



The Sheku Bayoh Public Inquiry

Witness Statement

ACC Ruaraidh Nicolson

**Taken by [REDACTED] at Capital House, Edinburgh
on Friday 7 October 2022**

Witness details

1. My full name is Ruaraidh [REDACTED] Nicolson. My date of birth is in 1960. My contact details are known to the Inquiry.

2. I joined the police in 1983. I retired on 31 October 2016. When I retired I was one of the Deputy Chief Constables (DCC). I had been in that position for 6 months.

3. In May 2015 I was the Assistant Chief Constable (ACC) for crime and counter terrorism. That was from the inception of Police Scotland on 1 April 2013. I was in Strathclyde Police prior to that. My last post was DCC. That was in the transition to Police Scotland. Chief Constable (CC) Stephen House and DCC Neil Richardson amalgamated all the police forces into Police Scotland, so I was moved up to DCC from ACC in Strathclyde.

4. I would need to see my Scope record for a further level of detail. I was also Detective Chief Superintendent in Strathclyde and Senior Investigating Officer (SIO) for a time.

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Training

5. ACC is a rank. You get training for the rank. There's various courses in terms of that leadership role. I did one in southern Ireland, senior leadership role training, I was asked to be seconded to that. This was the Garda Executive Leadership Programme (GELP). They had set up their own senior leadership training. People from southern Ireland, Northern Ireland and the UK in terms of senior leadership. The rest of it comes from experience and training courses. I can't say specifically what training courses I attended.

6. The GELP was prior to that but I can't remember the dates. It was weekends over a full year. This covers procedures. It's a broad based. Learning, case studies. Not in practical terms. We didn't go and carry out a mock investigation or whatever it was. IT was more academic. Some of them were real situations, in relation to firearms and that kind of thing. One of them was a high profile police shooting in southern Ireland, as an example. A whole load of aspects that were important in terms of senior leadership. I don't specifically remember those aspects at this time. I can't remember what any of the other situations were.

7. This was before Police Scotland, when I was part of Strathclyde Police. I think in Scotland the training school at Tulliallan, a lot of the training and procedures at that level would be the same. There would be local nuances as a matter of course. It's about learning from each of the different nations, different understandings, building that knowledge.

8. No other officers I know were on the course. I was the only one from Scotland on that course. There were three or four from England, two or three from NI, the rest from southern Ireland from the Garda Síochána.

9. Other than that I can't think of other training for an ACC.

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10. I did training for Senior Investigation Officer (SIO) at Tulliallan. This was the SIO course. That was more about experience than specific training. I was lead on the practical elements of the SIOs training at Tulliallan for a number of years. I think it was round about the 2000s. My Scope record will have the details of that. It was about 5 years.

11. I wasn't full time as an SIO trainer. I can't remember how often it was. When each force requires training we'd pull together a course at Tulliallan. I was asked by whoever was in charge of training at Tulliallan or I would have been asked by one of the senior people who were on the Crime Committee to actually undertake that work. Someone was doing it before, and then they retired and I was asked to fill that role.

12. I have been asked if I produced any training materials and guidance. I don't think so specifically but I would have input in that. When I was doing the training I would make suggestions for change. . I can't remember specifically now.

13. I have certificates for firearms command and counterterrorism firearms command. That might not be the right title. There is assessment for whether these certificates are awarded. You have to pass.

14. I wasn't trained as a Post Incident Manager (PIM). That was not a requirement for my rank or role. I can't think of any training in post incident management.

15. I don't think there was specific training for investigation of police officers, there might be. I can't remember doing something specifically. I've done training in terms of discipline, panels, and carried out discipline panels. Whether there's actual training for police officers criminally involved I can't think and can't remember specifically.

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- 16. I was involved in the investigation of 100s of deaths, suicides, motor vehicle deaths or whatever else. I was in CID for Strathclyde police for about 10 years.
- 17. I didn't have specific training in liaison with family and friends in deaths cases. That's part of the SIO role and it would be explored in the SIO course. We did have family liaison officers, that goes back quite some time. I dealt with them and oversaw them.

Training in equality and diversity issues

- 18. I can't remember the dates of the courses but I have had training in equality and diversity. Covered everything from race, LGBT issues, equality, diversity. It was classroom-based in Jackton and there might well have been stuff in Tulliallan as well.
- 19. I definitely specifically remember training in it. It was part lecture, part interactive, part discussion. I suppose it reinforced a lot of what I think I knew. I suppose that it allowed me to question myself about whether I knew exactly what I thought I did and just making sure that you treated everybody with sensitivity and, as a police service, provide them with a service that they actually require.
- 20. I went on to be the head of Safer Communities as well, involved in a lot of community engagement. Training is one thing but how you provide the service generally is more important. The application of that was important. This is community engagement. Building community trust. What you discover is the relationship between police and communities is quite fragile so you need to work on it all the time.
- 21. An example is making a mistake between race and religion, specific communities and looking at crime reports and making sure they're properly

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categorised and understood, going back to the area and making sure they're providing a service they need. It's about engagement and trust.

CS/PAVA training

- 22. I had Officer Safety Training (OST). I didn't need to be trained in CS or PAVA. If I needed to go out and use it that would be a problem. I've not had specific training about how they're audited or record keeping. In investigations I've carried out we've looked at audit logs or deployment of CS or PAVA, and definitely firearms. I know that they would be inspected. There would be a strategic level to this potentially.
- 23. I have been asked if there is any system to benefit from lessons learned from other jurisdictions. Separate to the GELP, there's always circulations in relation to lessons learned and you pick up things from other enquiries and you've got an interest in that kind of stuff.
- 24. There's always circulations in relation to lessons learned and what happened. You would pick up on things from other inquiries, if you've got an interest in all that kind of stuff. When you go on these training courses, any of the training courses I've stated, then there will always be lessons learned from the various jurisdictions. But at this moment in time I can't remember specifically about where that training would come in.
- 25. It's easy to say you know these things but you don't know all these things. You learn all the time. I can't specifically remember from that course what I learned. I can't think of anything specific that I took from the GELP and brought to Police Scotland.

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Media training

- 26. There was training in media. I did quite a few courses in terms of media engagement and training. It was scenarios, basically some training and presented with scenarios and going and presenting to a reporter. Media engagement was something I did in my role. A variety of people provided media training.

- 27. We had external people in terms of reporters, providing media training. Training courses, 1 or 2 day in relation to media. You get the training to speak to reporters and then it would be presented as if it was on national news, answering questions.

- 28. Briefings would be part of the training that we had. Mostly we would engage with our own people in the media team and then they would comprise some sort of statement that we would agree. They would provide expertise as required. It would be part of the training we had. We'd also have experience and I know the connection between media and the communities and the portrayal of service and rank and whatever else. A lot of that comes from experience rather than training.

Responsibility for training

- 29. I had a line manager. In 2015 I think it was maybe the DCC Iain Livingstone. At that level with the experience I had and training for years, the amount of training was fairly limited. At our level if I felt there was a gap I would go and seek training as required.

- 30. In no way am I confident I know everything about everything. All these incidents are different and every single one of them is a learning experience. There are different incidents that I've never dealt with before. I've always been open to learning and understanding.

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- 31. I'd be involved in both influencing SOPs and from my perspective it was important to be kept up to date with developments in SOPs and whatever else. I couldn't do my job without keeping up with updates and whatever else was developed. There definitely were opportunities for other officers to read these materials. If I remember correctly on the website there's a portal with memos and updates and whatever.

- 32. I can't remember if the officers were made aware of the training and guidance materials. There's an expectation that the officers would go on the website. How that's circulated I can't remember. It may be their supervisor cascaded it down to them. It could've been emailed to everybody as well.

- 33. I have been asked if there is an obligation on senior officers to check that officers have read the material. Aside from people going round and asking, it's much more difficult to do in the force more broadly. In my own department, everyone would know about it in any event. Going round probably wouldn't give you a great sense. You need to be out there. There's regular meetings and we'd be talking about these memos at command meetings. We wouldn't just leave it with the message, I'd be getting the message out at divisional command and senior meetings, to make sure local command are aware.

Stay safe memorandum 2014

- 34. I have read the 2014 memo (PS09749). Terrorism was global. I can't remember the specific background to the memo. It talks about a variety of different incidents and to stay safe. I wouldn't write the memo myself, somebody would've come to me to get a stay safe message out to officers and staff. It may have been across Great Britain. Northern Ireland has its own terrorism issues, it may have been GB message. It wouldn't just be specific to Police Scotland. We've taken that and sent that out. I think that has come

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from Safer Communities. Likely someone who is working on Prevent. Superintendent or perhaps Chief Inspector level. I was the ACC in Organised Crime and Counterterrorism at the time. That was my role. So the message would come from me.

