listening in
15 actively but if the sergeant is doing and instructing
16 all the right things then there would be no need for
17 Stevie to intervene because all that would do is just
18 complicate matters. So if it is being managed properly
19 in the PIO's view then a watching brief would make
20 sense.

21 Q. We've heard evidence that the acting police sergeant for
22 the response team was Sergeant Maxwell, that he called
23 for an ARV -- an armed response vehicle -- and a dog
24 unit, and I think Inspector Kay said he was content with
25 that approach. So that would be fine for him to sit and

Transcript of the Sheku Bayoh Inquiry

- 1 listen and not actively intervene at that time?
- 2 A. Yes, I would -- I would question the sergeant asking for
3 an ARV, what would be the purpose of that and that would
4 not be a decision for Stevie Kay, that would be
5 a decision for the inspector that is in Bilston and he
6 or she would then have to make an assessment on whether
7 the criteria to move firearms from wherever they are in
8 the country to wherever the acting sergeant wants them
9 to be, that would then -- a firearms decision would have
10 to be the inspector in Bilston.
- 11 Q. In terms of Inspector Kay listening to that from the --
12 acting police sergeant on the Sunday morning responding
13 to the incident, did that -- would that cause any
14 concern? Do you think that Inspector Kay would have to
15 get involved at that stage?
- 16 A. I would say so, yes. You know, it's very unusual for
17 a sergeant to be asking for armed response vehicles to
18 be deployed. That would be something that would have to
19 be clearly understood, the rationale, and there is, you
20 know, real tight parameters around deployment of
21 firearms. So yes, that would not be -- that ultimately
22 the decision would be Bilston. Anybody could ask for
23 them but the inspector in Bilston would -- he or she
24 would be the one that would make that initial decision.
- 25 Q. We've heard from Inspector Kay that he did travel to the

Transcript of the Sheku Bayoh Inquiry

1 scene, you've talked about the PIO travelling to the
2 scene. And he indicated that he was -- would be there
3 in two minutes, at roundabout 7.37 in the morning. And
4 then at 7.40 there was an Airwaves transmission we've
5 listened to previously that he said he had just arrived.
6 And that is normal, you have said, if it is a serious
7 incident?

8 A. I would say that is a very quick response actually, two
9 or three minutes later. He must have been based
10 relatively close, maybe at Kirkcaldy or maybe
11 Cowdenbeath Police Station.

12 Q. I should -- I've maybe misrepresented the position. The
13 calls started coming in at 7.10, there were six calls to
14 Bilston Glen which were graded -- largely graded 1, high
15 risk incident, and we have heard from Inspector Kay that
16 he was listening to these calls, listening to the
17 Airwaves communications between the officers and
18 Sergeant Maxwell and arrived at 7.40. So when you say
19 it was a quick response, do you want, in light of that
20 fuller background --

21 A. Sorry, when you said minutes I thought -- yeah, I didn't
22 understand -- so 30 minutes, if that is what you are
23 saying, roughly 30 minutes --

24 Q. From the first call coming in?

25 A. Yes, I don't know where Stevie was. Because he is PIO

Transcript of the Sheku Bayoh Inquiry

1 he can base himself anywhere in Fife, so you know if he
2 was, for example, in Dunfermline Police -- I don't know
3 where he was, I don't know if you know, but ...

4 Q. We will just check that?

5 A. Aye, so it really depends on where he was around how
6 quickly he can get to the scene.

7 Q. Okay, we can come back to that.

8 A. Okay.

9 Q. Do you think there's a sort of reasonable time during
10 which somebody would listen to calls coming in, multiple
11 calls, grade 1, and think: I'd better go now? Or do you
12 think ...?

13 A. I think every situation is different because, you know,
14 the reality is if it is a fast moving incident, for him
15 to be getting his jacket on, running to the car,
16 sometimes the actual -- you know, remaining where you
17 are and checking the computer and taking notes, or
18 whatever Stevie was doing or not doing, you know
19 I suppose it's a judgment call based on your own
20 experience at the time.

21 Q. Inspector Kay gave evidence and said that he thought
22 Garry McEwan, yourself, would be overseeing the full
23 thing with being the on-call super. Is that a fair ...?

24 A. I wasn't the on-call super, I was the on-call
25 chief super. At that early stage -- if you are not

Transcript of the Sheku Bayoh Inquiry

1 aware of something you can't take control of it, it is
2 those that are there at the time and the PIO, ultimately
3 that is their role, is to take command and oversight of
4 ongoing incidents. And that is their responsibility and
5 that is what they have their training for.

6 Q. When did you first become aware of the incident
7 involving Mr Bayoh?

8 A. So when Chris Stones phoned me ... is it 7.45? I can't
9 quite remember the time but it's in my statement.

10 Q. Thank you. In paragraph 52 of your Inquiry statement
11 you talk again about Inspector Kay and you say -- this
12 is when you have arrived at Kirkcaldy Police Office.

13 You:

14 "... went up the stairs and Inspector Kay arrived
15 back at some point and I did have a conversation with
16 him around the circumstances as he knew it."

17 When was this conversation?

18 A. So I was at Kirkcaldy at that point, so that would have
19 been -- I don't know if there is a time earlier on but
20 it certainly would have been after 7.45 and before --
21 I don't know, is it before or after the critical
22 incident? It will possibly tell you in the statement.

23 Q. If we go -- I think your critical incident --

24 A. Ten past nine.

25 Q. -- was at 9.10, your first meeting I think was at 9.30,

Transcript of the Sheku Bayoh Inquiry

1 which we will come on to, I am just interested if you
2 have a recollection of when you discussed matters with
3 Inspector Kay?

4 A. I don't actually. I think -- with the chronology
5 I think it may have been before the main meeting but I'm
6 not sure.

7 Q. The main meeting being the half nine meeting or the
8 first Gold Group meeting?

9 A. The half nine meeting.

10 Q. So some time before the half nine meeting?

11 A. Yes.

12 Q. Do you remember what you discussed with him?

13 A. It was really just, you know: one, how is he; two, how
14 are the staff; three, you know, as he understood it what
15 were the circumstances. And there was nothing really --
16 from the earlier briefing from Chris Stones, and what
17 I'd seen from the call card there wasn't really much
18 more that I was being told at that time because nobody
19 really -- nobody had quite understood -- nobody had come
20 together and sort of had a full briefing around it, so
21 everybody knew sort of different chunks, I suppose.

22 Q. Can we look at paragraph 28, please. You talk there:

23 "My role was as local policing commander. Not
24 firearms commander. For me there was an immediate
25 concern about the welfare of my staff who had been

Transcript of the Sheku Bayoh Inquiry

1 involved in such a tragic incident as well as ensuring
2 Fife Division could continue to police Fife Communities
3 as best we could in relation to other incidents with
4 a depleted resource."

5 When you use the phrase "depleted resource", can you
6 explain that for us?

7 A. On a Sunday morning there will not have been a huge
8 number of staff on, again you could get that detail, but
9 there will not have been -- there is maybe
10 a misconception there are hundreds of police officers;
11 there will not have been that in Fife on that morning.
12 And with those that were involved in this tragic
13 incident being removed, then it does create real
14 vulnerabilities around how can we police the wider --
15 things don't stop because the police have been taken off
16 the street. The communities are still waking up and
17 still discovering crime or there is still domestic
18 violence ongoing, or whatever it may be. So I was
19 genuinely concerned that we would not have enough police
20 officers left to respond to the other ongoing incidents
21 that will naturally happen.

22 Q. That was something that was part of your responsibility?

23 A. I certainly seen it as such, yes.

24 Q. I am advised it is in the morning Kay was at Kirkcaldy?

25 A. Right. So that was five minutes away from

Transcript of the Sheku Bayoh Inquiry

1 Hayfield Road.

2 Q. Thank you. So in light of that, that short journey, the
3 timings I gave you earlier were 7.10 was the first call
4 coming in -- six calls came in eventually -- and the
5 police arrived at 7.20 and it appears from the Airwaves
6 that Inspector Kay arrived at 7.40.

7 A. 7.40?

8 Q. Yes, 7.40 and 54 seconds. There was a transmission on
9 the Airwaves saying, "That's me just arrived". So 7.40
10 and 54 seconds. Looking at that timescale and your
11 understanding of the role of PIO, you'd said earlier he
12 had responded very quickly, do you wish to say any more
13 about that?

14 A. Obviously what I took from you is he was there within
15 three minutes or whatever it was you said, so that is
16 not the case, so it's 20 minutes. I mean, I've no idea
17 what Stevie was doing at that point or who he phoned.
18 20 minutes is not excessive, to be honest with you.
19 It's probably slightly longer than I would've liked but
20 it is -- you know, it's not two hours later. He is
21 there within 20 minutes. He has to find a car, he will
22 not have a car, he has to find car keys, he has to --
23 there will be all these different -- you know, he may
24 have to use the gents, you don't know what was there.
25 But 20 minutes is not excessive.

Transcript of the Sheku Bayoh Inquiry

1 Q. I think in fairness I don't think we heard evidence from
2 Inspector Kay to suggest he had to go to the toilet or
3 anything of that type of thing?

4 A. I don't know.

5 Q. Can I ask you about something that was in PS03136
6 please, I am interested in page 2. This is your if
7 I can call it an operational statement. It is
8 paragraph 1. You will see that this is where it says
9 7.45, so that was the time that you gave in your
10 statement most recent to the events on Sunday, 3 May.
11 You were telephoned by Stones, do you see that
12 paragraph?

13 A. Yes.

14 Q. A number of calls mentioned, and halfway down that
15 paragraph it says:

16 "A short time later I received a subsequent update
17 that the IC3 male had fallen unconscious on contact with
18 the police and was being administered CPR by the
19 officers in attendance."

20 I am quite interested in that sentence there. So
21 a short time later, this is shortly after your call with
22 Chief Inspector Stones, you received a subsequent
23 update. Who was that from?

24 A. Chris Stones again.

25 Q. It was still the same person?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. And you say there an IC3 male had fallen unconscious.
3 For those listening who are not familiar with that use
4 of language, what does IC3 mean?
- 5 A. So it means a black male, so IC1 is white north
6 European, IC2 is white south European and 3 is a black
7 male, 4 is maybe an Asian male -- I can't quite remember
8 but there is different terminology, I am a wee bit out
9 of the loop now but that is just so it's absolutely
10 clear in police terms what ethnicity of the person is
11 that we are talking about.
- 12 Q. Now, is it unusual to use that categorisation in
13 an operational statement? We've not seen that used by
14 many other officers.
- 15 A. Right.
- 16 Q. I am just wondering why you used it?
- 17 A. It is just -- it's something I've -- because it was
18 police terminology and I've just grown up, my era
19 I suppose we would use that sort of terminology for
20 different ethnicities.
- 21 Q. It says, "fallen unconscious on contact with the
22 police". I just wondered about your use of that phrase.
23 It is something you also mention in your Inquiry
24 statement, that he had fallen unconscious. Was there
25 a reason you used that phrase? It sounds maybe not as

Transcript of the Sheku Bayoh Inquiry

1 clear as it might have, "fallen unconscious on contact
2 with the police".

3 A. I wasn't meaning to be uncertain but no that is maybe
4 just again my terminology.

5 Q. Is that something that you would use commonly or is it
6 something that you particularly used in this Inquiry?

7 A. That sort of "fallen unconscious" or you know,
8 I think -- well, from my era again that is maybe a more
9 traditional in writing statements, that is some of the
10 terminology I would use.

11 Q. Okay, thank you. We mentioned a moment ago about
12 critical incident. I've got a few more questions about
13 this. PS03136, so the one we are on, page 2,
14 paragraph 3, please. You say:

15 "Shortly after 0908 hours, same date, I was informed
16 that the male had been pronounced dead and as such
17 I made the decision to declare a critical incident~..."

18 And that was at 9.10, that is what you said earlier?

19 A. Yes.

20 Q. And you "briefed the relevant officers to that effect".
21 Who did you brief?

22 A. So I phoned the command and control, so Bilston and
23 asked them to broadcast that on the call card, and to
24 alert whomever they do, I don't know the processes but
25 it's about -- it's about ensuring that nationally the

Transcript of the Sheku Bayoh Inquiry

1 organisation is aware that the Police Service have
2 declared a critical incident. And then I also did brief
3 ACC Nicholson via probably telephone that I had declared
4 that a critical incident.

5 Q. You are briefing senior people, how is that
6 information -- is that information disseminated to lower
7 ranks?

8 A. Yes. So that would be the purpose of Bilston. It is
9 really to make sure -- not the whole of the organisation
10 knows, but the key people -- senior or middle ranking
11 staff across probably Fife and the central belt of
12 Scotland were aware that there was a critical incident
13 ongoing. And that is about -- so middle managers are --
14 so there may be, I don't know, drugs operations that are
15 planned for that day, there may be, you know, other
16 non-essential duties that staff in the central belt of
17 Scotland were intending to do and what that does is it
18 alerts them so they can deprioritise these things
19 knowing that staff are going to be required to move --
20 are likely to be required to move towards the critical
21 incident. So that becomes the priority.

22 Q. So the managers, the senior managers, are told about it
23 so they can consider resourcing and prioritisation?

24 A. Yes.

25 Q. Is that information then shared with officers lower down

Transcript of the Sheku Bayoh Inquiry

1 in the ranks?

2 A. That is what I am saying, middle managers I would
3 expect, so through Bilston the inspector, because he or
4 she has, you know, has constant contact with other
5 handlers as in command control handlers and he will have
6 briefed them to the effect that there is a critical
7 incident in Fife, it has been declared, and yes, that
8 would be cascaded across to other divisional areas so
9 then they can deprioritise things, knowing that they may
10 need to move staff into the Kirkcaldy area.

11 Q. So when a critical incident is declared it is not just
12 the senior officers who know about it?

13 A. No. Yes, no, it shouldn't be, anyway.

14 Q. Continuing on with that paragraph you say:

15 "My rationale was that the effectiveness of the
16 policing response into this death was likely to have
17 a significant impact upon the confidence of the family
18 and communities. My primary concern at this point was
19 1) the family involved, 2) the officers involved and 3)
20 any local or national community tensions that could
21 arise as a consequence of the death."

22 I am interested in this paragraph, so this is after
23 the death has been intimated to you and you have
24 appointed a critical incident?

25 A. Declared it.

Transcript of the Sheku Bayoh Inquiry

1 Q. Declared it, sorry. This was your rationale. Can you
2 expand on what you say here?

3 A. So, you know, it's exactly that; there was a possibility
4 that the fact that Sheku had died following police
5 contact, that that may have had a huge implication
6 locally and nationally, so that is the community impact
7 part. But also, without doubt, on Sheku's family,
8 immediate family and wider family. But also, on the
9 second point there, around the officers involved.
10 Police officers, these officers, dayshift, Sunday
11 morning, you know they probably went to bed at 9 o'clock
12 at night knowing they were getting up at 4 o'clock in
13 the morning, they then get up in the early hours of the
14 morning go out genuinely, I believe, to protect the
15 communities, and this tragic incident has befallen them,
16 so they were absolutely distraught would be my
17 assessment.

18 So these were my three areas of concern, the family
19 first because they have lost a loved one, the officers
20 involved in it and then any wider community tensions
21 that may come as a consequence.

22 Q. Can we go back to your Inquiry statement, please.

23 Sorry, the Rule 8 response I think first of all. That
24 is SBPI 00075 and if we can look at paragraph 2. That
25 again says -- This is in relation to the events at 9.08

Transcript of the Sheku Bayoh Inquiry

1 in the morning:

2 "A male had died whilst being arrested by police.
3 This is a highly significant event. In my view the
4 effectiveness of the policing response into this death
5 was likely to have a significant impact upon the
6 confidence of the family and the local communities and
7 thus for that reason I declared it a critical incident."

8 You also refer to another statement. So you saw
9 this as -- from that moment, shortly after 9 o'clock in
10 the morning, you saw this as a highly significant event
11 in terms of the repercussions, possible repercussions?

12 A. Yes, to put it in perspective I at that point had, what,
13 25 years' police service or whatever it may have been.
14 I had been head of the CID, I had been involved in all
15 major -- a lot of major inquiries, I had never declared
16 a critical incident before it my entire career. So that
17 really puts it into importance for me. This is as
18 far -- it cannae get any more serious than this in my
19 eyes so that is why I called it. Well, I am sure it
20 could with multiple victims or whatever, but this is as
21 serious as it gets in my mind.

22 My worry around the community impact was was there
23 going to be any perception from, you know, family or
24 from wider communities that Sheku had died as
25 a consequence of the colour of his skin. That was one

Transcript of the Sheku Bayoh Inquiry

1 of the significant community impacts for me and I wanted
2 to really understand and hope that that perception
3 wouldnae manifest itself.

4 Q. Looking at the timings, you find out at shortly after
5 9.08 in the morning and then at 9.10 you declare
6 a critical incident for the first time in your whole
7 career. It didn't take a long time for you to
8 appreciate the significance of this?

9 A. No, no and I had known prior to that obviously that he
10 had fallen unconscious, so it was already going through
11 my mind, as you would expect for any police officer
12 involved in this: right, what is the worst case scenario
13 here and what needs to happen, you know, if that should
14 come to fruition.

15 Q. We've heard mixed evidence about people's perception at
16 the time. One officer spoke about he realised that
17 because someone had died, because it was a black man,
18 the media would be very interested in the events. He
19 realised the importance of this. Would you agree with
20 that impression?

21 A. Absolutely. I mean, history tells us that. You know,
22 I had not been involved in but had exposure to other
23 events, down south in particular, and debriefs of them,
24 where men, black men, had died following police contact
25 and the community impact on that around, you know -- you

Transcript of the Sheku Bayoh Inquiry

1 know in Manchester, in London, and I had the safety of
2 the wider Scottish population to think about as well, so
3 I wanted to try my hardest to ensure that that disorder
4 and looting and other things that came in other areas
5 didn't happen in Kirkcaldy, Fife or across Scotland.

6 Q. That awareness of events around the UK, in Manchester
7 and London, is that something particular to you and your
8 experience or --

9 A. No, no, there will be many other senior officers that
10 will have had that training, that debrief, you know, the
11 various courses that myself and others, many others,
12 will have went on that you get an insight into how that
13 transpired very quickly and how, you know, communities
14 can, you know, change their -- some parts of the
15 community, not all, but they can embark upon widespread
16 disorder and criminality.

17 Q. You've mentioned a concern that you had that there may
18 be a perception that he died as a consequence of his
19 skin colour. Why was that of concern to you?

20 A. Because had that perception manifested itself, then that
21 could lead to the disorder and other criminality that
22 I talk about. The one that always stuck with me, it was
23 a few years before, I can't remember the exact date but
24 the one down south, Mark Duggan. He died following
25 police contact and you know that literally created

Transcript of the Sheku Bayoh Inquiry

1 shockwaves across the whole of south of England into the
2 sort of middle England. So I was acutely aware that --
3 why could that not happen in Scotland if it happened in
4 England? So as a police officer, a senior police
5 officer at the time, you're really -- you don't want
6 that to happen so you are wanting to try and put as many
7 measures in place to try and prevent that from
8 happening.

9 Q. If you are putting measures in place to try and prevent
10 it, were you hoping to be able to avoid that perception?

11 A. I wasn't -- you can't pre-judge the Inquiry at that time
12 but I just wanted to make sure that we had sufficiencies
13 of resource, skill sets and staff available to step up
14 to address whatever might come to fruition.

15 Q. I am interested in that. You've said you don't want to
16 pre-judge the Inquiry. Would you have anticipated that
17 the Inquiry, the investigation into the death, would
18 take this into account, the possibility that the man has
19 died because of the colour his skin, or that that has
20 been a factor in his death?