- 35. That memo was advice. The risks at the time were such that you absolutely wanted people to follow it. You can't guarantee that someone's read it and people will follow what you say. If you have credibility as an organisation then people would see these things and follow them. They need to know they need to be safe and if they are safe, they keep the community safe.

- 36. The memos would go out fairly regularly. Some weeks there might be a few and other weeks there would be none at all. I can't think of anything on the website at this moment in time.

- 37. I have been asked how I intended and expected the officers reading this memo to respond to the advice. I want them to stay safe. Officers to be cognisant of the threat. Take precaution in terms of attending calls and just having that awareness and feeding back to intelligence of anything gleaned in terms of this type of attack.

- 38. I can't remember specifically the intelligence, there were marauding terrorist attacks across different countries, intelligence about lone individuals attacking either the public or people in uniform such as Fusilier Lee Rigby. Different areas of intelligence in terms of what the threat was. Mostly about marauding terrorists and a Lee Rigby-type attack on a uniform officer. Trying to get a message out to our staff, officers, to make sure they're keeping themselves safe. If they can keep themselves safe then they can keep the community safe. The memo is pointing them towards the stay safe film. That was on marauding terrorist attack. I have been asked if I remember any feedback on the memo from any officer. No I don't.

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39. I have been asked if I appreciate why the memo might be relevant to the incident involving Sheku Bayoh. Yes I do. I think that an individual as was reported running seemingly without purpose with knives in the middle of the street, at that time, could easily fit into what was suggested as an opportunistic attack. That would be a starting point. That would be taking cognisance of that and then take appropriate action. You'd still fall back on OST and whatever was required depending on how the circumstances unfold.
40. I have been asked if the race of the individual could be a basis for understanding this to be a terrorist attack. No. I have been told the officers' PIRC statements suggest Sheku Bayoh being black factored into their understanding of what incident they were going to. I have been asked if this is what I was intending with the memo. Absolutely not. For years the highest threat from terrorism in Scotland was Irish related terrorism. Race, colour of skin, whatever, is not an issue in terms of what was intended from this.

Experience

41. I've experience in hundreds of deaths cases. Not just murders, right across the board. I have dealt with a number of critical incidents. Whenever there is a critical incident then someone at my level would hold a Gold group. That's what happened here. I can't think of another example. There's been deaths in police custody but not in the circumstances that we have here. I can't remember any other case that was a death in police custody and was a critical incident.
42. I haven't dealt with any critical incidents of a knife wielder in public. I'm trying to recollect critical incidents but I can't recollect at the moment.
43. I've carried out an initial investigation in terms of a police shooting. At that stage it was Strathclyde Police and a handover to another police force.

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Because we needed an impartial or independent police force to investigate. COPFS would carry out initial investigation and then they would initiate an investigation by a different force. It wasn't a death, fortunately. A firearm was discharged but the person survived. [REDACTED]

- 44. As DCC in Strathclyde I had responsibility for discipline. It was instigation of investigations, overseeing reports going from the Force to Crown Office. Questions of suspension as well. It's similar to Professional Standards in Police Scotland. In each of the forces there was a statutory role for discipline and a DCC in charge of that role. In PS there was 3 DCCs in that role, [REDACTED] [REDACTED] I think is Deputy who has responsibility for discipline now.
- 45. Discipline panel cases could start as a criminal complaint to be forwarded to COPFS and come back for disciplinary proceedings. This was as Chief Superintendent (Ch Supt) so that would be late 2000s. I carried out quite a number of panels. This was for years. The level of officer being investigated were Constables mostly and Sergeants as well. This was in Strathclyde Police, I don't think we went to other forces to deal with their disciplinary proceedings.
- 46. You wouldn't really check reports but have knowledge of them. I would be briefed of what the issues were. It would be an awareness. There would be questions about suspension, dealing with other issues, members of the public, whatever the incident was. The office would be notified whether proceedings were taken or no proceedings. Discipline issues would fall out from that.
- 47. You're looking at statistics and what were the discipline issues in divisions. Making sure no division was out of kilter with what you'd expect. What the type of incidents were.

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48. I have been asked if race was a factor in any of these previous investigations. I can't recollect any from a discipline perspective. From a criminal investigation perspective, I've definitely been involved in cases where race was a factor, but not specifically in relation to police officers. There have been deaths cases where race was a factor. Race was a factor in the death because someone had been stabbed or whatever because of the offenders' views on their race or religion. But not a police officer for those criminal allegations. I honestly can't remember and can't think of any examples when race was a factor.
49. I have been asked if race and discrimination were factors in oversight of reports. I think it probably was. We're recording and monitoring all the statistics. I'd need to go back to that time to look at the package of what was being monitored.

Previous statements

50. I produced a witness statement on 21 June 2015 (PIRC-00317). Somebody else definitely typed this in. I'm assuming I produced my handwritten statement and then I've given it to someone to put it into Holmes. Someone else has typed that into the system. I have been shown a copy of my handwritten statement ([REDACTED]). It's my handwriting on this one. I've signed the handwritten copy.
51. I produced it because I was asked to by the PIRC. They didn't tell me anything, they just asked for a statement of my involvement. There was maybe a few days delay in me providing it, I don't know. They would've asked me in June 2015 at some point. They didn't come back to ask me about it that I recall. I assume that if I was asked for something else I'd provide a supplementary. I don't remember any other statements. As far as I recollect that's the only one I produced. I have been asked if I produced a true and accurate account to the best of my recollection at the time. I did.

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Notebook and daybook

- 52. At my level as ACC some people use daybooks. In my role I was very conscious of using a daybook. Some people use it because my briefings will be at secret or top secret level. My custom and practice when using it was to convert it to Gold group meetings and get all the detail into Gold group meetings. That was the way I went about my business. I'd make sure everything I was told that was relevant was recorded. If it was relevant I'd make sure it went to whatever meeting we were holding. There are no daybooks or notebooks from my involvement.

- 53. There's no requirement to keep them at my level. I think it's about recording relevant material somewhere. From a notebook perspective for police officers they're expected to write contemporaneous notes. At my role I go from meeting to meeting. A daybook would just be recording the meetings I'd attended.

Media

- 54. I've not been following the Public Inquiry. I saw snippets on the news but couldn't tell you who it was. I saw some of the evidence of Alan Paton. I heard his evidence and read part of his statement. It's what came up. I'd seen on the news about him so I went on to the Inquiry website. I think it was pre-recorded stuff I saw. I went to have a look at what his statement said. Interesting thing is that he definitely read my memos. That's one thing that came out. From my perspective the important thing is that the evidence is the evidence. We look at these things in an impartial way, it was PIRC and now the Inquiry. It's not for me to make any judgment.

- 55. I've had no involvement in Police Scotland at all after my retirement. Not surprised by any of the evidence. I supposed at my level you don't get

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surprised, you see the individuals giving their evidence and give opinions in relation to the overall evidence.

- 56. From a police perspective in this kind of case, the less involvement that the Police Service has on the investigation the better. If you move it to the PIRC as quickly as you can, the better. PIRC don't have all the staff to carry out the enquiries. It's for PIRC to decide what's carried out, house to house, that kind of stuff. The sooner they're involved, the more transparent, the more the public has trust in what is happening. If the police are perceived to be investigating themselves there's no public faith in that. The Procurator Fiscal (PF) is the independent element but the more independent it can be the better I think.

- 57. I've not been following the case in the media. I've obviously been following the news and I've seen some part of it in the media. I've seen bits and pieces about the Public Inquiry, and the announcement of the Public Inquiry. I can't think what else. Nothing stands out that I remember.

- 58. I don't think my recollection is affected. Honest truth is I haven't gone into the media and Public Inquiry in a lot detail. I hope I made the right decisions but even I can't be sure in the level of service and experience that I've got I wouldn't have made some mistakes but I don't know. I'm not worried about criticism, I've had plenty in my time. If I get criticised it's not the end of the world. Constructive criticism, if something should have been done differently, we can learn from it. There's nothing I can change now but hopefully it can be changed for other people.

Critical incidents and command structure

- 59. Police Scotland has the command structure for a specific incident. It's in my previous statement so there's probably not much point in reflecting too much on that. An on-call senior officer, covering incidents and whatever, takes

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responsibility away from others doing their day job. Then that rotates. An on-call is for 7 days at a time at that stage.

- 60. In a critical incident, Gold would be my level and then Silver would be Gary McEwan, I can't remember specifically who was. Bronze would be potentially the SIO. There probably is written procedure. I can't remember now to be honest.
- 61. I'd been Gold for critical incidents. Gold, Silver and Bronze have come in over the years. In the past you'd have these structures but they're not called Gold, Silver and Bronze. They've just been called that in recent times. I expect these terms came in from good practice from various incidents and understanding what actual roles are and how the structure fits together.
- 62. Gold sets strategic direction. Understand and ensure that all attendant issues had been dealt with. Silver would deliver on that strategic intent. Bronze, if there is an SIO, would be in charge of the investigation. There can be other Bronzes such as Safer Communities, it depends on the various aspects.
- 63. An incident can have more than one Silver and Bronze. There wouldn't be more than one Gold, but it depends. If you had a number of incidents ongoing then you might have someone sitting above that.
- 64. We don't specifically set out who is Silver and Bronze in those terms. But we do have roles and expectations.
- 65. I had acted as Gold previously. I'd done it for years. I don't know how many times. There weren't many, a few a year.
- 66. Critical incident would be defined – it's about the effectiveness of the police response and having a significant impact on the confidence of the individuals, the family and the communities. At that time in 2015 I'd be able to define it.

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- 67. I'm pretty sure the SOP would be part of what was colloquially known as the murder incident manual. I think it's encapsulated in that but could be wrong. There will be a number of documents that have the definition and expectation of a critical incident.

- 68. It was declared a critical incident by Gary McEwan. It was incumbent on me to hold a Gold meeting to ensure we were undertaking all the things we should be undertaking.

- 69. I have been asked if he consulted with me first. It could happen both ways. In this situation he doesn't need to come to me and ask if we should. The answer is of course we should. It's normal for it to be both ways.

- 70. Normally an officer at a senior level would declare a critical incident. The Inspector in ACR would brief up to a senior officer and that senior officer would declare it a critical incident.

- 71. If the man hadn't died then I don't think it would've been a critical incident. Gary McEwan has presumably waited until life has been pronounced extinct. If the circumstances were that there was going to be a significant impact on public confidence then it could be a critical incident. But somebody running around the streets with a knife and the police intervene and arrest him and he's alive – the public would be supportive of the police in that situation. Taking someone who's a risk off the street. In that situation it's unlikely a critical incident.

- 72. At the point before police involvement, it wouldn't have a significant impact on public confidence. A critical incident is about the element that has that significant impact to public confidence.

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- 73. I have been asked if a critical incident could be declared prior to the police response to an incident and the command structure could be in place to lead the response? The police would be involved in that kind of stuff. The critical incident is about the effectiveness of the police response that impacts the public perception of the response. So by definition you probably can't have a critical incident before the police response.

- 74. Most likely for a senior officer like Gary McEwan, he would be informed of a potential critical incident by mobile phone. He would be contacted and informed of the incident. It could come through a number of routes. It could come through the ACR or through the chain of command through P Division as it was at that time. I know from a couple of conversations I had with Gary McEwan he was being updated and was taking decisions in relation to that.

- 75. ACR would escalate that to a more senior on-call officer. It's not necessarily one specific rank. I would expect it to go through a chain of command, on-call superintendent and up to ACC. In this case it was obviously a critical incident. Who declared it didn't matter, as long as somebody did. Gary McEwan declared it and as far as I'm concerned that was the right thing to do. It might come up the chain of command and we can discuss it, but as far as I'm concerned this wasn't marginal, it was a critical incident.

- 76. Declaring the critical incident would be communicated from Gary McEwan downwards. The Gold meetings would know it's declared by Gary McEwan. All the parties in the Gold meeting will take cognisance of that and communicate that to their staff.

- 77. I have been asked what effect, if any, does declaring a critical incident have on officers. It heightens awareness, I think, of what needs to be undertaken and what needs to be understood. It gives that focus I think. That's the element that actions need to be taken properly. I have been asked if it affects decision making at Bronze level. This depends on each incident. Bronze level

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in this kind of critical incident you'd expect them to be taking cognisance of community information, community tensions, reinforcing community trust. Engagement with the community would be one of the key issues.

Firearms incidents and deployment

- 78. A firearm is police firearms. Whatever weapons they would use: rifles, shotguns and handguns. Police Taser is also a firearm.

- 79. A firearms incident is when a police officer discharges a firearm. It's the actual discharge of a weapon as carried by a firearms officer. I think another incident where a police officer pointing firearms at an individual would be a firearms incident.

- 80. I don't necessarily think you would need to declare a firearms incident. It's evident that it has happened. It's not the same as declaring a critical incident.

- 81. Firearms deployment doesn't make it a firearms incident. The ARV being deployed but no firearms drawn and no engagement by the firearms officers would not be a firearms incident. It depends on how it unfolds and the authorisation given in the first place. They can be deployed to an incident and depending on how it's assessed then decisions would be taken as to deployment by firearms officers and decisions made as to what to do.

- 82. Firearms or lethal weapons in possession of a member of the public does not make it a firearms incident. Firearms incidents are relating to the police use of firearms.

- 83. There will be many deployments of ARVs that never get to a firearms incident. I don't know the difference in the number, but the number of incidents will be very low and the number of deployments will be fairly significant.

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84. No part of the incident with Sheku Bayoh was a firearms incident. It would not have been appropriate to declare any of it a firearms incident. It could've become a firearms deployment. It depends on the circumstances. A firearms commander would follow the National Decision Making Model and decide whether to deploy firearms resources. The model is the risk assessment model. It's a specific model for firearms deployment.
85. If you've got a spontaneous firearms incident then the ACR would declare that to be a firearms incident. What this means is, with a spontaneous firearms incident, if the officers came across a situation where they self-deployed then you may well declare a firearms incident afterwards.
86. I have read the Armed Policing Operations SOP (PS10985). I am familiar with this SOP.
87. The criteria for a firearms deployment is set out at Section 10, page 20:-

10. Authorisation for the deployment of authorised firearms officers

10.1 AFOs are considered as being deployed when they are required to conduct a specific task during which the possession of a firearm, with appropriate authorisation, is a required element. This includes when they self-deploy as provided under the guidance set out in the APP(AP).

10.2 The deployment of AFOs should only be authorised in the following circumstances:

(a) Where the officer authorising the deployment has reason to suppose that officers may have to protect themselves or others from a person who:

- Is in possession of, or has immediate access to, a firearm or other potentially lethal weapon, or*

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- *Is otherwise so dangerous that the deployment of armed officers is considered to be appropriate; or*
- (b) As an operational contingency in a specific operation based on threat assessment; or*
- (c) For the destruction of animals which are dangerous or are suffering unnecessarily.*

88. If firearms officers had been deployed and pointed their firearms at Mr Bayoh, that would've been a firearms incident. If I remember correctly the ARVs weren't asked to deploy at all. The key thing from that is, if it was deemed to be so, the ARVs could've been deployed to that incident. The firearms commanders would have to go round the National Decision Making Model and using the intelligence, a decision could be made of whether to authorise the deployment of firearms officers.

Role on 3 May 2015

89. On 3 May 2015 I got a phone call that a potential incident had happened. I was picking up incidents. Once I'd dealt with that I made my way to Kirkcaldy. I was engaged when I got the phone call at round about 7:30am.
90. I was concerned at that stage that on the face of it there was a death in police custody. I only received an update, no directions. It was so early. The incident had happened, Gary McEwan must've been the on-call for that local area at Ch Supt level. I was updated that this had happened. I was allowing the senior people and others to get on with their work. I was updated on serious incidents, murder enquiries, resource issues, anything that's going to impact on communities, anything that will end up in the media. Incidents that would be a concern, around the force, obviously including this one.

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- 91. What I would do would be that after the morning round of understanding what was going on in the force, then I would brief up to the DCC and potentially the CC.
- 92. I think it's sufficient that I'm briefed and aware at that time, which I was. Looking forward at what I needed to do. Everyone was convening at Kirkcaldy office that told me I need to go to strategic command.
- 93. It's in my previous statement that at about 9:15am, I was contacted by Gary McEwan and I felt I needed to be there. Gary decided it was a critical incident. Him declaring it a critical incident was the right thing to do. He knew the death had taken place and what the circumstances were.
- 94. Gary McEwan was in charge of the incident. But it would escalate up the way. An Inspector would have an overview. It would escalate up the way then Gary McEwan would oversee it back down the way.
- 95. At the Gold group meetings we had people there that represented each area of policing. Some local and some national individuals. Myself and Gary McEwan would have a conversation about who was in charge. I think Pat Campbell was the on-call Det Supt for the area. He naturally became the SIO and if he comes out to deal with the situation anyway there's no decision to be taken there.
- 96. The others are all appointed by Gary McEwan and I. The SIO and investigative teams are important. Then in terms of community tensions, community engagement, we need to appoint someone outside. We might appoint someone from Safer Communities and media. Depends on the incident. I can't remember who else.
- 97. All of this is normal practice. Nothing was done differently in this case than what I would've done in any other case. For media and community

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engagement, it would depend, usually for serious incidents. You get a feel for community tensions. Most incidents will require, to some degree, some engagement of the community.