21 A. Absolutely, yes.

22 Q. Yes. So would you have expected the senior
23 investigating officer to include that as one of the
24 possibilities that he would wish to investigate?

25 A. Well, I had it in my mindset. Whatever -- I cannae

Transcript of the Sheku Bayoh Inquiry

1 really comment on what an SIO did or did not put in
2 there but it certainly was in my mindset, yes.

3 Q. We've already heard from the SIO and spoken to him about
4 this. But certainly that was in your mind from an early
5 stage in the morning, after you spoke to
6 Chief Inspector Stones and then you declared a critical
7 incident at 9.10 in the morning?

8 A. Yes.

9 Q. Did you take any active steps in relation to your
10 concerns about this possible perception and the possible
11 concerns?

12 A. As the day went on, myself and others did, which I am
13 sure you might come to, I am guessing, around the
14 sort -- you know the contact, the Community Reassurance
15 Group which is a really important conduit to understand
16 how communities are feeling but also -- and for me more
17 importantly, the family, to really understand how the
18 family are feeling and to, you know, just to try and --
19 aye, just build a relationship with the family I suppose
20 is probably the best way to describe it.

21 Q. I am going to come on to that in some detail during the
22 course of today. I am interested in this community
23 group that you've mentioned. Can you tell us a little
24 bit about that?

25 A. So it probably features in one of the early -- so, just

Transcript of the Sheku Bayoh Inquiry

1 to jump back a little bit, Nicola Shepherd, who I know
2 you have heard from here, she was the chief inspector
3 that had oversight of Kirkcaldy area so she was off duty
4 on the Sunday and I asked her to come in. One of
5 the primary reasons for that was because Nicola knew all
6 the officers, far better than I did, in Kirkcaldy, but
7 also understood the local community better than I did
8 because she was the local area commander and I felt she
9 would really add value to that area and as consequence
10 of that we established the Community Reassurance Group,
11 which was ultimately chaired and led by Nicola. That
12 was to try and understand the impact that this incident
13 was having on minority communities primarily but also,
14 you know, wider communities as well, because it does
15 not -- the impact of this will not just be within the
16 minority communities, it absolutely will have an impact
17 across all communities.

18 Q. Thank you. Can we come back to your Inquiry statement,
19 please. I should have asked you about this paragraph
20 when we were talking about critical incident. Sorry,
21 paragraph 38. You've talked about the significance of
22 declaring a critical incident in terms of your own
23 career?

24 A. Yes.

25 Q. You've said here:

Transcript of the Sheku Bayoh Inquiry

1 "Critical incidents get the resource they require.
2 At that point I don't know what is required but
3 hypothetically if I needed 100 police officers from
4 across the country I would get it."

5 So it's taken very seriously?

6 A. Absolutely.

7 Q. "Across Scotland there might be only one or two critical
8 incidents a year. They are not normally declared or
9 routine. The declaration is based on professional
10 judgment, it alerts the highest officer in the
11 country~..."

12 Who was Steve House at the time, that is
13 the Chief Constable:

14 "... it makes him aware of that incident and by
15 default priorities and resources are then provided as
16 required."

17 I think you said earlier this was the most serious
18 it can get, is that --

19 A. In my view, yes.

20 Q. If police officers at a lower rank find out there has
21 been a critical incident and there is only one or two
22 a year, do they take that seriously or is it only the
23 more senior officers?

24 A. No, I would expect them to take it as seriously. By
25 definition, it means the whole of the organisation are

Transcript of the Sheku Bayoh Inquiry

1 aware of it or they should be aware of it and, you know,
2 senior people are focused on it, and will, as you see
3 with ACC Nicholson, will actually attend. That is not
4 the norm, so officers will get a sense if they don't
5 know that this is really serious, the fact that you know
6 there are so many members of staff and senior officers
7 coming to Kirkcaldy Police Station.

8 Q. So, even if they haven't been formally told about it
9 being a critical incident, they can tell from the
10 arrival of very senior officers?

11 A. Yes.

12 Q. Does it make a difference to the way the incident is
13 managed, post-incident management after the event, if it
14 is declared a critical incident?

15 A. So I don't know if you are going to get into the
16 post-incident stuff.

17 Q. Yes.

18 A. So the -- I am not quite sure what you mean then. So
19 the post-incident -- a critical incident, because there
20 are so few, eventually you can -- you can
21 "decriticalise" it, if that is even a word, which
22 basically means that at a certain point in the journey
23 this is no longer a critical incident and it is regraded
24 as such and downsized. But that tends to take -- well,
25 it could take days, it could take weeks, it could takes

Transcript of the Sheku Bayoh Inquiry

1 months, it really depends on the situation or the
2 incident.

3 Q. Now, in paragraph 41 I think of your Inquiry statement
4 you say that any officer can actually declare a critical
5 incident but how often would it happen that a constable
6 or someone of a lower rank would actually do that?

7 A. I have never been aware of it.

8 Q. So theoretically possible but not common in practice?

9 A. Yes, I would say so, yes.

10 MS GRAHAME: Can you just give me a moment, I am conscious
11 of the time and we normally have a break --

12 LORD BRACADALE: I think we will take a break now. We will
13 take a break for 20 minutes.

14 (11.34 am)

15 (A short break)

16 (12.01 pm)

17 LORD BRACADALE: Ms Grahame.

18 MS GRAHAME: Thank you. I would like to move on to a 9.30
19 meeting that you've told us about in your Inquiry
20 statement, and I think you said it was a teleconference
21 meeting that you had with ACC Nicholson. Was that
22 a normal sort of 9.30 meeting that you would attend?

23 A. Yes, at the weekend it would be a sort of opportunity
24 just to get -- for the ACC and other senior members of
25 staff to get a sort of operational oversight of what has

Transcript of the Sheku Bayoh Inquiry

1 happened in the preceding 24 hours.

2 Q. I think you refer to this at paragraphs 29 and 30 of
3 your Inquiry statement. So convened at about 9 o'clock
4 in the morning and you mentioned this incident to
5 ACC Nicholson at that time?

6 A. Yes.

7 Q. And you say:

8 "Long story short, we had a discussion about this
9 incident. I spoke to CI Conrad Trickett and asked him
10 to travel down to take over PIM procedure~..."

11 That is post-incident management procedure?

12 A. Yes.

13 Q. Then at 30:

14 "This meeting took place after I had been informed
15 of Sheku's death and after I had declared a critical
16 incident."

17 And you mention that. So it's after the critical
18 incident has been declared, you have a customary meeting
19 with ACC Nicholson, you discuss the incident with
20 Nicholson at that time and you have a conversation with
21 Conrad Trickett?

22 A. Yes.

23 Q. We've heard from Chief Inspector Trickett, and he has
24 told us that he was PIM trained at that time. Was that
25 something that was unusual amongst the staff?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes, it's a very specialist training skill. Yes.
- 2 Q. We've heard that Pat Campbell had never been trained in
3 post-incident management procedure; was that unusual at
4 the time, in 2015?
- 5 A. Yes, it depends on how you move through your career.
6 You know, you build up certain specialisms, so you would
7 never expect Pat Campbell to be PIM trained because he
8 was more -- he's an investigator, so he would be focused
9 on investigation whereas Conrad was not an investigator,
10 so he had -- or he got the training to be a PIM.
- 11 Q. We did hear from Conrad Trickett that he spoke
12 a different language from Pat Campbell because he was
13 PIM trained and Pat Campbell wasn't, and in relation to
14 obtaining statements and information about the incident
15 from the attending officers, that there was maybe
16 a mismatch between their understanding of the types of
17 statements. Are you aware of anything of that sort
18 happening?
- 19 A. No, but I could see why -- "different language" is maybe
20 too strong a phrase but I could see why -- you know,
21 they are two distinctly different skill sets so, and if
22 each does not -- each probably had a reasonable
23 understanding of what the other did but maybe not -- you
24 know, they hadnae been through the necessary training,
25 so I could understand why there would be a little bit of

Transcript of the Sheku Bayoh Inquiry

- 1 uncertainty there but I am assuming through dialogue
2 between the two that would be resolved pretty quickly.
- 3 Q. Right. Can I be clear just about the comparison between
4 your role having regard to the welfare of the officers,
5 and that of Conrad Trickett. We heard from
6 Conrad Trickett that his role as post-incident manager
7 was to balance the needs of the investigation with the
8 welfare of the officers. And he gave that evidence on
9 Day 45, which was March this year?
- 10 A. Right.
- 11 Q. You've talked about your role also involving issues of
12 welfare. Can you explain to us how your roles differ or
13 if there is any difference really?
- 14 A. No, I think they are mutually inclusive actually, and
15 they complement one another. Historically, a PIM
16 process -- so because I had been a firearms commander
17 and been a detective super, I had an understanding of
18 both sides of the enquiry, or both these areas in
19 particular. But the post-incident management procedures
20 had never been put in place for a non-firearms incident
21 before. This was highly unusual and highly unique, and
22 the reason that, you know, I put it in place with Conrad
23 and with Ruairaidh's support is that I could see --
- 24 Q. Can I stop you there. I don't like interrupting but
25 when you say Ruairaidh, we actually have a number of --

Transcript of the Sheku Bayoh Inquiry

1 A. ACC Nicholson. It was obvious -- such was the
2 seriousness of the investigation, the enquiry, and the
3 incident, I certainly felt the staff would benefit from
4 having a PIM process wrapped around them. But also the
5 investigation would, because it would -- it creates
6 a clear audit trail whereas historically there wouldnae
7 be the level of detail and documentation through the
8 PIM -- if you didn't use a PIM structure, there wouldnae
9 be the same level of policy criteria documentation, that
10 you know enquiries such as this can then refer to.

11 Q. What sort of documentation would be prepared as part of
12 the PIM procedure?

13 A. I've not seen it but I'm assuming there would be a PIM
14 log that Conrad would have completed --

15 Q. We heard about that.

16 A. Right, and that is really thorough, so in a normal set
17 of circumstances then none of that would be available
18 for any future enquiry, so the reason -- one of
19 the reasons that, you know, I was keen to get PIM
20 process was so there was a clear documentation of every
21 decision that was made but also for the staff because,
22 you know, it was a really -- I know I have mentioned it
23 before, a traumatic episode for them and it was really
24 important for me that they got as much welfare support
25 as they possibly could and I felt Conrad and that

Transcript of the Sheku Bayoh Inquiry

1 process would add value to that.

2 Q. So in a normal incident there wouldn't be any of that
3 PIM paperwork prepared?

4 A. Nothing.

5 Q. There would be nothing?

6 A. Nothing, unless it was a firearms incident but in
7 a traditional, normal incident, none of that would be
8 available.

9 Q. Right. Can I ask you about another officer we are
10 hoping to hear from later this week, Lesley Boal. As
11 I understand it, part of your role was in relation to
12 resourcing and ensuring there was the proper resourcing.
13 We have an Inquiry statement from Lesley Boal,
14 SBPI 00223, I don't need to put this on the screen, it
15 is just for the benefit of anyone listening,
16 paragraph 69, where she says that initially her role
17 was:

18 "... to try and assist the SIO by getting required
19 resources, any specialist resources, speaking with him
20 if I had any concerns and generally supporting him in
21 any way I could."

22 Again, is there really any difference there or is
23 her role mirroring your role because you have also
24 talked about resourcing?

25 A. Yes, so there's two distinct -- I don't know if there is

Transcript of the Sheku Bayoh Inquiry

1 a chart available but the command structure of this
2 incident is really clear in my head and that you would
3 have ACC Nicholson as the Gold commander, you would have
4 me as the Silver commander with oversight of my staff,
5 that have been involved in the incident, community
6 tension, community impact, but then you would have
7 Lesley Boal as an experienced detective officer to have
8 oversight in supporting Pat Campbell in the role -- or
9 Pat's role initially as the senior investigating
10 officer. So both Lesley and I would be keen and
11 interested in making sure there was the right resource
12 and the right place, but it's different types of
13 resource that we are looking for. I am looking for
14 professional police officers that can continue business
15 continuity; Lesley and Pat Campbell are looking for
16 specialist investigators to progress the enquiry with
17 PIRC or on behalf of PIRC.

18 Q. So her role is more aligned to the role of the senior
19 investigating officer?

20 A. Yes, absolutely. Yes.

21 Q. Whereas you are looking at things from a police
22 continuity --

23 A. Yeah, community impact --

24 Q. A broader approach?

25 A. -- business as usual, yeah.

Transcript of the Sheku Bayoh Inquiry

1 Q. Right. Then you mention in your Inquiry statement that
2 you -- before you attended the first Gold Group meeting,
3 which I will come to in a moment, which was at 11.30 in
4 the morning, you went to the canteen. So at some point
5 between the 9.30 meeting with ACC Nicholson and before
6 the 11.30, the first Gold Group meeting. When was it
7 that you went to the canteen?

8 A. I couldn't tell you the exact time so I was -- exactly
9 that, it was between sort of both those times, and you
10 know I just felt it was important as the policing
11 commander of Fife to go and see how my staff were. So
12 I took the decision to go there. But then I had --
13 Conrad Trickett and I had had a discussion so I knew
14 Conrad was coming down, albeit I think he was in Dundee
15 or Aberdeen so that was going to take a bit of time, but
16 I felt it was important that the staff were made aware
17 of that and also I was genuinely, genuinely interested
18 in how they were.

19 Q. Was Conrad Trickett present when you went to the
20 canteen?

21 A. No, he'd probably just left Aberdeen so he was en route.

22 Q. Does that help you recall if the meeting was closer to
23 the 9.30 meeting or closer to the Gold Group?

24 A. I think it would have been closer to the 9.30. Once
25 I got the business of the initial meeting out the way,

Transcript of the Sheku Bayoh Inquiry

1 my priority was to see how my staff were.

2 Q. So when you went to the canteen, was that the first time
3 you had been to the canteen?

4 A. Yes.

5 Q. That was before Conrad Trickett arrived at Kirkcaldy
6 Police Office?

7 A. Yes.

8 Q. Did you have any other visits to the canteen?

9 A. I was there -- during that period I was there twice, and
10 both for the sort of same -- the same purpose really, it
11 was just -- I think the first time I was -- somebody fed
12 back to me around they'd not had anything to eat and
13 stuff like that, so once I'd -- I went away and
14 basically asked somebody to help with that and then
15 I went back and said: look, just for your information
16 that's in hand now, you don't need to worry about that.

17 I was more interested around, you know, family
18 because things were -- or would likely have been
19 beginning to build on media, across neighbourhoods,
20 chit-chat, and you know it was important that the family
21 members of the staff, if required, were alerted to the
22 fact that their loved one had been involved in this, and
23 I made that offer, and at that point it wasnae required
24 but the offer was there and I would have personally done
25 that if it was required.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. The second time you went back, do you remember when that
2 was?
- 3 A. It was again during that sort of one and a half hour
4 window because I just went and made the arrangements for
5 officers to get the necessary refreshments and stuff.
- 6 Q. So that was between the 9.30 with ACC Nicholson and the
7 11.30 first Gold Group meeting?
- 8 A. Yes.
- 9 Q. How long did the 9.30 meeting last?
- 10 A. On average it's normally about 30 minutes but
11 I suspect -- I don't know, it was so long ago -- but
12 I suspect it probably went on a little bit longer
13 because of this incident and the discussion that we had
14 to have around the next steps.
- 15 Q. After that first meeting you have your first visit to
16 the canteen and your second visit, was Conrad Trickett
17 there at the second visit?
- 18 A. No, because it was very quickly after the first one.
19 I just went and sorted, as I say, refreshments and
20 stuff, because staff -- yes, they were needing a bit of
21 a hand, they were needing to be looked after.
- 22 Q. Did you have a visit to the canteen at any time during
23 the day when Conrad Trickett was present in the canteen?
- 24 A. I don't think so, no. Not from memory.
- 25 Q. Could you be mistaken about that?

Transcript of the Sheku Bayoh Inquiry

- 1 A. I could be. I mean, again I've not listened to what
2 Conrad said but if he said I'd been there then
3 I wouldn't dispute it. I just can't remember.
- 4 Q. I am having something checked and we might come back to
5 this later on.
- 6 A. That's fine.
- 7 Q. But that is your best recollection today?
- 8 A. Yes.
- 9 Q. I think you've said in your response to a rule 8
10 request, the first time you got in touch with the
11 Inquiry, and in your second Inquiry statement, you have
12 said it was really purely for welfare purposes that you
13 were visiting?
- 14 A. It was.
- 15 Q. Did you consider whether you turning up in the canteen
16 would maybe be quite a surprise or quite upsetting to
17 the officers because you are so senior?
- 18 A. I would hope it -- if it was upsetting that was not my
19 intention, I was genuinely there to show sort of -- to
20 provide any help and welfare. I think it would be
21 remiss of -- you know, a terrible incident such as this,
22 for a senior leader not to be visible and not to sit
23 with staff and just, you know, just be there for them.
- 24 Q. What did you say to the officers?
- 25 A. Not a great deal to be honest with you because there was

Transcript of the Sheku Bayoh Inquiry

1 a lot of upset and tears in that room and I just tried
2 to reassure them that -- or to -- aye, to reassure them
3 that we had Conrad Trickett coming down, we are going to
4 put in place a post-incident management procedure
5 which -- one of the requirements of that is to look
6 after staff and the welfare of the staff and to make
7 sure that every ask of them was -- within reason -- was
8 going to happen.

9 If you go back to other incidents that there was no
10 PIM procedure, literally officers would come back and
11 they would get a five-minute from their supervisor: are
12 you okay? Yes, I'm fine. And that would be it. This
13 was a really robust, in my view, professional approach
14 to make sure the short term and the long-term welfare
15 needs of the police officers were catered for as best we
16 possibly could.

17 Q. Can I ask you about -- you were asked at paragraph 71
18 I think of your Inquiry statement about separating the
19 officers or having them all together in the canteen.
20 And you were asked by the Inquiry team about conferral,
21 if we can put that label on it, and you say:

22 "For conferral, other than putting a gag on them or
23 putting them in different rooms you couldn't prevent
24 some possibility of that. But against that, I said
25 when I was in the canteen that they should not talk

Transcript of the Sheku Bayoh Inquiry

1 about the incident. I said not to discuss it and to be
2 patient and wait for Conrad's arrival. I didn't
3 consider putting them in different rooms. I was happy
4 where they were. They were professional people. They
5 were told not to discuss the incident. They were
6 devastated, tearful, upset and shocked. They weren't in
7 a condition to discuss the incident. To separate them
8 didn't make sense."

9 I would like to ask you a little bit more about your
10 views at that time. Did you consider the possibility of
11 separating them?

12 A. So the -- at 71 I am asked about conferral, the question
13 from memory that was put to me was along the lines
14 of: could you have -- if they were in the same room
15 could you tell them to not talk about the incident? And
16 that was my response: other than putting a gag on
17 them... I mean you have to -- these are mature,
18 professional adults, my advice to them was: look, we've
19 got Conrad Trickett coming down, he'll explain the whole
20 process from here on in, right through. He'll look
21 after your welfare needs. Just take this time really to
22 just try and gather your own thoughts and, you know,
23 just await the next part of the process.

24 So that was really -- you know, I wasnae -- I tried
25 to be really not necessarily humble but considerate

Transcript of the Sheku Bayoh Inquiry

1 because these people, genuinely they were devastated,
2 they were really, really upset, so anything -- probably
3 most of what I said to them probably didn't even sink in
4 but I thought it was important: one, the visibility,
5 because they may or may not still remember that I did
6 actually show up; and two, to try and separate them as
7 they were at that point, I could see no benefit to it.