98. There are multiple communities. The local community in the Kirkcaldy area would be the starting point. There's also Sheku Bayoh's community, from his ethnic background. That would be in Kirkcaldy and also nationally. Family can also be a community. Then also a more general community right across the country. They may have views about what happened.

99. I would brief up the way. It splits into different parts. In the main the investigation is instructed by COPFS and undertaken by the PIRC. PS involved in terms of personnel and some expertise. Then it'll be incumbent on Police Scotland to deal with community tensions and then some of the other incumbent issues surrounding that investigation. There will be dialogue between the PIRC, the SIO, COPFS and Police Scotland in terms of discharging the various responsibilities. As Gold, I was the representative from Police Scotland for discharging those responsibilities.

100. I'm not sure about a Deputy PIM. I don't know the role. I don't know if it can exist. I didn't appoint one. I remember PI Jane Combe. I can't remember her role.

PIRC's role

101. I expect PIRC to be contacted which they were. They were contacted by the PF. They would be directed as to what the PF required. I would expect them to attend and provide some leadership, guidance, in terms of what they were going to investigate and what task they wanted Police Scotland to undertake.

102. The important thing is they understand what the incident is to be about. Between them and the Fiscal they take a decision on what to undertake and

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what they expect Police Scotland to undertake. The sooner they undertake their role, the more transparent they're being and how transparent we're perceived to be, there's more trust in the investigation.

103. It would be a discussion about what PIRC and Police Scotland should undertake. At the end of the day it's all directed by COPFS. They can instruct us on anything they want to instruct us on. In reality for community engagement and community tensions, our communities on the ground, it would be unrealistic to expect PIRC to undertake that kind of role. It would depend greatly on the incident itself and what expectation they have and what we would do. Importantly, from my perspective, the PIRC need to provide that leadership and guidance in terms of ensuring Police Scotland aren't carrying out part of the investigation that should be carried out by them from a transparency and trust perspective.

104. I'd had the same involvement of PIRC in other incidents. I'm not sure how many different incidents. A number of different incidents had the involvement of PIRC. I am familiar with working with them. The investigators change, there's different ones. I would've dealt with some of the PIRC officers before and some I'd not. Some were police officers so I'd dealt with them as police officers.

105. The role of Police Scotland, PIRC and COPFS is outlined in the Gold group. Police Scotland's role evolved over a few days. At some stage Police Scotland's role would've reduced quite significantly. As we took on the various strands of the investigation. It wasn't removed from Police Scotland but rather completed.

106. I would describe it as a PIRC-lead investigation with support from Police Scotland. I would assume this was communicated down to officers. The SIO would do briefings. I wasn't aware of them. I'd assume he was informing them of their role and expectations. That will be action-lead from Holmes in

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any event. So the MIT etc should be briefed or should have been briefed and then they would get actions in terms of what it was what was to be undertaken by them. Or they should have been.

107. If you take house to house, for instance, PIRC would take a house to house in the immediate vicinity, MIT elsewhere, unless there's a specific reason for MIT to carry it out. I think people deployed in the incident would want to know why PIRC was there and what they're involved in. I would expect that to be told to them, I don't know why we wouldn't tell people. It's all fairly obvious anyway because people know PIRC were in our Kirkcaldy Office, so telling cops of their involvement and what their role is seems sensible.

108. I have been shown a joint protocol between Police Scotland, PIRC and the Scottish Police Authority (SPA) (PS06953). I can't remember seeing this before. That's been in circulation for quite some time so I would've seen it. Can't think of any training or guidance on this document.

109. I have been asked, per the protocol on page 2, what was this investigation. It was a death in police custody. The types of investigation don't need to be mutually exclusive. Obviously a death in police custody could be a criminal allegation against the police at some stage. What's written in the protocol is what happened, definitely.

110. I can't think of a SOP that covers death in police custody. It doesn't follow that we have to use a particular set of procedure. I have been asked how I know what to do in this situation. You take it from experience and then think of what has to be done. If there is a SOP or whatever to fit the situation then you adhere to that. If not then you take from your experience of what the best practice would be.

111. I appointed Conrad Trickett as PIM. I appointed him because we had a number of police officers who had been together for quite some considerable

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period of time. They were refusing to provide statements. I knew Conrad Trickett had the experience to deal with the kind of situation we had at that time. To ensure we preserved evidence in a situation where we had no collaboration and wellbeing of the officers at that point. He was the kind of individual with the kind of experience to handle this and he had an understanding of procedure.

112. I know it's not a firearms incident but it's similar. I think he was Chief Inspector at the time or something like that. I knew him from working with him before. He must've been on-call for him to be there. I can't remember exactly but he was there and I was capitalising on his experience. I can't remember if I called him in from Glasgow or he was there already.

113. I have been told Conrad Trickett's statement refers to my involvement in agreeing to use firearms post incident management. I don't remember that myself but if that's what he's said I've not reason to doubt that.

114. I appointed him for his experience in that field, but I didn't specifically say to him to implement a firearms SOP but I did expect him to use his experience.

115. I have an overall understanding of what's going on and trying to stabilise until we have PIRC involvement. Once they're involved more transparency and more trust from the community. PIM procedure is something I've delegated to Conrad Trickett.

116. These roles are all being delegated. I have SIO experience but I don't have expertise in all areas. There's no necessity for individuals with that kind of experience coming to me. If there's something tricky then yes. They would brief me through the first day. If it's something specific they'd come and speak to me about it. I can't remember if anyone did come and speak to me about something specific. If they say they did then I expect they did.

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Understanding of the incident

117. I have been asked if, at the outset of the investigation, my colleagues and I considered this to be an investigation into potential criminality on the part of the police officers. You're always open to this. That's why the investigation is so important. You always have to keep an open mind and follow the evidence. In my mind it could've been anything whatsoever. As discussed in the protocol, it could be numbers 2 or 3 on page 2, criminality of police or a death in custody. We needed a full investigation so we understand what the issues were.

118. That didn't change over the day, I had an open mind about what we were dealing with. We were initially dealing with a death in custody but that could change depending on the outcome of the enquiry. Keeping an open mind is important to doing a proper investigation.

119. I've been told some investigating officers have stated to the Inquiry that they were sure there wasn't criminality on the part of the officers. As long as they're objective and honestly report that, that's what I would expect. I'm just looking for a thorough investigation at the end of the day. In an investigation where you've got a death, at the beginning sometimes you don't know what's happened and there's no sign of criminality but as you carry out the investigation you discover that there is.

120. Follow the evidence, you follow all various aspects, house to house, crime scene management, post mortem, all the things that come out. Toxicology or whatever. At some point in that process you think it's definitely criminal or not. At the beginning I don't know how you can say one way or another until there's a proper investigation.

121. Race wasn't a factor for Police Scotland to investigate at that time. These are always things that you have in your mind. From my perspective the

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investigation into what's actually happened and the causes are with the PIRC. If they come back and say there's an element of racism then you have to do something about that. As far as I know in the time I was there, there was no suggestion that race played a part in what happened. I have been asked if there was anything to suggest race wasn't a factor. I don't suppose there was, but from what was reported at the beginning we had an individual running about between cars with a knife, that's the action of the individual I think. As the investigation goes on there's a better understanding of what goes on there. From that initial part of the investigation it didn't feel to me like race was the cause of this happening. Thorough investigation ought to unearth all the various aspects of what happened. You're open to all of it, so in these investigations you're looking for all the issues and understanding all the issues. This includes understanding the motivations of Mr Bayoh and the police officers.

Understanding of the incident

- 122. There were basically reports to the control room that the individual was running in the street among cars, mobile vehicles, not stationary, with a knife or knives, and he'd been detained by police officers. The first time I was contacted he was in cardiac arrest. I was later contacted and life had been pronounced extinct. That was in the phone call with Gary McEwan.
- 123. It changed from an individual who was in cardiac arrest after being detained by the police, to having died in police custody. I think these things developed as we went along, that understanding. I briefed to the DCC and possibly CC.
- 124. I have been asked how my understanding of the incident affected strategic decision making. From my perspective it was taking control of various aspects of the incident, dealing with the family, officers, community, investigation. Making sure all that was being delivered effectively and most importantly keeping the situation stable until we were in a situation where

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PIRC were involved and we knew what PIRC's requirements were. It would mostly be the same for every case. It's about getting the structures in place. Different SOPs in place for different types of incident. I think the important thing from my perspective was to set up the strategic command, Gold command, and ensure we had various aspects in place.

125. I have been shown the PIM Log (PS00387). I've not seen this before. If that's what Conrad Trickett chose to do then that's up to himself. I've delegated this to Conrad Trickett so I wasn't involved.

126. I have been shown the PIM Log at page 2: *"Date 3/5/15. Time 0955. Stage 1 Sit rep as known to the PIM: Reports male machete in street. Police attend, male strikes one with machete. Other officers use CS and arrest. Use batons restrain. Collapses. CPR commenced by officers -> ambulance -> hospital. PLE 0906. Declared critical incident. PIM Informed of Incident By – ACC."*

127. I would've known that at some stage but probably not when I spoke to Gary McEwan at 9:15am. I wasn't sure about "Police attends" and "male strikes one with machete". I didn't have that level of detail at that stage. I don't remember saying that. I informed him of the incident but I don't remember saying that. I can't remember when the detail came out about striking a male with a machete.

128. I have been told Det Supt Pat Campbell states (PIRC-00211 at page 3) the following: *"I was at this time preparing to leave Livingston and drive to Kirkcaldy, therefore, I made contact with Detective Chief Superintendent Boal via my Police issue telephone and provided her with a verbal update of what had been briefed to me by Detective Inspector Robson. She informed me at this time that she had provided a brief to ACC Ruairaidh Nicolson and that 'on call Policing Standards Department (PSD),' Superintendent Craig Blackhall had been briefed, this was to ensure that if the injured male did prove that there was an immediate referral to 'Crown.'"*

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129. I probably did get a phone call from Lesley Boal. I'd been in the round robin of morning calls. She would've given me an update. I don't think the update would've been any different from Gary McEwan.

130. Life being pronounced extinct is what it means to prove. There would be an immediate referral to Crown. If the male hadn't died we wouldn't have a death in police custody so the only consideration would be criminal aspects. So we'd have to report to Crown anyway in terms of the criminal acts of the male who's still alive and then an investigation into the conduct of the officers as well.

Incident at Hayfield Road

131. I've seen ARLS in operation from a control room perspective. It's about deployment and the controller can make decisions about where the vehicles are and who's deployed. It's more accurate than a map of Kirkcaldy. It's GPS based so I'm sure it's more accurate than that but it's a question for a technical expert.

132. Availability of the ARV didn't come up on the day. Nor did the availability of the dog unit.

133. I've expected the officers to have body armour on. Response officers would have their stab proof vest on. They ought to wear their caps but we know from experience they don't. They'll deploy from a vehicle and leave their caps and hats in a vehicle. There's not much protection from their caps.

134. I wasn't briefed about which officers were in charge of the scene and the response to the incident.

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135. I wasn't briefed on the actions of the Control Room, the ACR. You'll have control rooms at different levels.

136. Scene protocols at Hayfield Road was definitely something I delegated. Crime scene and incident management, it's the same process as gathering evidence at the scene itself. This is searches and forensics. The SIO would be in charge of that. As before, if anything specific is needed from me they'd contact me directly. Otherwise I'd be getting updates in the Gold group meetings.

Management of response officers

137. I didn't know who the response officers were.

138. I can't remember who was responsible for them on their return. The response inspectors and the shift sergeants would be responsible for them. I don't know why they were put into the canteen. I don't know who decided that. Police Scotland are responsible for their welfare as well, when they're on a shift.

139. I was first aware of them being in the canteen when I arrived. I was told they were all together in one area and they had been advised not to provide statements. I was concerned they were all in one place. That's why I asked for Conrad Trickett to come because I wanted someone with that experience to manage that situation.

140. I was concerned they were all together with the opportunity for collaboration. I wanted to make sure everybody was in a position where Police Scotland, PIRC and COPFS could provide and gather the best evidence possible. Then to get a grip of the situation with a view to understanding who was to interview the officers and, if they were to be interviewed, when they were to be interviewed.

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141. It seemed outside of protocol in terms of Conrad Trickett's actual role but I explained to him I wanted a grip of the situation so we could grab the best evidence we could and obviously for the welfare of the officers as well.

142. I think what I wanted was to ensure there was management of the situation. That's what I had in my mind with Trickett's role. In that situation I wanted the perception that we have a grip and we have an opportunity to interview the officers and get the best information and evidence that we possibly can.

143. The PIM suite will be in terms of firearms. I didn't use it in this incident. PIM suite in a firearms incident will differ around the country, but in the west it's the training centre at Jackton. I think it's always one place.

144. Collaboration or collusion involves agreeing to change statements or evidence to something other than what they believe to have happened. So I wanted to be absolutely sure they weren't collaborating in that fashion. They're going to talk among themselves about what happened so you can't prevent that from happening but you can prevent them from detracting from what their own thoughts are on what happened. Their own perception and understanding of it might differ. That's their perception, but to prevent them an opportunity to collaborate and come up with a story is the most important thing.

145. The procedure will definitely be in the firearms SOP but off the top off my head I can't remember procedure now.

146. I was aware one officer went to hospital. I suppose there would be an opportunity to keep them apart when the officer returned. But in the circumstances you'd want to be careful about singling out one officer. To stop them collaborating is for a senior officer to be there and part of their role

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would be to make sure that's not happening. The senior officer could go back and forth into the room, but making sure there's that presence about them.

147. The ultimate thing would be to separate every single one of them and prevent access to phones and whatever else. But we were already beyond that point. Depends on what happened and when they're going to be interviewed. If they're not going to get interviewed for a number of days then if you wanted to avoid collaboration you'd have to arrest and detain them. Separating them and then finding out they're not going to be interviewed for a number of days then what's the point in separating them. They're not providing operational statements.

148. If you're separating them, not allowing them to go about their business, that's fine in the initial stages of the initial investigation and enquiry. At some stage they're going to want to leave or whatever. At that stage are you going to think about detention. Think about the interview, when's it going to take place. It must be in a particular time scale. So it's all these considerations in terms of what you do with these officers. Taking the opportunity to make sure you can gather as much evidence as you properly can.

149. I don't know to be honest. Can you stop them from contacting family or whoever else? No I don't think you can. It's arguable but you wouldn't want them talking to each other on mobile phones.

150. The forensic recovery of the officers' equipment was dealt with by the SIO. I would expect that would happen.

151. I wasn't aware of Nicole Short's injuries being photographed and wasn't involved.

Kirkcaldy Police Office CCTV

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152. I have been told the CCTV at the back of Kirkcaldy Police Office was not working and had not been working for some time. I don't know if I was aware. Probably not, I can't recollect. It's not unusual. These things break down and there's questions about when the repair gets conducted. If it's old equipment or new technology. I don't know the system well enough and I don't know how long it was broken down for. There'll be CCTV systems broken down all over the force.

153. Responsibility will be an administrative function in terms of property. It would be civilian staff. The people responsible for Kirkcaldy office can ask for the system to be updated or repaired or whatever. The commander at the Kirkcaldy office and then the administration function actually delivering on repairs. The commander would be Chief Inspector level, perhaps.

Force Medical Examiner

154. I have been told Dr Gillian Norrie, the Force Medical Examiner, was asked to examine the response officers. I can't remember if I knew this or not. The name rings a bell but I can't remember. I've not seen any of her evidence to the Inquiry. I think that would be normal. We don't have these things happening that often, but if it's in terms of injuries then that would be gathering evidence in terms of injuries and whatever else you can ascertain from a medical perspective. The FME or going to hospital would be the way you evidence the injuries. The hospital doctor could provide a statement on the injuries. For officers who didn't go to the hospital, it would be to ask the medical examiner. Assaults on police officers have become more frequent as the years went on. I'm sure I must have asked the FME to examine a police officer's injuries at some point.

155. I have been asked to comment on Dr Norrie's evidence to the Inquiry at the hearing on 9 June 2022 to the extent that she said she hadn't previously been asked to examine police officers in her FME capacity, that it was very

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unusual and that she wasn't sure it was something she should be doing, so she first checked with her boss who agreed that it was quite unusual but that she should go along and do it.

156. She obviously hasn't done it before so that's fine. She obviously didn't feel it was right for her to be doing that. I suppose I would need an understanding of her reasoning to comment. It might be back to different practices from different forces.

Amanda Givan's evidence

157. I don't remember the Federation rep. I can't remember who it was. I don't know who Amanda Givan is. I've not seen any of her evidence to the Inquiry.