8 Q. Why did you think it was important for them not to
9 discuss the incident?

10 A. Because I think if you start to -- it's like -- it's not
11 necessarily in policing, it could be in anything. If
12 you start -- everybody has a different view to -- you
13 know, this whole experience just now, the chap to my
14 right's view will be different from mine around what
15 I did or did not say. So if you begin to discuss it, it
16 just actually clouds the whole matter as it is in your
17 own head so for me you are better just tae keep your
18 thoughts to yourself at that point and then when the
19 process begins you can then -- you'll have your
20 opportunity to write it down or to tell whoever it is
21 that you choose to tell.

22 Q. Given your impression of the officers and how they were
23 reacting, and that they might not take in your
24 suggestion that they shouldn't discuss the incident, do
25 you feel there were other safeguards in place at the

Transcript of the Sheku Bayoh Inquiry

1 time to prevent them talking to each other? I'm not
2 suggesting gags or anything --

3 A. No, the reality was they were in a room together,
4 I don't think they were of a mindset to be talking about
5 the incident, to be absolutely honest with you. They
6 certainly didn't when I was there and that was not in
7 any way visible to me. There was a Federation rep
8 there, but no other safeguards, no.

9 Q. In terms of your perspective about thinking about
10 the wider interest, the community tensions or the
11 public's perception, was it of any -- looking back on
12 that now, the officers being gathered together in the
13 canteen, do you have any concerns about how that
14 might -- the public perception of that?

15 A. I could see -- I could see the public perception. You
16 know, people can put a different or a certain
17 perspective on anything. I genuinely don't think it was
18 a concern at that point. But I don't -- I do understand
19 the point you are making.

20 Q. Looking back now, do you think -- if you could go back
21 and do anything differently would you do that
22 differently, in light of what you knew at the time?

23 A. So if I was to do it differently we would have had to
24 move the staff to all corners of sort of Fife so they
25 would not -- there was not sufficiency of rooms and

Transcript of the Sheku Bayoh Inquiry

1 accommodation in Kirkcaldy to separate them all, so if
2 I'd made the decision to separate them, I would have had
3 to then get two members of staff to take each witness
4 and move them to, one to go to Cowdenbeath, one to
5 Dunfermline, one to Levenmouth and logistically that --
6 you know it's a mess that, to do that, and we wouldn't
7 have had the resource to do it anyway because that would
8 be pulling more police officers off the street to go and
9 be taxi drivers, for want of a better phrase, and that
10 logistically would never have worked. So with
11 hindsight, if this was to happen today, we would still
12 require far more accommodation to do that realistically.

13 Q. When you were visiting the officers, did you tell them
14 that there had been a critical incident declared by you?

15 A. Yes, I did actually. Yes.

16 Q. Was that the first meeting, the first visit, or the
17 second?

18 A. It would have been the first one.

19 Q. The first visit. Can I move on and ask you about --

20 LORD BRACADALE: Just before you do that, sorry to
21 interrupt, can I just clarify one thing, please,
22 Mr McEwan. During that period when you visited them and
23 before Conrad Trickett arrived, was there any other
24 officer, senior officer but junior to you, supervising
25 the officers?

Transcript of the Sheku Bayoh Inquiry

1 A. No. There was the sergeant there who had been involved
2 in it but no inspector or chief inspector. No, sir.

3 LORD BRACADALE: Thank you.

4 MS GRAHAME: Thank you. Can I move on and ask you about
5 Colette Bell, who was the partner of Mr Bayoh. We've
6 heard evidence that she was taken to Kirkcaldy Police
7 Office during the morning. She had phoned in about half
8 past eight in the morning from her home in Kirkcaldy and
9 then officers had taken her in to the police office.
10 I don't know if you've listened to any of that evidence?

11 A. No, I've not actually.

12 Q. Did you at the time know that Colette Bell had been
13 brought to Kirkcaldy Police Office?

14 A. There is a chance that -- yes, most likely at the
15 11 o'clock Gold meeting or whatever time it was --

16 Q. 11.30?

17 A. 11.30, I would suspect, because Colin Robson gave a very
18 thorough briefing at that and I suspect that would have
19 been included in the briefing.

20 Q. We've heard she was already in Kirkcaldy by the 11.30
21 Gold Group meeting so were you involved in any way with
22 the decisions about bringing Colette Bell to Kirkcaldy?

23 A. No, that is the SIO that would make those decisions.
24 Albeit, you know, most likely -- less likely to be
25 Pat Campbell because these are quite straightforward and

Transcript of the Sheku Bayoh Inquiry

1 important decisions to be made, it's more likely
2 Colin Robson would have made them as the initial SIO on
3 the ground.

4 Q. Right. Can I ask you something about evidence we heard
5 from DC Mitchell, he was one of the officers involved in
6 bringing Colette Bell to the station. That was Day 35
7 of the Inquiry on 1 February this year. He was one of
8 the officers who had delivered the death message to
9 Colette Bell.

10 A. Right, okay.

11 Q. And that was in Kirkcaldy Police Office. She had her
12 baby with her, and her mother had come to help her. At
13 that time, DC Mitchell gave evidence that he had had
14 a direction from supervisors that we weren't to mention
15 anything to do with police contact, so that Mr Bayoh had
16 come into police contact, until it was properly
17 investigated. And I asked him -- this is DC Mitchell:

18 "Question: When you say a direction from your
19 supervisors, who do you mean?"

20 And he said:

21 "Answer: That was relayed to us by DS Dursley~..."

22 And he was told not to mention police contact.

23 I'm interested -- you've talked about the importance
24 of the family in your role. I'm interested if you have
25 any comments on this evidence, that officers were told

Transcript of the Sheku Bayoh Inquiry

1 not to mention to Colette Bell that Mr Bayoh had come
2 into contact with the police?

3 A. Yes, I mean it's -- it's difficult because I don't know
4 the full circumstances of the investigation at that
5 point. My immediate reaction was that that was not the
6 right thing to do. But I don't know -- there may have
7 been other, other discussions in the background and the
8 investigation strand but I suppose the question if
9 somebody -- if I was there that day, I would have said,
10 "Why not? Why wouldn't we?"

11 Q. In terms of your perspective about thinking about
12 community tensions, and the potential ramifications,
13 what concerns would you have about not sharing that
14 information with Colette Bell?

15 A. It's actually -- it's less about the community tensions,
16 it is more about treating Colette Bell as I would want
17 my partner to be treated in similar circumstances.

18 Q. I think in -- there are two paragraphs in your Inquiry
19 statement I would like to ask you to look at.

20 Paragraph 85. You say:

21 "... it was vital in my mind ..."

22 Five lines down, it starts at the end of the fourth
23 line down:

24 "They had tragically lost a family member and it was
25 vital, in my mind ..."

Transcript of the Sheku Bayoh Inquiry

1 Do you have that?

2 A. Yes.

3 Q. "... that we were as engaging and being honest with them
4 at the earliest possible time, without obviously
5 compromising the investigation."

6 Was that the approach you would have taken --

7 A. Absolutely.

8 Q. -- with the family?

9 A. And that is the one caveat, I don't know -- I mean, you
10 will have asked others, I don't know if by telling
11 Colette Bell something, would that have compromised the
12 investigation. There is nothing that is obvious to me
13 but that wasnae my area of responsibility.

14 Q. Thank you, we have asked other witnesses that.
15 Paragraph 104 you use a phrase I'm interested in. This
16 is at a later time but you say -- this is about
17 Colette Bell:

18 "... was at Ade and Kadi's house when I went up.
19 Often it's about getting one version of the truth."

20 I will come on to that visit later but I am
21 interested in the phrase "getting one version of the
22 truth". Can you explain that?

23 A. So again, it's a little bit out of sync but for me it's
24 about as best -- from my perspective and from other
25 police officers, if you have various different family

Transcript of the Sheku Bayoh Inquiry

1 members, for me it's about trying to get everybody
2 together, if you're going to give them -- in a general
3 sense if you're going to -- that is why briefing and
4 debriefing is important, in general terms, because if
5 you get everybody together then there is no dubiety
6 around what it is that is being said. If you have to
7 brief different people on different -- or about the same
8 topic at different times and places, the truth and
9 versions of the truth can be diluted.

10 Q. So if you are telling people the truth there will be one
11 version of that from the police?

12 A. Yes, but there's -- of course it's like statements,
13 of course, you give one, you know, one summary but then
14 if somebody comes and asks you a slightly different
15 question from a slightly different perspective then you
16 give more information or you change -- so it's -- as you
17 know as well as me, things can change and evolve, so
18 best practice for me is where possible if you can get
19 the collective family together then that would surely be
20 the best approach, but that is only where possible.

21 Q. Thank you. I said I would come on to the Gold Group
22 meetings, and the first one was at 11.30 on 3 May.
23 Let's have a look at the minutes from that meeting.
24 PS06491, please. You have been asked about this in your
25 Inquiry statement. So we see this is the Gold Group,

Transcript of the Sheku Bayoh Inquiry

1 11.30 on that date. We see that present was
2 ACC Nicholson, we have heard he was the Gold commander?
3 A. That is right.
4 Q. You are there, Chief Superintendent McEwan, we have
5 heard you were Silver commander?
6 A. Yes.
7 Q. And then we see the other attendees,
8 Detective Chief Superintendent Lesley Boal,
9 Detective Superintendent Campbell, Chief Inspector
10 Shepherd, you have mentioned all of those, and you have
11 also mentioned Detective Inspector Robson who was taking
12 the minutes and we have heard he was the duty SIO for
13 Fife on that day, and he gave the sort of factual
14 briefing?
15 A. Yes.
16 Q. And then someone called Kate Finlay from media; what was
17 her role?
18 A. She was just from Corporate Communications, it's
19 important with incidents such as this and others that
20 you have a media expert there should you wish to cascade
21 any messages out to the media, it's important that they
22 get a really good grasp and understanding of the Inquiry
23 because what tends to happen or what does happen is that
24 the media outlets will go direct to Kate Finlay, as it
25 was in this instance, if they have any further follow up

Transcript of the Sheku Bayoh Inquiry

- 1 questions, they will not come directly to me they will
2 go through the Corporate Comms.
- 3 Q. We have heard about the Gold and Silver commanders, who
4 were the Bronze commanders?
- 5 A. The Bronze commander that is there is Nicola Shepherd,
6 so she is the Bronze commander for community impact and
7 community reassurance, reporting to me. I am trying to
8 think what other Bronze commanders there may have been.
9 They are clearly not there but there may be a commander
10 in charge of -- a Bronze in charge of locus protection,
11 so there might be an inspector that has responsibility
12 for that. There may be others involved. But ...
- 13 Q. In terms of the investigation itself, we know that
14 Pat Campbell was the SIO. Would he be a Bronze
15 commander or would that be someone different?
- 16 A. No, I wouldn't -- I would class him as the senior
17 investigating officer, I wouldn't class him as a Bronze
18 commander, no.
- 19 Q. Is there ever a Bronze commander for the investigation?
- 20 A. There may be through -- maybe FLO side there might be
21 a Bronze commander that would look at the FLO part of
22 the investigation. I am trying to -- maybe forensic
23 strategy, there might be a Bronze commander that would
24 look after the forensic side of things, so there would
25 be other subsets that would support SIO and

Transcript of the Sheku Bayoh Inquiry

- 1 Pat Campbell.
- 2 Q. But in terms in of the investigation part of the
3 incident, is Pat Campbell the top of the tree, if you
4 like?
- 5 A. Support -- yes. He's the key decision-maker at that
6 point, supported though by Lesley Boal, because she had
7 previously been an SIO and was Pat's supervisor. So her
8 role there is really to support Pat Campbell and helping
9 him through, which is a really complex investigation.
- 10 Q. So really it is Pat Campbell who is in charge of the
11 investigation?
- 12 A. Yes.
- 13 Q. He and has, if I can use the word, command, that you
14 used earlier; he's the man?
- 15 A. There can be only be one senior investigating officer
16 and that, at that point, was Pat Campbell.
- 17 Q. So it's not a situation where you as Silver commander
18 would interfere with this investigation, or
19 ACC Nicholson would get involved? He would be the
20 ultimate person responsible?
- 21 A. Yes. That does -- that can happen because everybody
22 wants to get involved but certainly, having done the
23 role that Pat was doing at that point, I understood how
24 important it is to allow him to make his decisions.
25 Because if you get others interfering it just truly

Transcript of the Sheku Bayoh Inquiry

1 makes things worse. So yes, I mean, the key is to allow
2 him to make his decisions and then he comes to the
3 Gold Group and briefs out some of the key decisions that
4 he has taken and/or maybe seek some advice if there is
5 any advice that he is needing.

6 Q. PIRC were not present at that meeting?

7 A. Not at that meeting, no, they hadn't arrived by that
8 time.

9 Q. We have heard other evidence that they hadn't arrived by
10 11.30 that day but others have talked about knowing that
11 PIRC were going to take the lead?

12 A. Yes.

13 Q. Is there a reason that you are aware of -- you have
14 talked about your earlier teleconference, and people
15 joining that way, and we can see that people were
16 present at this meeting. Were you aware of any
17 difficulties that prevented PIRC from joining this
18 meeting, either remotely or in person?

19 A. Not that -- no, I can't remember actually. There may
20 have been. I don't know what the delay was for PIRC
21 getting there but I just can't remember what it was.

22 Q. So with them not being present, how were the discussions
23 in the Gold Group meeting going to be shared with PIRC?

24 A. Once they arrived they would -- you know, their key
25 focus would be initially around discussions with

Transcript of the Sheku Bayoh Inquiry

1 Pat Campbell, they would get a copy of the minutes if
2 they were available, and they would be briefed by key
3 police personnel, I suppose, on what had happened up
4 until that point.

5 Q. Who would those key personnel be?

6 A. So for me it would be Pat Campbell, it would be
7 Colin Robson, who would be the two key -- and they would
8 probably have, I would imagine -- I was probably present
9 at some, they would have had some discussion with the
10 ACC as well as the Gold commander.

11 Q. If we can look at the minutes further down the page,
12 please. We see the first item on this agenda for this
13 meeting is:

14 "Terms of reference - Gold Strategy
15 (CS Garry McEwan)."

16 And there's a number of -- there's a list, if you
17 like, of what you might have called paragraphs or bullet
18 points or something, detailing the terms of reference.
19 I'm interested -- you have been asked about this and the
20 purpose of the terms of reference. If we look at the
21 bottom one, it says:

22 "Ensure the integrity, interest and reputation of
23 the Police Service of Scotland and its staff is
24 maintained and safeguarded."

25 Under that in red:

Transcript of the Sheku Bayoh Inquiry

1 "Agreed that wording of terms of reference would be
2 considered and amended for future meetings to provide
3 terminology specific to circumstances of incident."

4 So this is the minutes -- it is not the agenda, it's
5 the minutes, but I'm interested in the terms of
6 reference and the inclusion of ensuring the reputation
7 of the police, that that be maintained and safeguarded.
8 Can you give us some understanding of why that was
9 included?

10 A. Because in Scotland, across the UK, we -- we, not we
11 I am not in the police anymore, but the police, they
12 police by consent of the community so if the police's
13 reputation is tarnished to such a degree that the
14 communities don't have the trust and confidence in the
15 police officers to do their job, then, you know, who
16 knows where society -- who knows where we would be in
17 the country. So it's important that the communities at
18 large see the police as an organisation that they can
19 trust and that they will work with. Because, as I say,
20 the police police by consent, so we need the communities
21 and people to police with us.

22 Q. What impact does that have on the investigation side?

23 A. For me it's about making sure the investigation is done
24 thoroughly, it is transparent, no stone is left unturned
25 it's about -- it is not about -- it's about making the

Transcript of the Sheku Bayoh Inquiry

1 investigation as thorough and professional as it
2 possibly can be, which in effect maintains that trust
3 and confidence that communities have in policing.

4 Q. Is any part of this term of reference about protecting
5 officers from potential wrongdoing or avoiding
6 investigating potential wrongdoing?

7 A. No, no, it's not about -- absolutely not about avoiding
8 investigation, it's about doing the most wholesome and
9 fulsome investigation as we possibly can, so that the
10 rights and wrongs are identified and are addressed.

11 Q. I have said to you we are hoping to hear from
12 Lesley Boal later this week, and she has commented
13 on this in her written statement that she has given to
14 the Inquiry.

15 A. Okay.

16 Q. And has expressed the view, and we've not heard from her
17 yet, but in writing she has expressed the view that she
18 didn't agree with that being part of the terms of
19 reference:

20 "Decisions shouldn't be made to ensure this.
21 Ensuring reputation of Police Scotland is not objective
22 and not transparent. I think I would have raised this
23 in my meeting~..."

24 And she had picked up on that. So she obviously,
25 looking at that, has expressed concerns about this being

Transcript of the Sheku Bayoh Inquiry

1 included. Looking at that now, do you have any concerns
2 about this being included as part of the terms of
3 reference?

4 A. I suppose Lesley must be looking at it from a different
5 perspective. I don't recall her raising that at the
6 meeting or I am assuming it may have been -- it may have
7 been amended at the time. So I mean those five bullets
8 they were not commonly used but these tend to be some of
9 the phraseologies that were used at the time. They can
10 always be improved upon, so I can't -- I don't dispute
11 what she is saying, that is her view.

12 Q. Were they standard sort of terms of reference in
13 a Gold Group meeting?

14 A. Yes, they were not unstandard. Maybe not for
15 a traditional Gold but for a critical incident, you
16 would find that a lot of that terminology is most likely
17 in the policy, if you had access to the policy you would
18 find a lot of that is in the -- probably the Major
19 Investigation Manual.

20 Q. We see the words in red, that I read out. These are
21 part of the minutes after item 1:

22 "Agreed that wording of terms of reference would be
23 considered and amended for future meetings to provide
24 terminology specific to circumstances of incident."

25 Do you remember an agreement being reached as part

Transcript of the Sheku Bayoh Inquiry

1 of that discussion?

2 A. I don't -- I don't remember the conversation but I am
3 not surprised by that, terms of reference rightly does
4 evolve as any Inquiry progresses, so that would be
5 normal, I would expect that to be the case. Yes.

6 Q. All right. But you don't remember any specific
7 discussions?

8 A. I can't remember, no. If anybody did raise that,
9 I would accept that would be a fair comment, you know,
10 these do require to be amended and changed, and I think
11 they did to a degree as they moved on through the ...
12 through the Gold Groups.

13 Q. Sorry I interrupted.

14 A. That's fine.

15 Q. Can we look at SBPI 00075 again please and paragraph 3.
16 So this is the Rule 8 response your first statement,
17 written statement to the Inquiry. Paragraph 3. You
18 were asked about a Gold Group and you say:

19 "A strategic group chaired by the ACC where
20 strategic decisions are made connection to direction of
21 investigation, costs, media, community or political
22 interest."

23 Can I ask you to explain more clearly what the role
24 of the Gold Group is in relation to the direction of the
25 investigation?

Transcript of the Sheku Bayoh Inquiry

1 A. So how that would play out in real life is that
2 Pat Campbell would give a briefing, around where the --
3 at what point the investigation is at, and then, as
4 I say, there may be some additional points he wishes to
5 discuss or a certain direction he wants to take and he
6 will be looking for the Gold Group to add value to that,
7 and to give advice and/or, you know, dependent upon the
8 question that was posed, the ACC who chairs the group
9 could make a decision around a certain hypothetical
10 point that was being raised by the SIO.

11 Q. Now, I am interested because at this time, at this
12 meeting you were aware that PIRC were going to take the
13 lead on the investigation.