158. I have been referred to PC Amanda Givan's evidence to the Inquiry at the hearing on 14 June 2022: *"Yes -- well, when I say there was no one -- there was no one in control of the canteen area, which I would have expected if you had brought a number of police officers back to sit together, I would have expected someone to be there, even just to check on their welfare and make sure they were okay... It was all a bit chaotic and I just generally got the impression that I was in the way and I absolutely didn't want to be slowing anything down or hampering their investigation, so I -- but I left my business card, I told them that my intention was to go back downstairs and make sure the cops were okay... I suppose telling him that I was going down to look after them, or to remain with them, I was hoping that he would send along someone from Police Scotland that would do that job. It's absolutely their responsibility, so I was hoping that that would be the case.*

159. At the initial stages of anything, it's going to be chaotic. Police officers are coming in and out and needed to get a grip. It reinforces in my mind that we

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needed someone who was going to get a hold of that situation. That person would be Conrad Trickett. He's there for control, stability and getting what we needed.

160. The Police Federation are like a union, they have a separate role altogether. The welfare of police officers is absolutely the responsibility of Police Scotland. They were our responsibility, our staff. I would definitely expect someone more senior from Police Scotland to be with them. That was delegated to Conrad Trickett. It's fine that Amanda Givan was there for the welfare of the officers. Police Scotland still have a responsibility for their welfare. The delivery of welfare must be through Police Scotland.

161. In these circumstances we need a bit more than the Federation Representative. What that looks like I don't know, but Police Scotland needs to be responsible for their welfare.

162. I have been referred to a further section of PC Givan's evidence to the Inquiry at the hearing on 14 June 2022: *"I asked about post-incident procedures, given the nature of what we were -- what the police were dealing with, and he said he would get -- he would get back to me... When I asked -- when I asked if that was a consideration, you know, I got a kind of -- not a startled look, but, you know, the impression I got was that was the first of him considering that that might be suitable. Q. Who gave that you startled look? A. Superintendent Campbell."*

163. I wasn't aware of this at the time. The post incident procedures is in the SOP. There'll be a SOP for part of a lot of things that's required to be put in place. Some elements of what happens there wouldn't be a SOP for. A lot of these things come naturally in these kinds of incidents.

Completion of paperwork

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164. I have been asked who was in charge of ensuring the officers completed their paperwork on their return, this being their operational statements, their notebooks, use of force forms and any use of spray forms. The officers themselves are responsible. Their supervisor is also responsible for making sure these documents are being completed.

165. The duty Sergeant not as much anymore but it used to be the practice. When I joined in 1983, a Sergeant would go round twice on their shift and ask to see your notebook and they'd put a signature in the notebook. They checked times and ensured that it's completed to a satisfactory degree. They also ensured it's contemporaneous. We've moved away from that over the years. That practice has ceased long ago.

166. It also depends on when these officers are going to be interviewed. A lot of what is in the forms could be included in that statement, the detail and whatever. The forms can be filled in at a later stage. If they're not going to be interviewed then these forms should be filled in.

167. It would be their supervisor checking it. I have been asked who is supervising the supervisors checking that this is completed. Supervision goes right to the top of the tree, myself and the CC. The question is what are we asking them to complete. The officers themselves do have some responsibility but it works both ways.

168. The officers have got a duty to provide an operational statement and fill in the various forms. The duty is in the SOP in terms of the various elements of it. I believe a breach or clear breach of a SOP results in disciplinary proceedings. That's the same for any action of police, not just completion of relevant paperwork.

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169. There's an absolute purpose at a lower level to prepare a notebook and take contemporaneous notes. If a constable speaks to someone who goes through a red traffic light, engages the driver, there's an expectation that notes are taken contemporaneously and that would be in the report. That officer's notebook would be seen at a later stage. There are more examples in terms of a murder investigation when a suspect says a whole load of things. That should be in the notebook at the time or as close as possible and properly recorded. Completing notebooks is very important at that level. At the very least any dealing with the public should be recorded in their notebook.

170. I have been asked to comment on the use of daybook instead of notebooks by some officers. At an operational level it would be essential to have a notebook. Notebooks themselves are numbered and allocated to individual officers. In addition every page is numbered. Daybooks are a very different thing. Contemporaneous notes should be in the notebooks at that level. A notebook can be used in court and can be produced to assist an officer's recollection. I think you'd have to use a notebook in court. I don't think a daybook would have the same standing as a notebook.

171. There's an expectation on officers to complete notebooks. I don't think there's any policy or expectation from senior officers to ensure notebooks are completed.

172. I can't recollect if there's a duty to complete a notebook. I don't recollect completion of notebooks coming up at all in my work in discipline. Depending on how important it was then I suspect non-completion could be a disciplinary matter. I don't have any specific instances of that. I can't remember the basis for why that would be discipline matter.

173. I have been asked what can be done if there is a request for completion of an operational statement and the officer does not comply. It depends on the

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circumstances and what the issues were. The trouble with it is where does it take you? How do you compel someone to give you a statement? It's fine to say you need to compel them, but if they don't do it, you give a lawful order, you go down disciplinary route and they don't complete it, what then? The difficulty with it is they can argue they gave a statement at a later time. They were always going to give the statement at some stage. They'll give the statement and what happens, they argue it wasn't the right time. It's one of those things. How do you effect compulsion to give a statement or fill in paperwork at that point? It's a really difficult situation, you hear about whether they can be compelled. In practical terms how are you actually going to do that? It's a difficult predicament.

174. The key thing is you want to have a statement in relation to the incident and know exactly what happened, what their perception is and how they dealt with it so you have a greater understanding of what happened. If you go down the disciplinary route it might affect their careers but it doesn't get you to where you want to get to.

175. I have been shown the PIM log (PS00387) at pages 13 and 14: "1340 ... *Take external clothing. No need to take statements at this time... 1341 D Supt Pat Campbell speaks to officers... No operational statements at this time.*"

176. I suppose that is correct. I'm second-guessing the SIO but the officers have already said they're not prepared to provide statements at that point so he's taken the decision that there's no need for statements at that time. I don't know if he's taken that decision in consultation with the PIRC or whatever.

177. I have been shown the PIM log at page 14: "1341 D Supt Pat Campbell *speaks to officers. Provides initial circumstances of enquiry to date. No suspicion on part of any officer.*"

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178. I think at 1:41pm on the first day, no suspicion is premature. We haven't carried out the enquiry yet so it seems a bit early to make decisions on suspicion or otherwise. The SIO was responsible for identifying suspects.

179. If you take a death, for instance, the point you discover a death and carry out an investigation, it becomes criminal, then it moves to identify someone who's likely to be responsible. At that time you decide on the detention process and work through that until you have a sufficiency of evidence and report it to Crown Office. You're being directed or the Crown are directing the PIRC officers. So it's the other way round. The SIO is responsible for the status of these officers in consultation with the PIRC. The responsibility is whoever the PIRC SIO would be in consultation and discussion as to where the enquiry was leading.

180. At this point, from my perspective I'd have a completely open mind to what their status was or what it might be. It would be too early to confirm their status at that point. I would confirm their status when we're at the point where we've gathered the evidence and one way or another we've established what their status is as best we can. Communicate it by talking to them and telling them. It could be given to legal representation. It could be recorded. I'd need to understand the circumstances of why it would be in writing. There would need to be circumstances when it should be in writing but in the main it would be given verbally.

181. I have been asked what evidence I would be expecting to recover before determining the status of the officers. Evidence from house to house enquiries and evidence from the post mortem. Depending what the evidence was, it would be fed back to COPFS, then to PIRC in terms of criminality. COPFS can certainly make a decision on that. Particularly from the PM, fed back to the COPFS and they can make a judgment immediately. Statements would be by police officers or by the PIRC. There could be decisions on criminality from the statements that are taken from the officers. Again, even if

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the statements were taken it would still be in consultation with the Crown how we're proceeding with it.

182. I don't know why the officers were not willing to provide statements. No doubt this has happened in the initial stages of enquiries before. They may well have refused to provide statements but I haven't seen it very often.

183. If they're incapacitated and incapable of doing it then you'll have a medical saying they're unfit. You'd have to wait until they were fit to provide the paperwork and ask them to provide it at that point. I've no doubt it's possible that senior officers can complete it but would have to make it very clear on the paperwork that that's what had happened.

184. An operational statement and a statement from a PIRC interview are two different things. Not necessary both happening together. I assume PIRC would interview these officers. I'd expect the officers to complete an operational statement. Then the decision of PIRC would be whether to interview them afterwards. The question is whether there is enough in the operational statements or are there more questions. PIRC can forensically examine the operational statements and then PIRC can explore this in a full statement taken either by Police Scotland or PIRC.

185. All the paperwork would be collated together and be made available to the enquiry. Police Scotland would gather that information and it would be made available to PIRC and the Procurator Fiscal.

186. The officers should complete notebooks as soon as reasonably practicable to have a contemporaneous note. That has specific weight in court.

187. The SPF would be representing the officers, the officers may well ask for them to be present. They're there to be supportive. It's not the role of a lawyer.

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188. The SIO from Police Scotland perspective is the delegated person for the statements. If I had concerns, I tell the SIO in the Gold group meetings. You can take a direct approach if you believe that was going to have some effect. Generally it's delegated.

189. There's two documents I've seen from Neil Richardson (PS10953; PS10954) that went to the officers to provide advice surrounding providing statements. In terms of the forms, Use of Force, PAVA etc, that would be part of OST. I don't know if they were reminded of this in this case.

190. I think I was aware of PIRC requesting the statements from the officers. I can't remember exactly now. I'm pretty sure there was some difficulty in obtaining the statements. I don't know where the statements were prioritised.

Memoranda on statements from subject officers

191. I have been referred to two memoranda dated 26 March 2015 (PS10953; PS10954). I can't recollect having seen them before. They've gone to Divisional Commanders and Heads of Department, Ch Supt level. Could also be sent to some Superintendents. It was incumbent on them to send the memo down to the staff. My expectation is that the Divisional Commanders and Heads of Department would distribute these memos to all staff.

192. I have been referred to the memorandum of DCC Neil Richardson (PS10953) at page 1: "*Direction has been provided to PSD from the Crown Office and Procurator Fiscal Service (COPFS) to the effect that the practice of obtaining statements from officers' subject to 'on duty' criminal complaints must cease with immediate effect.*"

193. I don't think I did know this at the time. I have been asked if this is applicable to the officers. That depends on how you discern. What was initially being

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dealt with was a death in police custody. At the time they weren't subject to an on duty criminal complaint. This wouldn't apply.

194. It is further stated at page 1: *“Should a statement be required from a subject officer for on duty criminal complaints, this must be done under SARF (Solicitor Access Recording Form) conditions after consultation with a PSD Chief Inspector.”*

195. This could be a PIRC interview or an interview with no caution.

196. I have been asked to comment on the position of a self-incriminating operational statement. I'm not sure how it can be reconciled because the operational statement becomes evidence in the investigation. That's not any different to a member of the public going to give a statement and then find out they're criminally involved so that statement would form part of the evidence for the Procurator Fiscal.

197. I have been referred to the memorandum from Ch Supt Eleanor Mitchell (PS10954) at page 1: *“One such area, which raised significant debate, was the obtaining of operational statements from on-duty Subject Officers with the status ‘under investigation for a criminal allegation’. This status can only be reached either through assertion of criminality by a complainer or based on evidence gathered and always concludes with a submission in report format to the Criminal Allegations Against the Police Department (CAAPD)... The decision in simplistic terms is the gathering of evidence, and in turn the aforementioned operational statements to the point of submission to CAAPD can be considered no different than gathering a statement from any suspect in a criminal investigation; and this facet is an operational matter for Police Scotland.”*

198. Officers were not under investigation for a criminal allegation at that point.

Signature of witness.....

Treatment of family and friends

199. I had no involvement at all with liaison with the family and delivery of the death message.

200. Police Scotland and PIRC decide between dialogue and discussion between the two on who would be dealing with it. I think it was Police Scotland in the initial stage. I think the procedure in that stage was someone other than the Family Liaison Officer (FLO) would deliver the death message and then the FLO would be deployed after that. The decision would be made as to whether it was a Police Scotland FLO or a PIRC FLO. It may well be that Police Scotland would deploy FLOs. That could change as the enquiry progresses. That's normal practice.

201. I was aware of Gary McEwan's involvement with the family. He knew the family from a community engagement perspective. I'm aware he took some active role in it. I can't say any more about that. He may well have said he was going to do it but I can't recollect. It wouldn't be normal practice but if it's deemed to be helpful then that's fine, there's no problem with that.

202. Someone would get deployed to deliver the death message. We need formal identification first of all. Family members may well be involved in ID. The family would be informed if the person was believed to be a member of the family.

203. It could be said that it was believed to be a family member, but it's really important to be sure that you've got the formal identification afterwards. You'd have to be pretty sure that it was that family member before inviting the family down to the mortuary for identification purposes. Most situations you'd have to tell them without formal identification. In other circumstances you'd go to the family and say it's likely to be their relative and carry out identification.

Signature of witness.....

204. I don't know who produced the death message. The responsibility would be the SIO.

205. I have been told a statement was taken from Collette Bell at the station after she was given the death message and asked if this was appropriate. It depends on the circumstances and what was required from her at that stage. If it was important information to be gleaned then that can be taken. If a bit of time can be given to her then that's better.

206. It wasn't my role to appoint FLOs. It was the SIO. I don't remember any difficulties in appointing an FLO. I don't remember the relationship between the FLOs and the family.

Media engagement

207. I don't think I was involved in media engagement but there might've been a statement prepared in my name. I don't think there was to be honest. It wouldn't necessarily be at my level. I don't recollect. It could be Gary McEwan or it could be local command, depends on the messages. I don't recollect but I think it would be a holding statement that the incident happened and it would be referred to the PIRC and the Crown Office. I don't know how the information that a female police officers had been stabbed was provided.

208. I have been referred to the PIM log at page 16: *"1930. Press release handed over by Press Officer – Kate. Shown to Scott Maxwell, James McDonough. Fed Rep."*

209. I didn't know about this. I don't know why that would happen. I don't think it was suitable. Depends on the detail of the press release, I would need to see it to understand the contents of it. Whoever is doing the press release is doing the press release, not these officers.

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Gold group meeting 3 May 2015 at 11:30am

210. I'm the Chair of the Gold meetings. It's to set out the terms of reference, the Gold strategy. Then it's about having the various components to ensure you can deliver on that. We need to understand what the strategy is and have the key individuals that can deliver on the various aspects of it. It would be fair to say I'm accountable for ensuring that the Gold strategy is carried out.

211. I have read the Gold Group Meeting Minutes for 3 May 2015 at 11:30am (PS06491). I can't recollect who took the minutes. I think it's probably right that DI Robson was taking the minutes.

212. I can remember being at this meeting. I don't think there's anything that isn't in the minutes that I remember.

213. The terms of reference looks like Gary McEwan has pulled that together in the first instance. They would be agreed by me. He would've showed me the terms of reference before the meeting. I think that was fine, we needed to get up and running as quickly as we could, set the agenda and ensure everybody understood what they were doing. It's the strategy that's set out at that level for all that is going, the investigation, community engagement, the whole enquiry.

214. I have been referred to the Terms of Reference – Gold Strategy at page 1:
“Ensure the integrity, interest and reputation of Police Service of Scotland and its staff is maintained and safeguarded.”

215. This is about doing all the right things. Just exactly that. If you do all the right things we protect our reputation. The rights things are public engagement, community engagement, carry out an effective investigation, and in this case transition the investigation over to the PIRC. Police Scotland had the entire

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investigation and then that would transition across to the PIRC as quickly as possible in the circumstances.

216. I can see how you could interpret that term differently. The Police Service of Scotland is not the most important thing here. You can see the red writing of the terms on the minutes that they are to be reviewed. From then onwards that sentence has fallen off the terms of reference in the minutes from the other meetings. The most important thing is to carry out an effective investigation. Term number one is the most important there.

217. The terms have probably been picked up from a previous meeting from another incident. Truth is you've got to start somewhere, have the conversation and take it forward as it evolves and you've got to understand what is required.

218. There's a general briefing of the facts of the incident but there wasn't a huge amount of detail at that stage. At the level of that meeting you wouldn't expect a huge amount of detail, just a general overview.

219. I don't recollect discussing the status of the officers. Identifying suspects would be at a lower level. This is about the overall strategy. In this instance, it's early on and the investigation is still to be carried out. In general whether somebody's a suspect or not would be one for the SIO and his team.

220. I have been asked if police officers being deemed suspects would be a matter for this strategic level. We've already got the Crown Office involved in it. The other dimension is the designated deputy who's got responsibility for discipline for when we've got that level of understanding. But we weren't there at that stage.

221. If COPFS or PIRC were there and available then they would've been part of the Gold group. When they actually arrived we had a meeting. The next

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meeting PIRC had arrived and they were part of that meeting. At this stage I wanted a Police Scotland meeting to ensure we were doing all the right things in preparation for what we knew was going to be a PIRC investigation.

222. Witness strategy is just updating. I don't think I approved this. It's just an update in the meeting. What is outlined in the minutes is that these were the priority actions, the statements from the three individuals in that moment in time.

223. I have been asked if I agree with these priorities. He's the individual with all the information so if he updates that, that's what he's focused on at that moment in time. I wouldn't be in a position to challenge that.