14 A. Yes.

15 Q. So how did that impact on the ability of the Gold Group
16 and the police in general to direct the investigation?

17 A. Yes, I think that is a valid question to ask and I think
18 that is probably reflected in the minutes, is there
19 was -- there does not appear, if you go back -- there's
20 not a lot of decisions taken and the reason for that is
21 because -- or part of the reason was because, I think
22 I used in my statement it's a sort of a foot on the ball
23 moment but it's a -- you know, PIRC -- the handover has
24 been, as I understood it, the command of the incident as
25 of maybe 10.30, give or take, had moved to PIRC. The

Transcript of the Sheku Bayoh Inquiry

1 direction had come from Crown that PIRC were going to
2 lead on this investigation but they -- they weren't at
3 the meeting. So, you know, the Gold Group were not
4 going to make -- or take any significant decisions
5 unless they were life or death until PIRC were there,
6 and had established themselves, and taken physical
7 control and ownership of the investigation.

8 Q. How important is it in an investigation and taking the
9 lead in an investigation, to be physically present and
10 part of the discussion?

11 A. Yes, absolutely, it's very important. And I understand
12 sometimes -- again, it's a national organisation, so
13 geographically it is -- on a Sunday morning it is
14 probably -- it may have been more of a challenge to get
15 the PIRC resource there, but it is important, of course.
16 It's far better if everybody is in person and having
17 that face-to-face discussion.

18 Q. At this Gold Group meeting you did have any input from
19 PIRC in relation to the investigation?

20 A. Not that I recall. Pat Campbell may have used phrases
21 along the lines of, "I've spoken to PIRC ...". But PIRC
22 physically were not there and I don't recall any direct
23 input, no.

24 Q. To what extent -- thinking again about the direction of
25 the investigation, to what extent was the race of

Transcript of the Sheku Bayoh Inquiry

1 Mr Bayoh and investigating any possible racial
2 discrimination aspects in relation to his death, to what
3 extent was that part of the strategic direction of the
4 investigation?

5 A. That was not -- from memory that was not an emerging key
6 discussion point at that meeting.

7 Q. So you had obviously taken that very seriously in
8 relation to declaring a critical incident. That had
9 been done before this Gold Group meeting?

10 A. Yes.

11 Q. But was there any discussion about race at that meeting?

12 A. Yes, there was -- there was certainly discussion about
13 race. I can't remember exactly what it was, but, you
14 know, there was a comfort I would say is probably the
15 best way that Pat Campbell with his experience and rank
16 was absolutely tuned into that fact.

17 Q. What makes you say that?

18 A. Just the -- it's hard to think back. I can't come out
19 with any direct phrases but, you know, it was -- we were
20 all, I would like to think, in that group bright,
21 semi-intelligent people and, you know, we understood the
22 importance. And the fact I had called it a critical
23 incident and the fact that, you know, the perception
24 that I talk about earlier, the perception that might
25 come from family, might come from communities, that was

Transcript of the Sheku Bayoh Inquiry

- 1 a real concern of mine. So that was known in the
2 Gold Group.
- 3 Q. Was that because you made that specifically known?
- 4 A. Well, I'm sure I would have. Yes.
- 5 Q. Can you help me understand -- obviously it was
6 an important factor in your consideration in declaring
7 the critical incident, and that is a decision taken by
8 you --
- 9 A. Yes.
- 10 Q. -- at 10 past 9 in the morning. So by 11.30 when you
11 are having this first Gold Group meeting how is it that
12 that information about a critical incident is shared
13 more widely with the Gold Group?
- 14 A. So I would've briefed them on the fact, similar to what
15 was in my statement, I declared it a critical incident
16 at ten past 9 and here was my rationale behind doing
17 that, and, you know, just the procedures that I have
18 touched on there and then here's the terms of reference
19 that, you know, had been pulled together and then we
20 just worked through the agenda I suppose.
- 21 Q. So if they've not heard prior to 11.30, at least by
22 11.30 everyone in that Gold Group meeting knows it has
23 been a critical incident?
- 24 A. Yes, yes. And, to be honest, I would be shocked if any
25 of those at that meeting at 11.30 didn't know before

Transcript of the Sheku Bayoh Inquiry

1 that. I think to be -- they did, and I'm sure they
2 agree with that.

3 Q. Then presumably, when a critical incident is declared,
4 that is disseminated pretty quickly?

5 A. Yes, absolutely.

6 Q. Before we leave this first Gold Group meeting, can I ask
7 you to look at PIRC 00182. This is your statement from
8 2018. If we can just go down the page. It was
9 January 2018. So this was the one we spoke about
10 earlier this morning.

11 A. Yes.

12 Q. Page 2, paragraph 6, please.

13 "I have been asked by Investigator Sinclair who
14 briefed me regarding the incident involving Sheku Bayoh.
15 As I said in my first statement at 1130 I attended the
16 Gold Group meeting chaired by ACC Nicholson."

17 And you say who was present:

18 "Detective Inspector Robson was the duty
19 Detective Inspector that day and he provided the
20 Gold Group with details of the incident and that is
21 where I got my information from."

22 So was that the sort of fullest detail of the
23 information you had had about the incident that day up
24 to that point?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. And that came from DI Robson?

2 A. Yes.

3 Q. You have told us that around about 7.45 you had been
4 contacted and you've told us about your involvement and
5 visits to the canteen and the meeting at 9.30 and such
6 like. To what extent was Detective Inspector Robson's
7 briefing at the Gold Group meeting significant to you?
8 Was that -- to what extent did that provide you with
9 more information?

10 A. Yes, it was definitely more detailed than I had had up
11 until that point but not significantly so. And the
12 reason I say that is that, you know, none of the direct
13 police witnesses involved in the case had been
14 interviewed. They had never given any detailed account.
15 So the Gold Group for me was -- Colin gave a --
16 DI Robson gave a high level overview with a bit more
17 detail but then Gold Group is about: right, what is the
18 next steps, what is it we need to be doing as
19 an organisation to progress the Inquiry, to reassure the
20 communities, to address whatever financial -- what costs
21 there may or may not be. That was the purpose of the
22 Gold. So Colin -- you know, multiple calls about a man
23 with a large knife, Hayfield Road, police attendance,
24 man was restrained and fell unconscious, CPR, and he
25 passed away -- it's sort of -- it's as factual as that.

Transcript of the Sheku Bayoh Inquiry

1 There wasnae much more follow-up questions because we
2 knew that -- nobody had any of the other answers at that
3 point. Nobody knew what -- nobody could really fill in
4 the blanks.

5 Q. So at this meeting you've had the factual briefing from
6 Robson, you've declared the critical incident. Race is
7 an important factor?

8 A. Yes.

9 Q. You've been thinking about the potential ramifications
10 of that in taking your decision about a critical
11 incident being declared, and the senior officer in
12 charge of the investigation is present, Pat Campbell.
13 PIRC aren't there but Pat Campbell has made reference to
14 being in touch with PIRC?

15 A. Yes.

16 Q. So would you have anticipated that, as part of the
17 investigation being carried out, that the possibility
18 that the death of Mr Bayoh was contributed to by racial
19 discrimination of some kind, would you have expected
20 that possibility to be part of the investigation into
21 his death?

22 A. I would expect that would have been one of the
23 hypotheses that Pat may have considered. I don't --
24 I genuinely don't know if it was because I never seen
25 Pat's evidence and I've not read his statement in

Transcript of the Sheku Bayoh Inquiry

- 1 detail, but I would imagine that would be one of
2 the hypotheses.
- 3 Q. We have heard some evidence about hypotheses and
4 an investigator thinking about all the possible
5 hypotheses and we may hear further evidence this week
6 about this, and we've heard that one of the possible
7 hypotheses is that Mr Bayoh had been stabbed or injured
8 in an assault earlier and had arrived at Hayfield Road
9 and died as a result of an earlier assault. We have
10 heard that one of them could be an underlying health
11 condition and that is what caused his death. Are these
12 the sort of hypotheses that you would --
- 13 A. Yes, absolutely.
- 14 Q. -- expect an investigator, keeping an open mind, would
15 be looking at all of the possible options?
- 16 A. Yes, that is the key of an investigator; is keep it as
17 broad as you possibly can in the early stages and then
18 you begin to focus as you learn more and more about the
19 particular incident.
- 20 Q. We've heard that what investigators do is consider all
21 the possible hypotheses, within reason obviously?
- 22 A. Yes.
- 23 Q. And then, once they get enough evidence to exclude
24 a hypothesis, that they can then draw a line under it in
25 a sense and move on and re-direct resources to the

Transcript of the Sheku Bayoh Inquiry

- 1 hypotheses that are becoming more likely?
- 2 A. Yes, I would say that is a good summary.
- 3 Q. So you would expect one of the hypotheses to be that
- 4 possible race discrimination has been a factor in his
- 5 death, and you would expect that to be part of the
- 6 investigation that was being considered?
- 7 A. Again, it's difficult for me because I was not part of
- 8 the investigation. But, yes, I would -- I would be
- 9 surprised if that was not included.
- 10 Q. Before you could exclude that as a possibility would you
- 11 expect statements from police officers to be obtained?
- 12 A. Yes, from any -- I mean, to eliminate any of the
- 13 hypotheses, you need to be certain that that is
- 14 no longer a likely -- or likely scenario.
- 15 Q. So it's included at the beginning, recognised that
- 16 Mr Bayoh was black and it's a possibility and then you
- 17 wait until you've got the statements you need and then
- 18 you can exclude it or draw a line under it?
- 19 A. Yes, or whatever. You wait until you have the evidence
- 20 to direct you in whatever direction you need to go.
- 21 Q. If that wasn't included as a hypothesis would that
- 22 surprise you?
- 23 A. I think certainly, you know, the -- his race I think
- 24 is -- should have been considered, yes.
- 25 Q. Yes. Thank you. Can I ask you about terrorism and the

Transcript of the Sheku Bayoh Inquiry

1 discussion at the Gold Group meeting to do with that.
2 If we can go back to the Gold Group minutes, I think
3 they were ... (Pause). If we can look at item 3,
4 please. You will see there is a whole list of bullet
5 points there, and item 3 says:
6 "Investigative process."
7 And it was spoken to by DCS Boal and
8 Detective Superintendent Campbell:
9 "Initial actions and investigation strategy outlined
10 by Detective Superintendent Campbell in respect of the
11 following areas ..."
12 And I think there are about nine bullet points
13 listed there. Do you see quite -- beyond halfway down
14 the bullet points it says "CT considerations"?
15 A. (Witness nods).
16 Q. We've heard evidence that CT is counter-terrorism.
17 A. Yes.
18 Q. And it says:
19 "Raised by ACC and to be reviewed by NIB."
20 What was NIB?
21 A. I want to say National Intelligent Bureau but I'm not
22 entirely sure.
23 Q. Alright. Can I ask you what your recollection of this
24 part of the discussion was about counter-terrorism.
25 A. I don't have a strong recollection around it. What I do

Transcript of the Sheku Bayoh Inquiry

1 know is ACC Nicholson is highly experienced in that area
2 of work, and various others, but he has been a senior
3 detective for many, many years and he may have had
4 oversight of the resource at Gartcosh, which is where
5 the CT resource is. So I'm not surprised that he may
6 have raised that and asked for some -- I'm guessing
7 intelligence checks or whatever to have been done. But,
8 to be honest with you, I genuinely can't remember much
9 more than that.

10 Q. Were you aware of anything either in the factual
11 situation that you had been advised of or any other
12 circumstances that would give rise to considerations of
13 counter-terrorism?

14 A. No, there was never anything raised to me at any point
15 that this was a terrorist-related incident, no.

16 Q. When you say nothing, do you mean at all; there was
17 nothing ever raised that gave cause to think it might
18 relate to terrorism?

19 A. It had never even in my presence been discussed as
20 a possible hypothesis, if that's what you are
21 suggesting.

22 Q. I'm just asking you if there was anything that you --
23 anyone said anything to you that day or anything you
24 were aware of --

25 A. No.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. -- that would make you think this has possibly got
2 something to do with terrorism?
- 3 A. No, absolutely not.
- 4 Q. We have heard other evidence from officers saying they
5 didn't think it was anything to do with terrorism.
- 6 A. No.
- 7 Q. Did ACC Nicholson explain in any way at that meeting why
8 he raised the issue?
- 9 A. Not that I recall.
- 10 Q. Did Pat Campbell say that this was part of his
11 investigation or reasons why it might be included?
- 12 A. No, it certainly wasn't -- if there was a discussion
13 around that specifically, it was not a protracted
14 discussion because I can't remember it and it wasn't of
15 any significance.
- 16 Q. Would the fact that it was raised at this meeting by the
17 ACC, would that give people -- would people think: oh,
18 that's a very senior officer raising it, maybe that
19 should be part of the investigation?
- 20 A. Yes, I mean the fact -- and it has on the bullet "raised
21 by ACC", the fact he has raised it and asked for it to
22 be actioned, then, yes, it will have been done. There
23 is no doubt. It would have been given the priority that
24 he has asked for it to be given there.
- 25 Q. So something would have been done about that --

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. -- because it has been raised by the ACC?

3 A. Yes, absolutely.

4 Q. So whether or not it was part of the investigation
5 hypotheses at the outset, once the ACC raises it at the
6 Gold meeting that probably will require some action to
7 be taken?

8 A. Yes. I'd be really surprised if NIB had not undertaken
9 some form of review, as has been asked for there by the
10 ACC.

11 MS GRAHAME: Right. I am conscious of the time.

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

14 (1.03 pm)

15 (The short adjournment)

16 (2.03 pm)

17 LORD BRACADALE: Ms Grahame.

18 MS GRAHAME: Thank you. I was about to move on to another
19 Gold Group meeting which took place in the afternoon at
20 14.40 hours, and if we look at the minutes of that
21 Gold Group meeting first of all, that is PS07268. We
22 see again you were present with the ACC, Boal, Campbell
23 were there again, Detective Chief Inspector Houston was
24 there; what was his role?

25 A. I think he was Pat Campbell's deputy.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Would he have been a crime scene -- to organise crime
2 scene management?
- 3 A. He could well have been, we spoke earlier about Bronze
4 commanders, if he was doing crime scene he would be the
5 Bronze probable lead for that.
- 6 Q. Then you have talked about Nicola Shepherd, you have
7 talked about Robson, and then we see at this meeting
8 Keith Harrower was there from PIRC and we have also
9 heard John Ferguson was from PIRC as well; do you
10 remember that?
- 11 A. I don't actually.
- 12 Q. Then someone called Keith Hardie was there from MIT,
13 he has given evidence as well.
- 14 A. Okay.
- 15 Q. So this was the first Gold Group meeting that PIRC had
16 attended. If we look further down you will see in
17 the minutes there is reference to terms of reference but
18 on this occasion, at this stage, the reference to
19 reputation and ensuring reputation, that had been
20 removed by then. Do you remember any more discussion
21 about that matter?
- 22 A. No, just simply as I touched on before, terms of
23 reference is a -- can be an evolving document, so that
24 doesn't surprise me, and then you know the final bullet
25 there which brings PIRC into the equation that wasn't on

Transcript of the Sheku Bayoh Inquiry

1 the original, from memory.

2 Q. So this is the first involvement of PIRC really in terms
3 of attendance at the Gold Group meeting. Do you
4 remember when PIRC had first arrived in Kirkcaldy?

5 A. I don't actually, no.

6 Q. But they were there by this meeting?

7 A. Yes.

8 Q. Can we look at your Inquiry statement, please. If we
9 can have that on screen again. 258. If we can look
10 first of all at paragraph 44. I am going to look at
11 a few paragraphs in this section but let's start with
12 44, where you talk about:

13 "The first time PIRC attended was~..."

14 And then 45:

15 "I didn't know what PIRC were going to be doing
16 until they arrived but I expected them to come in and
17 take overall command of the investigation. I expected
18 them to possibly require support from our resources
19 during the initial stage. But that would have been one
20 for the investigation to decide. My sense was that PIRC
21 were struggling to manage the incident. That's not
22 meant as a criticism of PIRC. They were pretty new at
23 that point but I felt they didn't have the resources and
24 potentially the experience in certain aspects."

25 I'm interested in exploring this paragraph with you.

Transcript of the Sheku Bayoh Inquiry

1 So until this meeting -- until PIRC arrived and then
2 attended this meeting, how would you describe the
3 communication and the level of information you were
4 getting from PIRC in your position as Silver commander?

5 A. Prior to the Gold meeting?

6 Q. Yes.

7 A. Nothing.

8 Q. No contact at all?

9 A. No contact, no. And that, in fairness to PIRC, was
10 probably not unrealistic at that early stage. I was
11 aware from Pat Campbell that he had had a number of
12 discussions with PIRC so I was content with that.

13 Q. All right. You had expected them to come in and take
14 overall command of the investigation. What would that
15 have looked like in Kirkcaldy?

16 A. So in a real sort of -- in a basic sense, for Keith and
17 his team to come in, to -- rightly to be afforded, you
18 know, time to understand the background to the incident
19 as well as what had been done until that point, but
20 thereafter for them to take the lead and to make the
21 decisions moving forward. Ultimately PIRC are
22 independent from policing, and a death such as this
23 following police contact required an independent review,
24 so by default, you know, they need to be driving forward
25 the Inquiry.

Transcript of the Sheku Bayoh Inquiry

1 Q. So if that independence was required from PIRC, as in
2 this occasion it was, did you have concerns about the
3 fact that the police had continued or commenced the
4 investigation from the events happening at twenty past,
5 half past seven in the morning and this is 2.40 in the
6 afternoon?

7 A. I didn't have concerns as such. I was a bit of
8 a realist at the time. You know, PIRC were a very young
9 organisation, they didn't have a huge level of resource
10 but let's not -- my mindset was let's not try and
11 present this to be something that it's not, PIRC are
12 either in command of this incident or they're not and my
13 understanding was that they were in command of it but
14 due to the limited specialist resource that they had, we
15 had resources available that under their direction we
16 could deploy on their behalf.

17 Q. What do you mean by the term "specialist resource"?

18 A. So it could be anything, it could be crime scene -- you
19 touched on crime scene manager there, I don't know the
20 answer to this but that would be an example where PIRC
21 may or may not, in May of 2015, have fully trained and
22 qualified crime scene managers available. I don't know
23 if they did but if they didn't then it would not be
24 unreasonable at that point for Police Scotland to assist
25 with that but under the direction of PIRC.

Transcript of the Sheku Bayoh Inquiry

1 So, you know, it's not a true independent enquiry,
2 it is cojoined but for me with PIRC as the lead agency,
3 is probably a better description, back in 2015.

4 Q. When you say not a true independent matter, what would
5 you -- if you were looking to create a true independent
6 enquiry or review into the actions of the police that
7 day, what would you have expected?

8 A. Yes, so if it was a true and independent enquiry, then
9 PIRC would come in at whatever time, let's just say
10 11.30, they would rightly be afforded a brief then they
11 would take control, oversight, of all aspects of the
12 investigation but they would have the resources to
13 fulfil that obligation, and they didn't in 2015.

14 Q. In terms of resources, can you perhaps help us with
15 a comparison, what resources the police had and what
16 resources you saw PIRC having?

17 A. Yes, I mean in its broadest sense one of advantages of
18 the creation of Police Scotland was that you had access
19 to resources -- you know, I can't remember the number
20 now but hypothetically speaking, 20,000 members of
21 staff. I'm not saying you would galvanise all them for
22 this enquiry but you had access to all these varied and
23 vast experiences. When PIRC arrived on the day, I think
24 there was five of them. So you know ...

25 Q. Am I right in saying that earlier this morning you'd

Transcript of the Sheku Bayoh Inquiry

1 said that when a critical incident is declared that you
2 can pull in resources from all around the country?

3 A. Yes.

4 Q. Does that just mean Scotland?

5 A. Yes, I mean if we did need mutual aid, as we did
6 previously, we sent officers from Scotland down to --
7 I touched on Manchester and Birmingham previously, we
8 supplied resources down there so if there was
9 an occasion where that merited it, which was not on this
10 one, then we could probably go further afield.

11 Q. You say there you:

12 "I expected them to possibly require support from
13 our resources during the initial stage."

14 So what stage was that that you were referring to?
15 Because I have asked you about the period before they
16 arrived. What do you mean when you say there "during
17 the initial stage"?

18 A. Just the sort of -- the period from them arriving and,
19 you know, the subsequent short period of time until they
20 were in a position where they had the skills -- the
21 skill sets available to take it on. The reality is that
22 at no time did they have the capacity to do it. That
23 was the reality at that time, in 2015.

24 Q. So once you realised -- when did you realise that really
25 at no time they were going to have that capacity?

Transcript of the Sheku Bayoh Inquiry

1 A. It was obvious from the minute they arrived, you know,
2 when they -- when an independent investigating team
3 arrive for incident such as this scale and there's five
4 or six members of staff you can see clearly that they
5 are not going to have the capacity to push this forward.

6 Q. Was there any discussion that took place about the lack
7 of capacity that they had and the impact of that on the
8 investigation?

9 A. There was certainly discussion -- I had discussion with
10 some of my team around that. I may or may not have
11 direct discussion with PIRC, I'm not sure. The reason
12 I say that is because, you know, they are there to
13 investigate the police, so we -- it's a very -- the
14 relationship is not a -- we are not on an even keel
15 here, they are the investigators and they are
16 investigating an incident that involved the police, so
17 there is a sort of a -- I don't how quite to describe it
18 but we're not in each other's pockets.

19 Q. You've said:

20 "My sense was PIRC were struggling to manage the
21 incident."

22 Tell us what you meant by that?

23 A. I think just the size, the scale, the -- you know, this
24 is -- well, probably in policing history in Scotland,
25 this is probably the first, thankfully, of its kind and

Transcript of the Sheku Bayoh Inquiry

1 hopefully the last, that I can certainly remember, so
2 this is not an everyday traditional investigation that
3 the PIRC would get involved in, it is something far more
4 serious and far more complex than that.

5 Q. What was it, if anything, that gave rise to this sense
6 that you had that they were struggling; was anything
7 said or done?

8 A. It was just -- well one was the numbers, and, two,
9 I just -- I didn't have that comfort at certain points
10 that they were focusing in on aspects that I maybe, as
11 Silver and looking at the community side of things,
12 would maybe -- and the family which I felt was more
13 important.

14 Q. Tell us about that.

15 A. So, yes, the bottom line is I mentioned earlier in the
16 day, I mean what is important to me or should be
17 important for me to -- a lot of people involved, is the
18 family, the police officers, and you know, Sheku's body.
19 These are three things and probably the final one around
20 that is the media, around, you know, back to the
21 community reassurance, what do we need to be -- what do
22 PIRC need to be doing to provide some reassurance across
23 communities.

24 Q. So from your perspective, it was very important that
25 PIRC also had regard to the experience of the family and

Transcript of the Sheku Bayoh Inquiry

1 the community more widely?

2 A. Well, one affects the other. If you are doing the
3 investigation, there can be decisions and actions
4 initiated there that will by default have an impact on
5 the family, will by default have an impact on the wider
6 community, so it's important that investigators take due
7 regard of the possible consequences that could lead to
8 some of their actions.

9 Q. In the last sentence here at 45 you are talking about
10 resources, is that not just the resources, the number of
11 staff they turned up with but also whether they had
12 access to the specialist resources that you had in the
13 police?

14 A. Yes.

15 Q. Any other issues about resources that you've not
16 covered?

17 A. No, it was back to the skill sets and the experience.
18 I mean, you know, Pat Campbell was an example, and
19 Colin Robson, Graeme Dursley, these are investigators
20 who are right at the -- I would call people match fit,
21 so I was an investigator at one point but I am
22 no longer -- at that point I am no longer match fit
23 because I've moved on to other roles and
24 responsibilities. But Pat Campbell, Colin Robson,
25 Graeme Dursley are really match fit investigators, and

Transcript of the Sheku Bayoh Inquiry

1 there would be very few people that have got the same
2 skills and experience that they had at that particular
3 moment. I don't think PIRC -- and it is no criticism to
4 them because their staff will not have had the same
5 present day experience and currency of experience than
6 some of the names I have just mentioned.

7 Q. We've heard that some of the staff employed by PIRC were
8 former officers. Did you know many of them?

9 A. I didn't know them personally, I knew some were and had
10 been previous officers in legacy Strathclyde police
11 et cetera.

12 Q. Did you know about what experience or rank they had
13 achieved in their previous roles?

14 A. There was probably some talk of it at the time, to be
15 honest with you I can't remember now but -- because
16 there were some police officers that had worked with
17 and/or had had experience many years before of some of
18 the PIRC people so there was a bit of chat around their
19 experience.

20 Q. You've talked about the rank and experience of Campbell
21 and Robson and Dursley. Did you -- in terms of your
22 impression of the staff that came from PIRC that day, do
23 you feel they matched that rank or experience?

24 A. So I genuinely, hand on heart, don't think they did and
25 it is not a criticism of -- they just didn't have that

Transcript of the Sheku Bayoh Inquiry

1 currency of experience. We had, as I say, Pat Campbell
2 who was dealing with the most serious crime on literally
3 a daily basis. Now, there is probably no one else
4 anywhere that you could get that would have that same
5 level and currency. And Colin and DS Dursley, they are
6 in exactly same boat. I would never even compare myself
7 at that point to their level of current experience.

8 Q. Thank you. Then at paragraph 46 you go on to detail
9 that:

10 "The most important aspect for me was the community
11 impact, reassurance, the family side of things.
12 I wasn't overly impressed by their initial inaction in
13 the early stages towards the family."

14 You are referring to PIRC here:

15 "I thought they had failed to prioritise what
16 I thought was important which was the family, which in
17 turn affects the community impact and the ability to
18 give community reassurance."

19 In terms of what you've said here, you say not.

20 "... overly impressed by their initial inaction in
21 the early stages towards the family."

22 What would you have expected to happen?

23 A. So what I would've expected or hoped to happen, there
24 would have been family liaison officers deployed hours,
25 many hours before they were, to the family. And to try

Transcript of the Sheku Bayoh Inquiry

1 and to begin to build that relationship with them, and
2 to you know keep them abreast of how the enquiry and the
3 incident was progressing.

4 Q. When you say "many hours before they were", could you
5 help the Chair understand what you think a reasonable
6 timescale would be, if the event had occurred by about
7 half past seven in the morning?

8 A. If I was -- you know, if I had been the detective super,
9 you would be looking to deploy FLOs within a scenario
10 like this within two hours, I would suspect. You really
11 want to get FLOs in early and begin to build that
12 relationship and that trust.

13 Q. Is that the benefit of deploying them early?

14 A. It is certainly one of the benefits, different enquiries
15 require different responses, I definitely accept that,
16 but with this enquiry in particular, there was no reason
17 why FLOs should not have been deployed early.

18 Q. Could I just be clear in my own mind, obviously the
19 incident had taken place by about half past seven in the
20 morning. Life wasn't pronounced extinct until shortly
21 after 9.00 in the morning, when you are talking about
22 a sort of two-hour window of deploying FLOs, would that
23 be from the half past seven or from the 9ish in the
24 morning?

25 A. I would say by the 9ish.

Transcript of the Sheku Bayoh Inquiry

1 Q. So round about 11ish -- before midday?

2 A. Yes.

3 Q. You were talking about the benefits of the FLO being
4 appointed. Can you elaborate on that for us? We've
5 still to hear evidence from a FLO.

6 A. Yes, I mean, FLO -- it is not a new skill set but it's
7 a really important skill set insofar as that a FLO is
8 there, they have sort of two main tracks, one is to
9 build that relationship with the family, to build trust
10 and confidence and to really try and ensure that
11 everything that they are asking for, within reason, we
12 as the investigating authority will try and fulfil.

13 So that is one aspect. Two is then to -- is to look
14 it build some antecedent history as I would call it, the
15 sort of background, get a picture of, you know, on this
16 occasion it would be Sheku and his family and who he
17 was, what sort of man he was, just build the -- so we
18 had a greater understanding of him and his wider family.

19 Q. Can I ask you to look at paragraph 86:

20 "The background to this is important because by the
21 time I got involved with the family directly~..."

22 We will come on to this later:

23 "... there was already a great deal of anger and
24 upset. PIRC were responsible for family liaison. My
25 point of contention in this case is that they weren't

Transcript of the Sheku Bayoh Inquiry

1 dealing with it properly. I felt like I needed to see
2 the family because it wasn't at the forefront of PIRC's
3 mind. On the day in question they didn't have FLOs out,
4 they weren't even on duty. That wasn't good enough.
5 I raised that a couple of times directly with PIRC.
6 Their recommendation was 'it is fine we will see them
7 tomorrow'. I disagreed. I said we can't leave the
8 family overnight. They needed to be briefed and made
9 aware. It was wholly inappropriate.

10 I'm interested in this paragraph. You've said that
11 they didn't have FLOs on duty. Was the decision that
12 PIRC were to supply the FLOs rather than the police?

13 A. So I know now, having read a couple of the statements,
14 that there was dialogue between Pat Campbell and
15 Keith Harrower around who was going to take
16 responsibility for the FLOs. For me it didnae really
17 matter who took responsibility for it, it was the fact
18 that we needed to get FLOs deployed and the fact of the
19 matter was -- I am jumping forward a few hours but by
20 quarter to five, half past six there were still no FLOs
21 deployed in that family and to me that is wholly a sort
22 of woeful response, no matter how you try and paint that
23 picture.

24 Q. You say that it wasn't good enough, you raised it
25 a couple of times directly with PIRC. Can you tell us

Transcript of the Sheku Bayoh Inquiry

1 a little bit more about when and who you raised it with?

2 A. So there had been -- there was a number of discussions
3 around FLOs and, you know, concerns and I do remember
4 having at least one conversation with Keith Harrower
5 about FLOs. But it was just -- it was back to capacity,
6 I don't actually -- I don't know if Keith has been in
7 here yet or not, I've not seen --

8 Q. We will hear further evidence from PIRC next year,
9 I think.

10 A. Okay, for me I think they didnae have the capacity, it
11 was a Sunday, they couldnae source them potentially,
12 I think Police Scotland had a similar challenge. But
13 for me we didn't do enough to get the FLOs out to the
14 family.

15 Q. You've said there that PIRC recommended just leaving
16 FLOs to the next day and you say:

17 "We can't leave the family overnight. They needed
18 to be briefed and made aware."

19 You seem quite insistent in that paragraph on that.
20 Was that your view at the time?

21 A. That's why I -- I know I am jumping forward but that is
22 why I went because there was no FLOs on the horizon, to
23 my knowledge, there wasn't going to be a deployment, so,
24 you know somebody needed to go and try and speak to the
25 family and, you know ...

Transcript of the Sheku Bayoh Inquiry

1 Q. Then looking at paragraph 87 you say:

2 "PIRC couldn't muster FLOs and said they couldn't
3 deploy until the following day which I thought was
4 wholly unacceptable. I can't remember which PIRC
5 officer did this. Keith Harrower was my main point of
6 contact in the early stages so I'm guessing it was
7 probably Keith that told me that. PIRC weren't keen on
8 deploying Police Scotland FLOs. That was their decision
9 to make. I understood that and why they made that
10 decision. It's not good practice to have one FLO on the
11 Saturday and another on the Sunday. The preferred model
12 is to have an agreed FLO and have them right in from the
13 off. That provides consistency and builds trust. The
14 PIRC preference was to have one on the following day.
15 For me, waiting 24 hours before the family have been
16 given a thorough proper update on the circumstances was
17 inappropriate. If [it] was my family and there was
18 concern about the circumstances, and I wasn't being told
19 for 24 hours it would be devastating."

20 So you understood the decision that PIRC didn't want
21 to have police FLOs. What was the basis for that?

22 A. I think that was probably moving on a little bit around
23 once the death messages et cetera had been presented.
24 I mean, it was clear to me and it was clear I think to
25 everybody at that point that to then introduce

Transcript of the Sheku Bayoh Inquiry

1 Police Scotland FLOs into that family dynamic was not
2 going to add any value, because of the distrust that had
3 come because of me and my team's previous -- the
4 policing -- PIRC's previous inaction over the course of
5 that morning.

6 Q. In terms of your impression, was there any concern about
7 the police providing FLOs and the police being
8 investigated, that sort of conflict there?

9 A. Yes, I mean, I personally don't think in a situation
10 such as this one, which is, as I say, thankfully very
11 unique, the FLOs should be Police Scotland FLOs.
12 I think they should be part of that independent --
13 I mean, PIRC had oversight of this investigation, the
14 priority surely had to be the family so if you are going
15 to deploy your most important assets anywhere, it has to
16 be to the family.

17 Q. And it would have been PIRC FLOs that would have been
18 the most suitable?

19 A. In my view, certainly.

20 Q. Can we go back, please, to -- sorry we are flipping
21 between two parts of the statement -- can we go back to
22 47, please. Here you say:

23 "My view was the community tension, impact,
24 reassurance would be led by my teams and I wouldn't
25 expect PIRC to do that. I wasn't fully sighted on the

Transcript of the Sheku Bayoh Inquiry

1 progress of the investigation. That was for the SIO and
2 then PIRC. So it just becomes trying to ensure close
3 collaboration and engagement. In the early stages
4 I wasn't reassured that they (PIRC) were dealing and
5 engaging with the family properly. PIRC should be
6 responsible for family liaison. They weren't providing
7 FLOs and that was a problem for me."

8 And then if we can go back to 84 and 85, you were
9 also talking about FLOs in this section. You point out
10 that you've never been a family liaison officer:

11 "The role tends to be Constable or Sgt rank. When
12 that role was brought into policing it was probably in
13 the late 90s to early 2000s when I was a SIO. I've used
14 FLOs a lot, they play a vital role in any serious
15 investigation. I was never a FLO myself but I've got
16 a good awareness of FLOs. They're critical to the
17 ability to assist and support a family and there are
18 really experienced FLOs that you'd use for certain types
19 of cases, for example child deaths. You'd need
20 a certain type of FLO for that. I have utilised them
21 many times."

22 I am interested, we have heard different evidence --
23 we have not heard from the FLOs yet but we have heard
24 different evidence, some think the priority for the FLO
25 is the family and a welfare support type role and others

Transcript of the Sheku Bayoh Inquiry

- 1 have said they are actually part of the investigation
2 team and liaising with the investigation team. With
3 your experience of using FLOs, can you help us
4 understand that further?
- 5 A. Yes, I touched on it earlier, I think it is both.
6 I think it is family welfare, family trust, doing
7 whatever needs to be done for the family in the first
8 instance, but it is also too it's a conduit for the
9 investigation, so the SIO may have particular sensitive
10 questions or points that they need to try and understand
11 better, and if you have a good, well-trained experienced
12 FLO, they can -- they can find those answers with the
13 family in a more appropriate way.
- 14 Q. Then you make it clear in paragraph 85 that the FLOs
15 were not your responsibility. So that wasn't part of
16 your remit to arrange FLOs or any of that?
- 17 A. No, and -- but why it was important to me was that -- it
18 is back to the community trust and confidence. If you
19 lose a family and they don't trust the police as
20 an organisation, what could happen is a very quick
21 deterioration with other communities that -- with family
22 but also other community, so it's about really trying to
23 work with the family in these circumstances.
- 24 Q. So you can see the wider benefits from your perspective?
- 25 A. That was -- yes, that was one of the concerns.

Transcript of the Sheku Bayoh Inquiry

1 Q. The FLOs, the responsibility of the FLOs, was for PIRC
2 and Pat Campbell to arrange as part of the
3 investigation?

4 A. Yes.

5 Q. So it was Pat Campbell for the police, and someone for
6 the PIRC to liaise on that?

7 A. Yes, but the decision ultimately at that point would
8 have been PIRC's decision around who, when, and where
9 were the FLOs deployed because they were leading on this
10 investigation.

11 Q. Right. But you do say:

12 "... as local commander ... [you] still had a role
13 to ensure the family were given an update as
14 a priority."

15 I think you have talked about the wider implications
16 of that, and:

17 "They had tragically lost a family member and it was
18 vital, in my mind, that we were as engaging and being
19 honest with them at the earliest possible time, without
20 obviously compromising the investigation."

21 Again, you repeat that honesty is coming out there
22 in that part of the statement. You felt that was
23 an important part of engagement with police?

24 A. Yes, I mean this case in particular -- so there are some
25 cases when you maybe can't be open and honest with

Transcript of the Sheku Bayoh Inquiry

1 an entire family. You know, if you suspect foul play
2 for example. But this particular incident, there was
3 absolutely no suggestion of that, so for me it's about
4 absolutely being open, honest and engaging with the
5 family as early as we possibly can.

6 Q. Then at the end of that paragraph you say:

7 "Bearing in mind there may have been some
8 sensitivities which the family couldn't be told, they
9 could be given the key elements in a dignified and
10 compassionate way. What became apparent to me was that
11 they weren't getting the necessary updates and it was
12 leading to a great deal of upset and frustration.
13 I then took the decision to go and visit them."

14 So you took that upon yourself to do that?

15 A. Yes.

16 Q. When you mention "key elements", can you help us
17 understand what you mean?

18 A. Just exactly that. So what -- whatever the case or
19 incident may be, what are the -- what's the information
20 that I have to hand that would be relevant to the family
21 and important to the family without compromising the
22 investigation is one point. And the second point is,
23 you know, you have to be -- you do have to be careful
24 because at any time in the early part of
25 an investigation there's a lot of hearsay, there's a lot

Transcript of the Sheku Bayoh Inquiry

1 of false reporting, there's a lot of suggestions that
2 may turn out to be absolutely factually incorrect, so
3 you do have to caveat that with a family because clearly
4 whatever you tell them it sticks with them, as you would
5 expect. So you just need to try and be careful that you
6 don't mislead them in any great degree, you try your
7 hardest not to.

8 Q. Finally on this, can I ask you to look at paragraphs 113
9 and 114. Let's start with 113:

10 "Visible leadership is important for a family. The
11 bottom line is PIRC waiting until the next day is wholly
12 inappropriate. If the FLOs were deployed and that
13 relationship was in place then I wouldn't have gone to
14 that house. It was because there was no plan and no
15 relationship and a family had lost a family member.
16 Visible leadership was for a senior officer to go and
17 tell the family all I could tell them."

18 So you were that embodiment of visible leadership
19 that day?

20 A. I certainly tried to be, yes.

21 Q. And you think that was because PIRC didn't have a plan,
22 they hadn't got a relationship and the family had lost
23 a member of their family?

24 A. There had been no contact at that point so the only
25 contact, as I understand it, that the family had had

Transcript of the Sheku Bayoh Inquiry

1 with anybody was a couple of death messages that were
2 presented by a couple of young detectives. So, no,
3 I don't think they had had the coverage and the contact
4 they deserved.

5 Q. You thought they deserved better than they received?

6 A. Up until that point, yes, absolutely.

7 Q. Then you say at 114:

8 "I spoke to somebody in the PIRC, can't remember
9 who, most likely Keith Harrower. They asked me not to
10 go and said I was going to go, because they didn't have
11 somebody in place. That was because of what I would
12 expect as a parent if they had very recently lost
13 a member of the family."

14 Can I ask you when you say, "They asked me not to
15 go", what do you mean?

16 A. So it was their investigation. So you know, the PIRC
17 were located in a different part of Kirkcaldy Police
18 Station from me so I chapped where the PIRC were, their
19 door, and of course there is a bit of a build up to this
20 around the death messages and the upset from the family
21 as a precursor to this point. But what was clear from
22 the feedback I was getting is that the family were, you
23 know, absolutely distraught with the first and second
24 death message, and what was clear is somebody needed to
25 be visible with that family. That did not really follow

Transcript of the Sheku Bayoh Inquiry

1 sort of proper -- maybe not proper procedures but maybe
2 it was seen as bit of an unusual step to take, so PIRC
3 were not keen that I went to that house. But there was
4 no plan B for me, so I took the decision to go.

5 Q. If PIRC had had resources in place and FLOs in place
6 ready to go or to go and see the family, would you have
7 got involved?

8 A. I wouldn't have. Not that day. I may have two or
9 three days later as the local policing commander for
10 Fife, I might have went up just to, you know, give my
11 sympathies et cetera, et cetera but I would not have
12 went at that time if there were FLOs in place, no.

13 Q. Can I ask you -- you mentioned earlier and you've
14 mentioned it in paragraph 55 of your Inquiry statement
15 an expression that it was "a foot on the ball moment".
16 Can I ask you just to expand on that?

17 A. So obviously there had been the original flurry of
18 activity, I suppose, the whole initial phone call, the
19 police attending, the police contact, the tragic death
20 of Sheku, the Gold Group meeting, the notification that
21 PIRC were going to take oversight and responsibility for
22 the investigation but there were still certain things
23 that were in train. So -- and I don't know the ins and
24 outs of it all but there were still elements of the
25 investigation that had already commenced so it would be

Transcript of the Sheku Bayoh Inquiry

1 probably wrong to say: right, you know PIRC are going to
2 be coming in the afternoon, let's -- just to use Colette
3 as an example, because you mentioned her -- let's just
4 leave Colette the now, let's just leave her in a room
5 until PIRC come here.

6 So there were certain things that were already
7 progressing that I think it was right for the detectives
8 to follow through on them. So those that were in train
9 were still being progressed, but rightly PIRC were
10 leading now so we needed to await their arrival and
11 then, you know, see exactly what they wanted to do with
12 this investigation.

13 Q. So were there specific elements of the investigation
14 that were effectively put on hold until PIRC came
15 on board?

16 A. I don't actually know because you would have to ask
17 Pat Campbell or others that were leading on the
18 investigation but there may have been things that had
19 the Police Scotland retained the investigation would
20 have been progressed quicker than maybe they were or ...
21 and they weren't because we were waiting on PIRC
22 arriving.

23 Q. Before I move on to the death messages, which you've
24 just mentioned, can I ask you something about evidence
25 that we've heard from Colette Bell, that when she was in

Transcript of the Sheku Bayoh Inquiry

1 Kirkcaldy Police Office and she was giving
2 a statement -- and it was DCs Mitchell and Parker were
3 the officers who dealt with her and gave her the first
4 death message that was delivered, she told us that she
5 had provided details of Sheku Bayoh's next of kin to the
6 officers during that statement, and she also told them
7 about Sheku Bayoh's former partner, whose name is
8 Connie, she was the mother of his oldest child.

9 I understood from her evidence, Colette Bell's
10 evidence, that an arrangement was in place for him to go
11 and see his oldest child that day, so Colette had told
12 the police in the hope that that could be avoided. But
13 Connie apparently, she said later, heard of his death on
14 Facebook.

15 I'm interested in your perspective about when
16 a person shares information about the next of kin, who
17 they are, and arrangements that obviously won't be
18 taking place now because the person has died; what would
19 you expect officers to be doing with that information?

20 A. In the circumstances you present there, you would expect
21 an immediate action to be raised for officers to go and
22 find the ex partner and make her aware. But at the same
23 time, if you'd established the other members of next of
24 kin you would be looking to -- not to do it -- the
25 perfect world is do it all at the same time but as close

Transcript of the Sheku Bayoh Inquiry

1 to near it because you don't actually know -- you know,
2 you don't know the relationships, you know, maybe that
3 you have a sister or an ex partner, and you don't know
4 who is closest or otherwise or how relationships are
5 behind the scenes, but you would be looking to action
6 some immediate contact to these people.

7 Q. We have heard evidence that by the second Gold Group
8 meeting, which was at 2.40, that there was some
9 discussion at that meeting about the next of kin and the
10 identification of them. Do you remember any discussion
11 about that at that meeting?

12 A. Vaguely, but not -- not that I could add any value just
13 now.

14 Q. Can we move on to the death messages. I think in one of
15 your Inquiry statements you talk about the initial death
16 message and I just want to share with you what we've
17 heard so that we know what we are talking about.

18 So we've heard that the first death message was
19 given to Colette Bell in the morning at Kirkcaldy Police
20 Office by DCs Mitchell and Parker and that was when she
21 was in the office and then she was given the death
22 message and then they took a statement from her at that
23 time. There was no mention at that time of there having
24 been police contact.

25 A. Okay.

Transcript of the Sheku Bayoh Inquiry

1 Q. That was the first death message, if we can call it
2 that. The second death message was then a message given
3 to the Johnsons, Kadi and Ade Johnson. So given to the
4 family, the next of kin was his sister, and that was
5 technically the second death message but the first that
6 was given to Mrs Johnson, his next of kin. That was
7 about ten past three in the afternoon.

8 Again, initially no mention of police contact. Then
9 the third death message was effectively the second time
10 that officers went out to speak to Mrs Johnson and her
11 family and that was again given by DCs Mitchell and
12 Parker a short time after the first time he'd spoken to
13 Kadi Johnson and that was the first time they had
14 mentioned police contact. So we're talking about those
15 death messages: the first, second and third, but it was
16 only the second and third that were specifically given
17 to the Johnsons.

18 A. Yes.

19 Q. It's just so I know when I ask you questions about it we
20 are talking about the same thing. So if we can look at
21 PIRC 00181, page 2, paragraph 2. 181. If we can look
22 at this. Page 2, paragraph 2 and you say:

23 "I have been asked ..."

24 Sorry, if we go back to the first page, this is the
25 statement given to PIRC on 24 June 2015. We spoke about

Transcript of the Sheku Bayoh Inquiry

1 that earlier this morning.

2 A. Okay.

3 Q. Sorry, I should've just let you see that. And you say,
4 paragraph 2:

5 "I have been asked about the initial death message
6 which was given to the family and the form of words
7 used."

8 When you say "the initial death message", are you
9 talking about the first one that was given to
10 Colette Bell or the first one that was given to Ade and
11 Kadi Johnson?

12 A. I think I am actually talking about the second one that
13 was given to Ade and Kadi.

14 Q. Thank you:

15 "I recall speaking to DS Dursley regarding officers
16 who had attended ... and that the family were wanting to
17 know more information. I advised DS Dursley to speak to
18 Detective Superintendent Campbell and to see what
19 information could be provided to the family to update
20 them surrounding the circumstances."

21 So you had spoken to DS Dursley at that time. Was
22 that after officers had gone to speak to Ade and
23 Kadi Johnson the first time?

24 A. Yes.

25 Q. Tell us about that conversation.

Transcript of the Sheku Bayoh Inquiry

1 A. So I was actually in the office with Chief Inspector
2 Shepherd and DS Dursley chapped the door, and he
3 basically outlined that two detectives had been to the
4 house with a form of words, the family were up in arms,
5 deeply upset and the form of words, you know, was really
6 basic. So I -- as I said there, so it is not my role to
7 make determination around form of words in death
8 messages so my advice was: look, you go and speak to the
9 Detective Super, he's literally in another room, and see
10 what can be done and he can engage with PIRC and see,
11 you know, if we can try and improve the communication or
12 the content of messages.

13 Q. So from that can I assume you had had no involvement in
14 formulating the form of words --

15 A. No.

16 Q. -- for the first visit to the Johnsons?

17 A. No.

18 Q. You had not been asked for any advice or guidance in
19 relation to that?

20 A. No.

21 Q. Did you even know what the form of words were?

22 A. Not the first one.

23 Q. Not the first one?

24 A. No, not the first one.

25 Q. Then in relation to the second one you have obviously

Transcript of the Sheku Bayoh Inquiry

1 had this conversation with DS Dursley. Did he then go
2 and speak, as far as you know, to
3 Detective Superintendent Campbell?

4 A. Yes, I have read Graeme's statement, albeit I've not
5 seen him here --

6 Q. Graeme Dursley?

7 A. Yes. He then talks about how he gets a second form.

8 Q. Were you involved with that second form of words?

9 A. No.

10 Q. Did you have any input into it?

11 A. No.

12 Q. So that was something that was dealt with with Campbell
13 and Dursley, as far as you are aware?

14 A. Yes, yes certainly the investigation side.

15 Q. There is something in this statement that I'm little bit
16 confused about and I am hoping you can clear up for me,
17 again page 2, paragraph 6. It starts:

18 "Detective Superintendent telephoned myself with the
19 form of words and also sent written confirmation that it
20 had been agreed with PIRC."

21 Then you say:

22 "I was at Glenrothes Police Station. My intention
23 was to attend at Kirkcaldy Police Office and pass the
24 form of words to the officers. I telephoned the PIO
25 Stevie Kay the [temporary] inspector who advised me that

Transcript of the Sheku Bayoh Inquiry

1 the officers had finished for the day and had left the
2 office. I asked Stevie Kay to contact each officer
3 individually and deliver the form of words to them.
4 I also sent the form of words electronically to make
5 sure the message was accurate."

6 Can you just help me understand because you are
7 talking about forms of words and telephoning and
8 discussing them but it doesn't seem to relate to
9 the family?

10 A. No, so if you look just below the label,
11 "Police Scotland Management", so that was the cause of
12 death, so that is some time later. That was once the
13 post mortem had taken place and the cause of death, so
14 that is a totally different message.

15 Q. That's totally different. I will come back to that,
16 actually. But that has nothing to do with the family or
17 the form of words or anything along those lines?

18 A. No.

19 Q. Thank you. Can I ask you to look at -- in your Inquiry
20 statement, please, and we will go to paragraphs 96 to
21 98. You've been told -- you were asked questions about
22 the death message that had been delivered to the
23 Johnsons:

24 "I have been told the death message was as follows
25 'Following an incident this morning, in the

Transcript of the Sheku Bayoh Inquiry

1 Hayfield Road area of Kirkcaldy, officers from
2 Police Scotland have been attempting to arrest
3 Sheku Bayoh, during which time he became unconscious,
4 conveyed to hospital by Scottish Ambulance Service and
5 despite best efforts by medical staff died shortly after
6 9am this morning."

7 My understanding is this would be the third death
8 message. The second time the Johnsons were delivered
9 a death message. 97:

10 "It doesn't ring any bells specifically but that
11 sounds about right. My comments are that -- and this is
12 the crux of it for me -- you need to tell the family
13 more than that. There were clearly more questions that
14 they have and from memory the police officers that were
15 present had been told not to answer any questions. For
16 me, that was wholly inappropriate at that time and we
17 needed to take a more transparent approach. It had only
18 inflamed matters. You need to be open and transparent
19 with the family and that was the nub of it for me."

20 98:

21 "I didn't have a say in the content of message, that
22 was part of the investigation strand. That is because
23 the family will be witnesses in the investigation."

24 I'm interested in paragraph 97 in particular, so
25 perhaps we could see the start of that on the screen.

Transcript of the Sheku Bayoh Inquiry

1 You say this is the crux of it for you:

2 "You need to tell the family more than that. There
3 were clearly more questions that they have and from
4 memory the police officers that were present had been
5 told not to answer any questions."

6 Can you give me a little bit more about
7 the background there?

8 A. So that was the conversation that I had had with
9 DS Dursley and/or the two detectives because they --
10 after they passed the second message they came back to
11 the office and I was -- you know, they came up to my
12 office, if you like, and I basically -- they were really
13 quite upset themselves because they had been advised --
14 I don't know by who, but they had been advised to give
15 the form of words and say nothing more: that's what you
16 tell the family, which is impossible to do and is
17 unrealistic and you know is not what we should be doing.

18 So that was that. We need to -- we can't just
19 regurgitate or keep repeating a sentence to a family
20 that have lost a loved one, it's not the right thing to
21 do and the detectives and Graeme Dursley identified and
22 felt exactly the same.

23 Q. What would be the right thing to do?

24 A. The right thing to do would have been to have FLOs
25 in place that were fully briefed in the enquiry, and for

Transcript of the Sheku Bayoh Inquiry

1 them to go through their FLO protocols and to build that
2 relationship and, you know, drip-feed or give whatever
3 information that they felt was the right information to
4 give.

5 Q. I know you've not been a FLO. Do you feel there is any
6 tension between officers giving a death message and
7 a FLO providing or drip-feeding more information about
8 the investigation? Do you think there is any difficulty
9 there?

10 A. I do -- you know, I am out of touch now but I do
11 understand there is a potential for that to -- those
12 that pass the immediate death message, the family could
13 react badly to them and then if they were the FLOs then
14 to try and rebuild that could be difficult. So best
15 practice has, over the years I am sure, and over
16 victims' and witnesses' feedback, has sort of suggested
17 that you're better to have somebody to give the death
18 message and then for the FLOs to come in just at the
19 back of that so they are not the ones that have
20 presented, "Your loved one has died".

21 Q. We've heard evidence, we've heard evidence from
22 Sergeant Mitchell about this on Day 35 of the hearing,
23 and he spoke about his concerns about the death messages
24 they were asked to deliver, that they lacked clarity
25 around the events, and he knew the minute he read it out

Transcript of the Sheku Bayoh Inquiry

1 to the family they wouldn't be happy and they would kick
2 off, quite understandably, because it never explained
3 anything. He spoke about knowing that you were going to
4 go out at some stage later. He wasn't very happy about
5 going back a second time with another written statement
6 to deliver to the family. Do you have some sympathy
7 with that evidence?

8 A. With him? Yes, absolutely. You know it's -- you
9 just -- that is adding no value and it's just creating
10 more animosity and upset for the family and it's also
11 putting the detectives in a position that, you know,
12 nobody would want to be in really.

13 Q. If trust is being damaged and animosity is increasing,
14 what impact does that have on you and the role that you
15 were in or taking on at that time?

16 A. Yes, so that is the knock-on effect I have spoken about
17 before, that that is where that then is a major issue
18 for the family, and rightly so, but it then can have
19 an impact on community trust, community assurance and
20 members of the community can really begin to, you know,
21 kick back quite significantly around that, if they feel
22 that the police have not been treating the family of
23 someone who has died as a consequence of police conduct,
24 eh, contact.

25 Q. So, looking back at the events that day, and I know

Transcript of the Sheku Bayoh Inquiry

1 you've told us this was a unique set of circumstances,
2 there is no police FLOs set out, there is no PIRC FLOs
3 set out, there's been a number of death messages,
4 different information has been shared. I think Mitchell
5 took the view that he would've preferred not to go back
6 a second time to the Johnsons and for you to go in, but
7 looking back now how do you think that could have been
8 improved; the handling of that whole situation?

9 A. Without trying to repeat myself, it's simple -- so
10 I understand the giving a death message, so you know
11 that probably should've been broadened out a little bit
12 but the immediate death message is one thing but then
13 it's about having the FLO and the support there to move
14 right in with the family, and to then begin, you know,
15 being there when the family are distraught, when they
16 are going through are their grieving process which
17 takes, as we know, days, weeks, months, years even, but
18 for FLOs to be there and just to be there to support as
19 best they possibly can. That was the bit that was
20 missing, we didn't have that there to move in to be with
21 the family and that is the inexcusable part of that.

22 Q. If they had had experienced FLOs in place to take on
23 that role immediately, you would then have not needed to
24 go to the house at all?

25 A. No, absolutely, I would not have required too go out, as

Transcript of the Sheku Bayoh Inquiry

1 I say I may have went a few days later but I wouldn't
2 have went on that day.

3 MS GRAHAME: I am conscious of the time.

4 LORD BRACADALE: We will take a 15-minute break at this
5 point.

6 (3.00 pm)

7 (A short break)

8 (3.19 pm)

9 LORD BRACADALE: Ms Grahame.

10 MS GRAHAME: Thank you. I'd like to move on to your visit
11 to the Johnsons' house. Can we look at your statement,
12 PS03136. This was your operational statement. I'm
13 looking at page 2, paragraph 7. Then we will go on to
14 page 3 in a moment, but if we can start there:

15 "About 1810 hours, same date, accompanied by CI
16 Nicola Shepherd I attended ..."

17 This was to the Johnsons' house:

18 "... and met with the sister of the deceased (Kadi),
19 her husband (Ade) and the deceased's partner (Colette)."

20 We have heard that she was present when you
21 attended:

22 "There were a large number of other family members
23 present at that time. I took the lead during the
24 conversation and gave a factual account of the
25 circumstances as I knew them at that stage, I did

Transcript of the Sheku Bayoh Inquiry

1 reiterate that this was a very fluid and dynamic
2 investigation with many witnesses being seen, and that
3 I was unsighted on the detail of all statements
4 provided."

5 Did you know which statements had been provided at
6 that point?

7 A. No, I would never -- at Gold we would never go into that
8 level of detail, so no.

9 Q. So where had the information about the events come from,
10 as far as you were concerned at that time?

11 A. Primarily the call card and also to a degree the
12 briefing that DI Colin Robson had given.

13 Q. To the Gold Group meeting?

14 A. Yes.

15 Q. Had you had an opportunity to look through the call
16 cards?

17 A. Yes.

18 Q. We have heard they are also called STORM cards?

19 A. Yes.

20 Q. And then in summary, and I think we will carry on
21 reading this page:

22 "In summary the information I provided was that at
23 just after 7am that morning a number of calls were
24 received by the police about a black male in possession
25 of a knife on Hendry Road Kirkcaldy at its junction with

Transcript of the Sheku Bayoh Inquiry

1 Hayfield Road; Police officers attended the scene and
2 during attempting apprehension of the male CS spray was
3 discharged and Police batons drawn. During this period
4 Sheku lost consciousness and the officers administered
5 CPR until ambulance personnel took over. Sheku passed
6 away at the hospital at 0904 hours that morning.

7 I thereafter explained that the PIRC had ownership of
8 the investigation and would undertake an independent
9 enquiry into the full circumstances and would be making
10 contact with the family soon."

11 A. Yes.

12 Q. So is that a summary of information that had come to you
13 from the call cards and the briefing from Robson?

14 A. Yes.

15 Q. You explain that PIRC will be making contact with the
16 family soon. Did you know when PIRC would be making
17 contact with them --

18 A. No.

19 Q. -- at that time? Then the next paragraph says:

20 "The key questions posed by the family at this point
21 were a) Why was this the first time they had been told
22 that Sheku died during contact with the police? --

23 I could not answer this point directly but made it clear
24 that I wanted to be as open and transparent as I could
25 be and this was the purpose for my visit b) Why did the

Transcript of the Sheku Bayoh Inquiry

1 police not disarm him? -- I could not answer that c) The
2 family have been told it took 15 officers to control
3 him, why was this? -- I could not answer this other than
4 to confirm that a minimum of six officers had initially
5 attended d) Why had the police taken Arran Crescent as
6 a crime scene? (Deceased's home address) -- I explained
7 that this was because of the disturbance of property
8 reported by the girlfriend when she returned home made
9 it important for investigators to secure any evidence."

10 You then go on to explain.

11 "... the family were understandably distraught~..."

12 Can I ask you about this paragraph that I have just
13 read. Let's look at the first question that the family
14 were asking. When you say, "The key questions posed
15 were~..." does that mean they asked a lot of other
16 questions but these were the ones you recorded in your
17 statement?

18 A. Yes, so just a couple of elements that are probably
19 important is Chief Inspector Nicola Shepherd, I asked
20 her to come up and in advance of going, you know, there
21 were some key elements that I wanted to tell the family
22 as a minimum, which are the ones in the previous
23 paragraph. And we'd agreed that I would take the lead
24 in the conversation, and Nicola, albeit I was never keen
25 on me or indeed her noting any -- you know, it's so

Transcript of the Sheku Bayoh Inquiry

1 impersonal if you begin to start -- you know, a grieving
2 family, to be taking comprehensive notes. But her role
3 there was to really absorb what was getting said, and
4 then once we went back to the police station we would --
5 she would document this, as she did. There was another
6 point I was wanting to bring out there but I have
7 forgot. But I will go back to you.

8 Q. So you discussed the approach --

9 A. Sorry, your second question was: were there a number of
10 other questions? Absolutely. When we arrived I spoke
11 to Ade at the door, myself and Nicola went in and off to
12 the left as it was, it was the living room, and there
13 were seats all the way around the living room, as you
14 would absolutely understand, and, you know, very close
15 family, probably wider family, and friends may well have
16 been there as well and there were children, not really
17 young tots but probably teenagers that were in the
18 kitchen and were coming in.

19 So it was a very busy household and there were a lot
20 of questions that were asked of me from various
21 different places in the room. But what I really tried
22 to do was, you know, Kadi and Ade, clearly Kadi in
23 particular was -- it was her greatest loss, as being the
24 sister. Ade, I can't remember if it was that meeting or
25 a subsequent meeting, had sort of voiced that the family

Transcript of the Sheku Bayoh Inquiry

1 were really supportive of him being the spokesman for
2 the family, which I thought was a great idea because
3 that allowed me someone in particular to try and focus
4 on, but what happened, and it was absolutely natural, is
5 I then gave my initial summary, there was -- there was
6 tears, upset, shocks, screams of surprise and shock and
7 horror from the family, and then, yes, multiple
8 questions came from multiple areas and I just really
9 tried hard to focus on Kadi, Ade, Colette, Colette's
10 mum, those that -- you know, everybody had loss there in
11 that room, that was clear, but I tried to focus on them
12 directly.

13 Q. Right. So how many people were in the room with you?

14 A. I never counted. But I would predict upwards of teens,
15 18 maybe into 20, with, as I say, you know, older maybe
16 teenage kids that were maybe in the kitchen and popping
17 their heads through. So it was a busy house, as you
18 would imagine with the circumstances.

19 Q. So let's go through these questions if you don't mind:

20 "a) Why was this the first time they had been told
21 that Sheku died during contact with the police?"

22 Can you explain that to me? Because we have looked
23 at the death message earlier, that Mitchell and Parker
24 had delivered, and when I read that out to you there was
25 mention of the police --

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes, there was.
- 2 Q. -- and their involvement. Were the family saying the
3 first time they'd heard about contact with the police
4 was from you, or were they referring to the earlier
5 meeting with Mitchell and Parker?
- 6 A. I think to be honest with you it was probably a bit of
7 both. I think some family maybe -- I don't know about
8 the third death message, I don't know who was all in the
9 room at that point, but there was certainly surprise
10 when I -- or shock and surprise when I described, you
11 know, the police officers being there and batons drawn
12 and CS spray and that, that was clearly news, probably
13 first-hand news of that detail.
- 14 Q. When you say the questions were posed by the family,
15 you've talked about the numbers in the room, and the
16 different people asking you questions. You wouldn't be
17 able to tell us who it was that asked that question,
18 would you?
- 19 A. No. And, you know, that particular question, that is
20 Nicola summarising -- that question was probably asked
21 in ten different ways from ten different -- slightly
22 different perspectives, so that is Nicola, after the
23 event, trying to boil down the sort of themes of
24 the questions, maybe more than the direct questions
25 themselves.

Transcript of the Sheku Bayoh Inquiry

1 Q. So this is not like question (a) was asked by one member
2 of the family and you were then asked for an answer, and
3 then no one else spoke?

4 A. No.

5 Q. You say:

6 "I could not answer this point directly but made it
7 clear that I wanted to be as open and transparent as
8 I could be and that was the purpose for my visit."

9 I think you have explained that, that your purpose
10 was for that reason.

11 A. Yes.

12 Q. Was it because of this desire to be open and transparent
13 that you did give additional information about
14 the CS spray and batons?

15 A. Yes, I genuinely had no concern about passing that
16 information to the family. I mean, that was -- you know
17 that was -- and I did caveat it when I went in to say
18 this is an ongoing dynamic investigation, some of what
19 I tell you today -- I am paraphrasing but some of what
20 I tell you just now might -- it might change. That was
21 the reality of it, but because, as I said in my previous
22 submission, as in here, investigations change direction
23 and witnesses come forward that change the perspective,
24 so you know I just wanted to be as open with the family
25 as I possibly could be, but I caveated it with saying

Transcript of the Sheku Bayoh Inquiry

1 some of this might actually -- might change, it might
2 not be as I articulate it but this is how I know it at
3 this time.

4 Q. Thank you. Then looking at (b), you were asked:

5 "Why did the police not disarm him?"

6 And you couldn't answer that?

7 A. Yes, I wasn't there, so they were asking about the
8 knife: how big, what was the handle, where was it from?
9 There were loads of questions coming out. Why did the
10 police -- why could they not take the knife off him?
11 I wasn't there, I couldn't answer that, and it would
12 only be the police officers that could provide that
13 explanation.

14 Q. We've heard evidence the police officers didn't give
15 statements until the following month, 4 June. Was it
16 your understanding at the time you were speaking to the
17 family that Mr Bayoh had been in possession of a knife
18 at the time the police arrived and approached him?

19 A. Certainly the key point for me was, you know -- and this
20 is why, even right -- and I wasn't there first thing in
21 the morning, but when you get multiple calls coming in
22 at 7 o'clock in the morning about a man in possession of
23 a knife and it's from independent sources, it's -- it's
24 going to be -- it's going to be true. The likelihood is
25 that is going to be true.

Transcript of the Sheku Bayoh Inquiry

1 If you get one source or one call coming in and
2 maybe it's a drunken telephone call at 3 o'clock in the
3 morning, then you would have your suspicions that it
4 might not be true. But at 7 o'clock in the morning,
5 various different sources, there is no doubt in my mind
6 that that was -- and of course it came to fruition that
7 that was exactly the scenario that played out and that,
8 you know, there was a man there, and at some point the
9 likelihood is he was in possession of a knife.

10 Q. At this time, when you went to speak to the family, was
11 it your impression from what you knew that Mr Bayoh was
12 in possession of a knife when the police arrived?

13 A. I'm not -- I don't think I had a clear position in my
14 head around that, to be honest with you. I knew the
15 calls had come in but I didn't know if he was physically
16 in possession of the knife when the police arrived,
17 whether it was in his waist band, whether it had been
18 dropped, whether ... you know, so I didn't have a clear
19 position.

20 Q. In the absence of any statements from the officers you
21 didn't have more detail about that?

22 A. No.

23 Q. Question (c):

24 "The family have been told it took 15 officers to
25 control him. Why was this?"

Transcript of the Sheku Bayoh Inquiry

1 Who had given the family that information?

2 A. I don't know.

3 Q. We've not heard any evidence to suggest that 15 officers
4 were required to control Mr Bayoh. Can you explain how
5 families can get misinformation about this?

6 A. Yes, and I am not saying that that was in this case but
7 you do find it is remarkable if you believe what
8 witnesses tell you, you know, there is hundreds of
9 thousands of police officers in Scotland because if
10 there is an incident it is ten police vans that arrive
11 with 30 members of staff, and the reality is there was
12 probably -- in that situation there was probably three
13 police vans and five members of staff, so it does -- you
14 know, these numbers do tend to get exaggerated. It's
15 just people at times overdramatise. I am not saying
16 that is what happened here but that can happen, that is
17 not unusual.

18 Q. You said you couldn't answer that other than to confirm
19 that a minimum of six officers had initially attended.
20 Where was that information from that you had?

21 A. So either the STORM call card or Colin Robson's update.

22 Q. Then (d):

23 "Why had the police taken Arran Crescent as a crime
24 scene? (That was the deceased's home address)."

25 Did you know anything about that?

Transcript of the Sheku Bayoh Inquiry

1 A. I did know that the police had control of it, whether
2 again from Colin Robson's update or at the Gold when
3 they were talking about scene protection, and taking
4 control of scenes, and I was aware that the home address
5 had been seized for the reasons there, to -- by the
6 investigators to see if there was any evidence required
7 there to be seized.

8 Q. And that was because we've heard evidence from
9 Colette Bell that she phoned in the morning and there
10 were signs of a disturbance in the property, she'd
11 reported that the police had arrived and saw the signs
12 of disturbance. And you've said:

13 "It made it important for investigators to secure
14 any evidence."

15 Was that your understanding?

16 A. Yes. I think that is -- that is fair, that
17 investigators would do that at the beginning of
18 an investigation such as this. The methodology and the
19 mindset, rightly, is you scale up to scale down. If you
20 seize certain places or equipment, once you have control
21 of it, you can always give it back but you can't -- if
22 you've lost control of it, you can't then recover any
23 forensics that might be there, so you are better to
24 seize in the first instance.

25 Q. Were you asked any other questions by the family about

Transcript of the Sheku Bayoh Inquiry

1 other properties?

2 A. Not that I recall, to be honest with you, it's too long
3 ago.

4 Q. There is certainly nothing mentioned in your statement
5 about that.

6 We've heard from Kadi Johnson in evidence, we have
7 heard from Colette Bell, and the Chair has the benefit
8 of certain statements, written statements, that have
9 been produced by people such as Ade or Lorraine Bell,
10 that they were told that it was a forceful arrest and
11 that I think specifically Colette Bell said that when
12 you came to the house you talked about it being
13 a forceful arrest. Do you remember if you used those
14 words "forceful arrest"?

15 A. No. I have been asked that, I think, in one of
16 the statements. I genuinely don't remember using that
17 phrase.

18 Q. Regardless of whether you used that particular phrase or
19 not, do you accept that the description you gave to the
20 Johnsons of the officers' actions were officers using
21 force?

22 A. Yes, absolutely. There has been a use of force
23 presented there, yes.

24 Q. Thank you. Can I ask you about something else that
25 Colette Bell has said in her evidence. Have you

Transcript of the Sheku Bayoh Inquiry

1 listened to Colette Bell's evidence?

2 A. No, no.

3 Q. So she gave evidence about your visit to the house, and
4 has talked about what you told them, that you used the
5 phrase "forceful arrest". She remembered you saying
6 that Shek had gone towards them, the officers, with
7 a knife. Do you remember if you said that to the
8 family?

9 A. No, not -- because I didn't actually know that to be the
10 case or not at that point. So I do not remember saying
11 that.

12 Q. Right.

13 A. I will have said that he -- there was reports that he
14 was in possession of a knife because I knew that to
15 be -- from the witnesses that came in. But not that,
16 no.

17 Q. She gave evidence that she had said:

18 "So you battered him to death?"

19 And this is a quote from what she said:

20 "And I still remember it now, he went like this, he
21 just raised his hands, shrugged his shoulders as if to
22 say 'don't know', and that will never leave me."

23 She says:

24 "I remember thinking: are you serious? You are
25 shrugging your shoulders like, is it you don't know or

Transcript of the Sheku Bayoh Inquiry

1 is it you don't care? I remember him shrugging his
2 shoulders and being so angry, thinking: are you serious?
3 Like, you are shrugging your shoulders."

4 Do you remember if you were shrugging your
5 shoulders?

6 A. I have seen -- I think I saw that on the news, actually.
7 I read that or seen it or whatever and it actually
8 genuinely upset me because I would -- I would never
9 have -- you know, I wouldnae do that, that is not in my
10 nature. I would not dismiss -- I mean, the whole reason
11 for me being there, the whole precursor -- hopefully it
12 has come out here today -- is that the family and the
13 immediate family and secondary family were of absolute
14 paramount importance, and I -- I would never dismiss
15 a statement such as that. I declared the critical
16 incident, I put it on as the most important policing
17 event in my police career. I would never have shrugged
18 my shoulders and dismissed that. The only sort of, you
19 know, explanation I can give is when -- because of the
20 multiple questions that I was getting asked, Colette may
21 or may not have said that and I may well have been
22 answering or having a conversation with another member
23 of staff, so that can be my only explanation to it
24 because I certainly was not conscious of doing it and
25 would never do that.

Transcript of the Sheku Bayoh Inquiry

1 Q. So bearing in mind what Colette said, if you did shrug
2 your shoulders at some point during that visit, was it
3 because you didn't know the answer to something or was
4 it because you didn't care about the answer?

5 A. I certainly cared about what had happened to that family
6 so if I -- that is what I was trying to say, if I had
7 shrugged my shoulders I may well have been answering
8 a different question. I don't recall shrugging my
9 shoulders but I certainly would not have shrugged my
10 shoulders at that question that Colette had asked me.

11 Q. She also talks about you being -- she says:

12 "I just remember him being quite hasty with
13 information, and maybe it was hasty or unsure."

14 I asked about that phrase "he was unsure", and she
15 said:

16 "Unsure. I think he was not very, like, confident
17 with the information that he was giving or uncomfortable
18 with the information that he was giving us."

19 Do you have any comment to make about that
20 impression?

21 A. So I mean, I think maybe what she is saying around
22 unsure might be fair because I am in that room getting
23 asked tens of dozens of questions, a lot of which I did
24 not know the answer to, so I would come across as a bit
25 unsure, yes, I would accept that. So unsure maybe of

Transcript of the Sheku Bayoh Inquiry

1 certain ...

2 Q. "I think he was not very, like, confident with the
3 information that he was giving us or uncomfortable with
4 the information that he was giving us."

5 A. Would I appear uncomfortable? I mean if I am being
6 honest, the environment, the situation was
7 uncomfortable. I am faced with a family who are
8 absolutely distraught and really, really I can't
9 over-emphasise how upset they were, and I am there
10 trying to explain the situation as it was that
11 I understood it. So it was a difficult situation.

12 Q. Can I ask you to go back to your Inquiry statement for
13 a moment, paragraphs 124 and 125. 124:

14 "I have now seen the statements from one or two of
15 the family about how they now feel about my visit on the
16 3rd May 2015, and indeed my ongoing efforts to remain in
17 contact with them afterwards. Those sadden me because
18 I genuinely sought to do what both I and the ACC
19 considered to be the right thing to do. I was
20 respecting the family by trying to give detail that
21 others -- mainly PIRC -- had failed to give."

22 125:

23 "I have no desire to add to the hurt of the family
24 by getting into a dispute about what was said or how it
25 was said by me. I tried my best to answer their

Transcript of the Sheku Bayoh Inquiry

1 questions based on what knowledge I had. I do not agree
2 with the recollection some have of the detail of that
3 meeting. I recollect it differently and did not leave
4 the house under the impression that I personally was the
5 object of any frustration or anger, as opposed to the
6 wider concern about the Police. That said, I appreciate
7 that for a grieving family in an emotionally charged
8 situation some of the facts were hard to accept. It
9 was, I am sure, a shock to learn that Sheku had been
10 seen with a large knife. No family wants it hear that.
11 The alternative however was leaving the family in
12 ignorance and that was, in my view, worse."

13 I would like to ask you about those paragraphs.
14 You've said that you were doing your best to answer
15 questions and you don't agree with the recollection some
16 have of the detail of meeting. Is there anything
17 specific that you want to add in relation to what you've
18 said in these paragraphs?

19 A. Not directly. I mean I genuinely -- I went to that
20 house to try and provide the family with some
21 information that they hadn't had before and I felt that
22 it was the right thing to do, and I'm genuinely sorry if
23 it didn't come across that way.

24 Q. Thank you. Can I ask you about something that
25 Kadi Johnson said in her evidence. She was asked about

Transcript of the Sheku Bayoh Inquiry

1 her recollection of your meeting, and this was
2 in January of this year, Day 34. She said that her
3 recollection was that you had said Sheku was holding
4 a machete, and when she reacted to that and asked
5 machete, you said it might be a blade or it might be
6 a knife, you weren't quite sure what the weapon was.

7 Can I ask you about the use of this word "machete"?
8 Do you remember if you used that word during the
9 conversation with the Johnsons?

10 A. I genuinely don't.

11 Q. You don't remember?

12 A. I don't.

13 Q. Is it possible that you did use that word?

14 A. Yes, it is possible. Yes.

15 Q. We've heard evidence from Conrad Trickett in relation to
16 his PIM log and he said that he was briefed by you at
17 five to ten in the morning when he got to Kirkcaldy and
18 he then retrospectively recorded that briefing with you
19 and he had recorded the word "machete", that Mr Bayoh
20 was coming at officers with a machete. So do you think
21 it is possible that during that day that is a word that
22 was used by you?

23 A. Yes, I do. You know, I don't -- I genuinely don't
24 recall saying it. In policing terms, and in sort of
25 media terms, it is a very commonly used word, machete,

Transcript of the Sheku Bayoh Inquiry

1 I am sure you could do the due diligence but the level
2 of calls that come into the police about males or
3 females with machetes, it is very common actually. And
4 I suspected this question would come up and I Googled
5 this morning on the train and in the last two weeks
6 there have been multiple reports of men, predominantly
7 men, with machetes. It is a very common term. I don't
8 recall saying it but I may well have said it.

9 Q. What does that word mean to you as a police officer?

10 A. A large -- a very large knife.

11 Q. Does it have any connotations in your experience in
12 relation to race or anything along those lines?

13 A. No, none whatsoever, no.

14 Q. Kadi also gave evidence that -- sorry, before I move on
15 to another passage of her evidence, in using the word
16 "machete" and the understanding you have, do you think
17 that would alter or impact on the investigation in any
18 way?

19 A. From the point that I became involved or ...?

20 Q. Well, just in any respect, if the word "large knife" is
21 used or the word "machete" is used, would that make any
22 difference in terms of how the investigation is directed
23 or how it proceeds?

24 A. No, no, I mean it is -- the bottom line is was the
25 individual thought to be in possession of a lethal

Transcript of the Sheku Bayoh Inquiry

1 weapon? A large knife or machete would both achieve the
2 same aim, so they are both lethal weapons, so it
3 wouldn't make a difference. The definition of a machete
4 I think in the dictionary is a large knife, so this
5 would make no difference.

6 Q. Would it make a difference if the people directing or
7 leading in the investigation think that someone came at
8 officers with a large knife or a machete as opposed to
9 simply having been -- having been seen by members of the
10 public at an earlier stage with a large knife or
11 a machete?

12 A. Would it impact ... sorry?

13 Q. Would that impact on the investigation if the people
14 leading the investigation take the view that he has
15 approached officers brandishing or holding a machete or
16 a large knife?

17 A. No, not at that -- the bottom line, the sad reality was
18 that you know Sheku was dead at that point, so there was
19 no accused person, you know. So the fact that it had
20 been a large knife, a machete or any other lethal weapon
21 would come out in the cold light of day when statements
22 and witness statements were given, but it would not have
23 any impact on the immediate course of action. No.

24 Q. I was about to move on to Kadi's other evidence. She
25 talked about you telling them that Sheku had punched

Transcript of the Sheku Bayoh Inquiry

1 a policewoman, the policewoman fell and he stamped on
2 the policewoman. And that was the first time that we
3 heard all of that. And that was from yourself. Do you
4 remember telling them about that?

5 A. Not in that level of detail. I may have -- I genuinely
6 don't recall that specifically but I did go into detail
7 as I knew it around, you know, Sheku running towards the
8 police. That was -- I am now beginning to sort of just
9 use phrases but that sort of connotation around that
10 confrontation between the police officers and Sheku in
11 Hayfield Road.

12 Q. Do you remember who told you that he had run towards the
13 police?

14 A. So I would -- I don't remember directly. It would be
15 Colin Robson, Stevie Kay, most likely one of those two
16 because they were the two that had given me the sort
17 of -- the briefings in the morning.

18 Q. Right. Do you remember how you found out about the
19 punch and the stamp?

20 A. How I found out? I think that from memory was later on.
21 That was when the detail began to emerge later.

22 Q. When you say "later", do you mean after your meeting
23 with the family?

24 A. Yes.

25 Q. Can I ask you to look at a statement from Ade Johnson,

Transcript of the Sheku Bayoh Inquiry

1 please. PIRC 00182, I think. You were asked about
2 this. 182 is your statement and I think you were asked
3 about it. I'm interested in page 2, paragraph 7 to
4 page 3. I'm wondering if I've got the right statement
5 here. Yes. So page 2, paragraph 7. This is your
6 statement to PIRC:

7 "Investigator Sinclair ..."

8 That is someone who works with PIRC?

9 A. Yes.

10 Q. "... has informed me that during the PIRC investigation
11 a statement was noted from a witness ..."

12 And this is Ade Johnson's statement:

13 "... who within his statement has mentioned that
14 when Chief Inspector Shepherd and myself attended ... to
15 inform the family about the incident that I said
16 'I should not be telling you this'. I have apparently
17 told the family that the police had received three phone
18 calls from a taxi driver, someone in a flat close by and
19 a passer-by. It has been said that I informed the
20 family that the incident occurred during a changeover of
21 shifts and that the report was of an African man
22 wielding a machete in the middle of the road. I have
23 apparently told the family that six officers were
24 despatched to the scene, that the officers had spoken to
25 Sheku but he had refused to drop the machete. As

Transcript of the Sheku Bayoh Inquiry

1 a result the officers had pepper sprayed him that Sheku
2 had then moved towards the officers and the police
3 officers used their batons. I have reportedly told the
4 family that Sheku kicked a policewoman and stamped on
5 her head. I then told them that the police officers
6 continued to use their batons and it was at this time
7 they realised Sheku was no longer breathing. CPR was
8 commenced and an ambulance attended and Sheku was
9 removed to hospital where life was pronounced extinct at
10 0904hrs. In relation to the comment 'I should not be
11 telling you this'. I do not recall using that language
12 and as per my statement I made it clear that my
13 attendance at the house was to be as open and
14 transparent to the family as I could."

15 Now, there is a lot of information in that
16 paragraph. Perhaps we can go back up to the start of
17 it. Can I ask you first of all, do you remember saying
18 to the family, "I should not be telling you this"?

19 A. No, definitely not. I was there to tell them things, so
20 no, I didn't say that.

21 Q. Right. Did you tell them that the police had received
22 three phones calls from a taxi driver, someone in a flat
23 close by and a passer-by?

24 A. No, I probably told them had been multiple calls
25 received, I didn't have the level of detail around taxi

Transcript of the Sheku Bayoh Inquiry

1 driver, flat close by. I mean, yes, I certainly was not
2 aware of that level of detail, if indeed that is true,
3 I don't know.

4 Q. At some stage did you receive information about who had
5 made the calls? We've heard from the people who made
6 the calls.

7 A. Yes.

8 Q. There were six calls.

9 A. Yes.

10 Q. One of the people, a Mr Kolberg, phoned twice.

11 A. Okay.

12 Q. Did you know at that stage who these people were or what
13 their jobs were, or any of that information?

14 A. No, genuinely I didn't. I wouldn't -- actually until
15 reading that, or when I previously read that, I don't
16 get access -- I don't need to know that level of detail
17 and it's not something that I would have been sighted
18 on.

19 Q. So from your own recollection, at the time you visited
20 the Johnsons, on 3 May 2015, after 6 o'clock, was any of
21 that information known to you?

22 A. Multiple calls, yes. Flat close by, passer-by, taxi
23 driver, none of that rings a bell with me.

24 Q. "It has been said that I informed the family that
25 the incident occurred during a changeover of shifts~..."

Transcript of the Sheku Bayoh Inquiry

- 1 Would that be correct?
- 2 A. So I would or I could have said that, yes, because
- 3 I think with the timing it probably was -- you know,
- 4 a shift probably had just finished so I would say that
- 5 was -- that would be fair, yes.
- 6 Q. "... and that the report was of an African man wielding
- 7 a machete in the middle road."
- 8 A. Yes. No, I didn't use that terminology.
- 9 Q. "I have apparently told the family that six officers
- 10 were despatched to the scene~..."
- 11 Did you tell them that?
- 12 A. A minimum of six, yes.
- 13 Q. "... and that the officers had spoken to Sheku but he
- 14 had refused to drop the machete."
- 15 A. I didn't have that level of detail.
- 16 Q. We've certainly not heard any evidence to suggest that
- 17 that is accurate in any way.
- 18 A. No.
- 19 Q. Do you remember hearing anyone telling you that was the
- 20 way things --
- 21 A. Until I had read that I'd never heard that, that has not
- 22 come out of my mouth.
- 23 Q. As a result the officers had peppered sprayed him. Do
- 24 you remember telling them that?
- 25 A. No, I don't. I was surprised at that because I never

Transcript of the Sheku Bayoh Inquiry

1 use the phrase pepper spray, it's not a -- CS spray
2 would be my terminology.

3 Q. We have also heard that a PAVA spray was used?

4 A. Or PAVA, yes.

5 Q. Would you call that pepper spray?

6 A. I would call it CS but PAVA is I think is the more
7 modern -- I must be a dinosaur but PAVA is the more
8 modern equivalent to CS, pepper spray is a non-policing
9 term for CS.

10 Q. "As a result the officers had pepper sprayed him that
11 Sheku had then moved towards the officers and that the
12 police officers used their batons."

13 Do you remember saying that?

14 A. So again, I didn't because the only people that knew if
15 batons had been used or not used at that point were the
16 police officers that were probably still in the canteen
17 at that time, I'm not sure. I had never asked them that
18 question and I would be surprised if anybody else had
19 asked them that question, I knew that batons had been
20 drawn but I didn't know that batons had been used at
21 that point.

22 Q. We've heard evidence from a PC Tomlinson who said he did
23 use his baton that day. So at least there was one baton
24 being used in relation to Mr Bayoh:

25 "I have reportedly told the family that Sheku kicked

Transcript of the Sheku Bayoh Inquiry

1 a policewoman and stamped on her head."

2 A. Yes, I mean, no, I didn't -- stamp on her head, no, and
3 kicked a policewoman, I don't recall saying that.

4 Q. "I have then told them that the police officers
5 continued to use their batons and it was at this time
6 they realised Sheku was no longer breathing."

7 Do you remember telling the family that police
8 officers continued to use their batons?

9 A. No, I mean I never -- I didn't know that batons were
10 used. I knew that batons had been drawn but I didn't
11 know they had been used, so I didn't know they continued
12 to be used, no.

13 Q. When did you find out that batons had been drawn?

14 A. Again, probably at the -- either from DI Colin Robson or
15 Inspector Stevie Kay.

16 Q. Would that have been earlier in the day?

17 A. Yes, yes.

18 Q. How would they have known that, without -- we heard
19 there were no statements until 4 June?

20 A. I don't know, you'd to ask them, I don't know if they
21 were -- was there batons left at the scene? I can't
22 remember now. I think their batons may have been left
23 at the scene, so by default they had been removed from
24 their casing.

25 Q. Right:

Transcript of the Sheku Bayoh Inquiry

1 "CPR was commenced and an ambulance attended and
2 Sheku was removed to hospital where life was pronounced
3 extinct at 0904 hrs."

4 And I think we've heard that that is correct, that
5 he was taken by ambulance to Victoria:

6 "In relation to the comment 'I should not be telling
7 you this'. I do not recall using that language~..."

8 So you simply don't remember using that phrase?

9 A. No, I went up there to tell the family things. I would
10 not have started by saying, "I shouldn't be telling
11 you". I mean, my ACC knew that I was going to be doing
12 this so for me there was no secrets. So ...

13 Q. It wasn't an attempt to build rapport or to ...?

14 A. No, I think at best I probably would have been better
15 saying something along the lines of, "We should have
16 been telling you this earlier", rather than,
17 "I shouldn't be telling you this".

18 Q. You say -- is that looking back, what you think might
19 have been a better approach?

20 A. Yes, I think the minute that I met with the family
21 I felt at that immediate point that this should have
22 happened hours before. This conversation should have
23 happened -- not necessarily with me but with somebody
24 who had -- was prepared to give the family, out of
25 respect to them and the fact they had lost a loved one,

Transcript of the Sheku Bayoh Inquiry

1 more information.

2 Q. This is obviously comments taken by PIRC from
3 a statement from Ade Johnson, and if we can just take
4 that at face value for the moment, can you think of any
5 reason why Ade Johnson would say you did say these
6 things?

7 A. No, I genuinely can't. What I've -- families, when
8 they're in such a state of shock, you know, clearly will
9 not be -- their recollection will not be as good as it
10 could be, but also my recollection won't be as good as
11 it could be as well, I do absolutely accept that. The
12 purpose of Nicola Shepherd for me being there however
13 was, and I mentioned it at the pre-brief, she was not
14 independent but she was there to take a step back, if
15 you like, and listen to the dynamic and the
16 conversation, and then download a hot debrief of the
17 high level summary of the conversation. That was the
18 purpose of Nicola being there, so for me the independent
19 most accurate record of that conversation was most
20 likely to come from Nicola than me or indeed perhaps
21 from the family.

22 Q. Could I ask you to look at -- maybe we don't need to
23 have this on the screen. I am going to read out some
24 other comments that have been made from Ade Johnson in
25 relation to an Inquiry statement that has been produced.

Transcript of the Sheku Bayoh Inquiry

1 So he was asked about -- for those in the room that may
2 want to know it's SBPI 00248, and he was asked about
3 this visit by you. He said he had been updated or
4 something like that and then he said:

5 "The officers got phone calls from a member of the
6 public that a man with a machete was on the street."

7 So he is referring to what you have explained to the
8 family:

9 "When he used the word 'machete' everybody shouted
10 in the room and then everybody calmed down for him to
11 continue."

12 Do you remember that happening?

13 A. I don't remember saying the word "machete", but I do
14 remember -- I remember the family, you know, up and
15 down, emotional sort of rollercoaster, that certainly
16 was the case.

17 Q. "Then he said [that is you] that when the officers
18 turned up it was five officers, including a female
19 officer."

20 Do you remember saying that?

21 A. No. I thought I said a minimum of six but ... yes.

22 Q. We've heard that PCs Walker and Paton were the first to
23 and then PC Tomlinson and PC Short -- PC Short is
24 a female -- were the second car to arrive, and then
25 there were other officers that arrived after that that

Transcript of the Sheku Bayoh Inquiry

1 were involved. So to that extent there was a female
2 officer called Nicole Short.

3 A. I did know that she was there and I did know by the time
4 that I was meeting with the family, I did know that --
5 I did know that Nicole had been there, yes.

6 Q. "He said [that is you] when they turned up they met
7 Sheku with the machete in his hand and they tried to
8 talk him down so that he drops the machete but he
9 refused. He said that Sheku punched a female officer
10 and it was at that point he said that the female officer
11 fell and he stamped on her head. He said it was at that
12 point that all the officers used their batons on him and
13 it was when they stopped that they realised that Sheku
14 was not breathing and he was unconscious and they called
15 the ambulance and he was pronounced dead on the way to
16 the hospital."

17 So that was your story -- your first story. So
18 again, that seems on the face of it to mirror the
19 comments that were given originally by Ade Johnson in
20 the statement that was put to you by PIRC. So again, is
21 your position on that exactly the same as you have
22 already told us?

23 A. Yes, I certainly didn't say a number of those things
24 and I didn't have that level of detail to be saying
25 them.

Transcript of the Sheku Bayoh Inquiry

1 Q. All right. (Pause). You mentioned Shepherd taking some
2 notes and I think in fairness I would like to just say
3 to you what she has indicated. You can then comment on
4 it. I will read it out. So this is from PS00643,
5 Chief Inspector Nicola Shepherd:

6 "Chief Superintendent McEwan took the lead in the
7 conversation with the family and explained that the
8 purpose of the visit was to provide them with
9 an understanding of the events from a police
10 perspective. It was emphasised that this was not
11 a factual account but what had been provided to us up to
12 this point. It was also made clear that many witnesses
13 to the events were still to be seen and the situation
14 was still fluid."

15 Is that pretty much what you said --

16 A. Yeah.

17 Q. -- earlier?

18 A. Yes.

19 Q. And then she goes on to say:

20 "In summary, Chief Superintendent McEwan explained
21 to all those present that at about 0700 hours that
22 morning a number of calls were received by the police
23 from members of the public about a black African male in
24 possession of a knife on Hendry Road at its junction
25 with Hayfield Road. Officers had just commenced duty

Transcript of the Sheku Bayoh Inquiry

1 and left to attend the call from the police station at
2 Kirkcaldy. The officers attended the scene and during
3 the apprehension of the man, CS spray was discharged and
4 batons withdrawn. During this officers became aware
5 that now deceased had lost consciousness. The officers
6 administered CPR and called for an ambulance. Now
7 deceased was pronounced life extinct at 0904 hours that
8 morning."

9 Does that accord with your recollection?

10 A. Yes, and as I say, that was the purpose of
11 Chief Inspector Shepherd being there was to absorb what
12 I said because it was such a frantic and you know
13 difficult conversation with many questions coming, it
14 was important that she could just take a step back and
15 actually try and absorb and summarise, which she has
16 done there, the nature of the conversation.

17 Q. Can I ask you to look at another document that contains
18 some information that was, as I understand it, raised at
19 the Gold Group meeting at 14.40 hours. So this is
20 PS06514 and it's the handwritten minutes, not the typed
21 version that we looked at earlier. It's not very easy
22 to read. But it's on page 2 near the top. Keep going,
23 please. So you will see there at the top -- this is at
24 the top of page 2 you will see it says:

25 "Male went for female."

Transcript of the Sheku Bayoh Inquiry

1 Can you see that on the second line?

2 A. Yes.

3 Q. "On ground, kicked to head, male stopped breathing, CPR
4 commences ..."

5 I think it says "locus protection in place":

6 "During struggle he lost control of knife,
7 photographed knife, batons recovered."

8 This is handwritten notes taken during the
9 Gold Group meeting at 14.40 and it seems that -- it
10 doesn't provide the source of that information but do
11 you remember that being part of the conversation at that
12 meeting?

13 A. Not -- eight years on not specifically but -- and
14 I assume that was DI Robson's, part of his summary, but
15 if you don't know the provenance, I'm not sure but ...

16 Q. So if it's correct that those notes were taken at the
17 time of that Gold Group meeting, which you attended,
18 someone had given this information to everyone in
19 attendance; about the female officer being kicked to the
20 head and during the struggle he lost control of a knife,
21 which suggests that that was something he had in his
22 hand during that struggle. So it would appear that that
23 information was available to you during that Gold Group
24 meeting. Is it possible that you had relayed that
25 information to the family when you went after 6?

Transcript of the Sheku Bayoh Inquiry

1 A. Possibly. I genuinely don't remember saying it and I've
2 never seen that handwritten note but yes, possibly.

3 Q. Thank you. Can I ask you to go back to your Inquiry
4 statement, please. If we can look at paragraphs 172 and
5 173. This relates to the Gold Group meeting at 14.40.
6 You were asked about the handwritten note,
7 PS Warrender's handwritten note. We have just looked at
8 that. Then at 173 you say:

9 "I don't remember this being said. At that time at
10 2 in the afternoon it wouldn't have had an impact either
11 way. The fact that he was in possession or not in
12 possession I was genuinely unsighted on that. That
13 hadn't become clear in my mind at that point. The kick
14 to head I don't remember, maybe more that she was
15 assaulted. I thought it was a stamp more than a kick.
16 I'm struggling to remember."

17 I am quite interested in just maybe getting
18 a further explanation of this paragraph. You say it
19 wouldn't have had an impact, the information about him
20 struggling and losing control of the knife and having
21 been involved with the female officer:

22 "The fact he was in possession or not in possession
23 I was genuinely unsighted on that."

24 What does that mean?

25 A. It means I didn't -- I didn't know. There had been

Transcript of the Sheku Bayoh Inquiry

1 no -- that level of detail was only known to the police
2 officers that had attended and of course none of them
3 had given statements. So I was unsighted on that level
4 of detail.

5 Q. So were you reliant on what was said at the Gold Group
6 meetings to sort of provide that further detail?

7 A. So -- well, the person that had the greatest detail at
8 the Gold Groups around, you know, the early part of the
9 investigation or the incident was DI Colin Robson but
10 no one, not even Colin, would have known exactly what
11 happened because he wasn't there at the time.

12 Q. You say:

13 "... kick to the head I don't remember, maybe more
14 that she was assaulted. I thought it was a stamp more
15 than a kick. I'm struggling to remember."

16 A. Yes.

17 Q. We've not heard any suggestion -- any evidence to
18 suggest that Mr Bayoh was in control of a knife or
19 a machete or struggling and lost control of it during
20 his involvement with the -- contact with the police. In
21 terms of the information that seems to have been being
22 discussed at the Gold Group meeting, insofar as that
23 doesn't seem to have been accurate, does that
24 misinformation being shared at the Gold Group meeting
25 have an impact on the approach taken by the Gold Group

Transcript of the Sheku Bayoh Inquiry

1 or the approach taken in the investigation?

2 A. No, I genuinely don't think so. That's what I was
3 trying to say earlier. If -- if Sheku was still alive
4 and the investigation was around did he or did he not
5 assault the police, then -- then this would be really
6 important, but the fact that he had tragically passed
7 away, him being accused of anything was almost
8 irrelevant. It was more around what led to the -- the
9 lead-up to Sheku dying was the important part of the
10 investigation. You know, what transpired there. So
11 what Sheku had done or not done was important but for
12 me -- or not for me, in a general sense that was maybe
13 not the most important aspect of it.

14 Q. So not relevant to Mr Bayoh, who is deceased, but we've
15 heard evidence that individual police officers have to
16 justify individual uses of force. So if they strike
17 someone with a baton or discharge their CS spray they
18 have to justify that. Would information about the use
19 of potentially fatal force such as a baton strike to the
20 head or a justification for using a spray, would it have
21 an impact on that and the way that the actions of the
22 officers are perceived?

23 A. This is all -- this information here, it's all hearsay.
24 It's -- I'm not saying it's not relevant but what is
25 relevant is what happened that morning at ten past 7.

Transcript of the Sheku Bayoh Inquiry

1 You know, what the witnesses that phoned in tell you,
2 what the police witnesses tell you and what other
3 witnesses -- eyewitnesses that were there can tell you.
4 That is the really relevant part. The fact that
5 a Gold Group meeting, that -- you know, that
6 information -- that may or may not be -- probably
7 suggests some of it is inaccurate through that briefing,
8 you know, it's not helpful but it would not change the
9 direction of the Inquiry.

10 MS GRAHAME: Thank you. I am conscious of the time.

11 LORD BRACADALE: Will you come back tomorrow morning to
12 continue with your evidence please, Mr McEwan. We will
13 adjourn until tomorrow morning at 10 o'clock.

14 (4.17 pm)

15 (The Inquiry adjourned until 10.00 am on Wednesday,
16 30 August 2023)

17

18

19

20

21

22

23

24

25

Transcript of the Sheku Bayoh Inquiry

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CHIEF SUPERINTENDENT GARRY MCEWAN1
(RETD) (sworn)
Questions from MS GRAHAME1

Transcript of the Sheku Bayoh Inquiry

1

2