224. I have been asked if forensic recovery is a higher priority. A lot of these areas would be undertaken at the same time. The scene management is what a scene manager has identified, setting out the parameters and requirements. There would be SOCOs identified and tasked. All that would be coming together. It would be for the SIO to outline why the focus as what he termed are priority actions at that stage.

225. Identification of the deceased may also be a priority. CCTV as well. A lot of it is in the minutes. If people have recorded CCTV in their house you've no idea how long it's there, 1 hour before it's wiped, or whatever it's going to be. All these things are ongoing at the same time.

226. I think the 4pm meeting is just getting towards the end of the day. I would be Gold for the next 24 hours, no handover to another.

Gold Group meeting 3 May 2015 at 14:40

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227. I have read the Gold Group Meeting Minutes for 3 May 2015 at 14:40 (PS07268). I would think the minutes would be DI Robson again but he'll tell you better than me. I definitely remember being at this meeting.

228. I have been asked why the early notification to PIRC was added to the terms of reference. It was an important element of the requirements. A death in police custody is a criteria for a PIRC investigation. I don't think it means anything else other than notification. From my perspective, what I wanted to achieve is that the earlier I have PIRC involved and leading the enquiry, the more transparent it will be. It probably could've been ensure early "handover" to PIRC rather than notification.

229. The reason I would get a full factual update in this meeting is for the benefit of the PIRC. You could argue the PIRC would get a full factual update from the SIO. I wanted to ensure they would get a full factual update and they can make decisions around the whole investigation.

230. I have been asked if PIRC are there to approve the actions of Police Scotland in this meeting. They're getting a brief, they're independent. At that level they were getting briefed on exactly what we were doing up to that point so that they can get a full understanding.

231. I have been shown handwritten notes from the meeting (PS06514 at page 1):
"Factual update DI Robson... All calls linked, units attended – STAY SAFE RISK ASSESSMENT".

232. I don't know what this means. I don't remember this. I have been asked if I know who CI Nicola Shepherd is. I would know who she is at that time but can't recollect now.

233. I have been shown handwritten notes from the meeting (PS06514 at page 2):
"Male – went for female. On ground kicked to head."

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234. I don't remember more of the update that isn't written in the minutes. I remember as part of the update it was stated that one of the officers was either kicked or trod on. But I can't remember the detail. That was the understanding that we had at the time.

235. In general terms, from my perspective, the level of detail is not for my benefit. It's for the benefit of the people who are carrying out the investigation. My role is to ensure that all of these individuals are able to carry out their duties, their roles, effectively. This is a lot more detail than I would expect to have, the reason for it is because the PIRC were there and I wanted them to know and understand what was actually ongoing at that time and have some detail of it.

236. If Scott Maxwell is said in the minutes to be the source then that will be right.

237. I have been shown handwritten notes from the meeting (PS06514 at page 2):
“ - *during struggle he lost control of knife*”.

238. I don't remember that. I agree this suggests that the male had the knife in the struggle with police. I can't remember the conversation.

239. I know there's a lot of detail in the notes, but we're really early on and an investigation needs to be carried out and people obviously are giving their view on what happened. From my perspective, that's all very well but it's for the investigative team to carry out the investigation and work out what has happened. It's so important.

240. Early in the investigation you follow the evidence. You start at the beginning and see what the circumstances are. You follow the evidence. Initially you might take a witness statement from someone who you find are more involved than at that point. That witness can become a suspect.

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241. Depending on what evidence materialises you might arrest someone and charge them. We're very early on in the investigation. Our understanding of what happened will develop as we go on and we make decisions based on that. The circumstances of this are COPFS are notified, PIRC are involved and it's a PIRC-led investigation. They make the decisions round about whether someone is a suspect or an accused or whatever.

242. I had no involvement in the next of kin strategy. The FLO strategy would be with the SIO. I have been asked if I know of any inaccurate information being given in the death message. I don't know about that. It might not be in the Gold group minutes, but if something had happened that was going to have an impact on the investigation's trust, then I'd want to know about that.

243. I have been referred to the minutes (PS07268) at page "*FLO to be briefed in relation to equality and diversity, NOK has been has been informed by DC Parker and DC Mitchell*"

244. This means taking account of the ethnicity of the deceased and his family. Ensure there is an understanding of that. Ensuring a knowledge of what cultural issues there might be. It's having an understanding of their background, how they're dealt with, how they expect to be dealt with, and the kind of things they would want to update the PF on in relation to the death and future funeral arrangements. In the round it's having that understanding of what cultural issue there might be, how to deal with the family and various aspects. Most FLOs will have an awareness of equality and diversity issues, but if that's reinforced then I think that's good practice.

245. I have been referred to the minutes at page 2: "*Seizure of productions from officers being carried out today (3rd May 2015), Staff have been advised by Federation staff not to provide any statements.*" The Federation's role is to support the officers, and to provide whatever assistance they want during the

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day. Also the Federation provide independent support to officers. There's no reason why the Federation wouldn't be in the Gold group.

246. I don't know where the information came from. I remember being told that they were refusing to provide statements. I think it was stated in the update. If they're refusing to give statements, to my mind then the PIRC are going to come and carry out the investigation and it's entirely up to them how they are going to take that forward. It's back to gathering evidence, and in many investigations people choose not to give statements.

247. You then go to investigate the issues round about and find out what the issues are. When you're more informed and have more information and evidence, that might be a better time to be interviewed. The SIO and the PIRC, whichever it is, can make the best decisions for the best outcomes in the investigation.

248. I have been referred to the minutes at page 3: *"CCTV Strategy – TSU also called out re presence of CCTV in police vehicle which attended at locus (update police vehicle CCTV seized has not been working since March 2015, seized regardless,"*

249. It's an issue raised there that the CCTV isn't working. I suppose at that point, it was seized regardless and could there still be material recovered from it. I don't recollect any response. The fact the CCTV is not working is a concern, there's no question about that. If CCTV is there, we want it to be working. I'm quite sure that CCTV will break down, it's about repair, maintenance, prioritising what's important. It'll happen from time to time, you need to go back to the people who maintain the cameras. Like every other system it will break down at some stage and it will have to be repaired and it depends how long that takes to happen.

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250. I have been referred to the minutes at page 3: “...update PF Fatalities David Green has been notified and he has made Nicki Patrick and Steven McGowan aware, neither have attended and David Green awaiting update)”

251. I don't know who notified David Green. I would be updated that David Green would be updated. That comes from Pat Campbell in his update. I'm assuming it's either him or Lesley Boal but I don't know. They're more than welcome to be there. As long as they're notified and they've notified the PIRC for the investigation, that's the important element of it. COPFS' role is they've been notified, asked for updates, and notified the PIRC. At some point they'll make decisions on what they're going to do. David Green has notified Nicki Patrick and Stephen McGowan. He's expecting that one of them will be involved in the process but that will be a question for Dave Green.

252. I have been referred to the Gold Group Meeting Minutes: “4. Review of policy/decision log – (All) Discussed – 1 policy decision recorded. 0910hrs 3/5/15 C.Supt McEwan declared the matter a critical incident.”

253. This is just to go through that. Are we providing an effective response, go through the terms of reference to ensure that we're understanding the strategy that was outlined. The point is that it was declared a critical incident. However many hours on this was just a statement of fact that this was declared a critical incident.

254. A Major Incident would be an explosion in a factory, a gas explosion. A major incident is not necessarily a critical incident. This would be a major incident. I'm retired 6 years now. When I was working I could tell you the definition of all these things. All these things become a distant memory.

255. I have been referred to the Gold Group Meeting Minutes:
“6. Community issues – (Safer Communities/CI Shepherd)

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Discussed and Chief Inspector Shepherd to contact elected members, Fife Migrants Forum with regards to the incident, chairperson of Fife Migrants Forum to be invited in to discuss,”

CIA review – (CI Shepherd)

Tasked to CI Shepherd who was also to consider security of Kirkcaldy Police Station re media interest and any community tensions.”

256. These are local elected counsellors. Engagement with them gives you an understanding of what local issues are. It’s about community perceptions from the elected members. I don’t know the Fife Migrants Forum. That will have been suggested to me because I don’t know who they were. Again, exactly the same reason, community engagement, tensions, issues.

257. At one point we became aware that there would be some protest. Information that there would be protests over a few days. Wouldn’t do this in all cases of a death in police custody. You would do it in a critical incident when the police response is likely to have a significant impact on the local community or family of the local community. In this case it was declared a critical incident. That is likely to have an impact on the local community.

258. I have been asked if this would be the same if Sheku Bayoh was white. It’s an added dimension. If it had been declared a critical incident it would be exactly the same process to engage with the local community to understand the tensions and issues there might be. You would do this if he was white or black. You’d have community constables out there in day to day policing, they’d be able to feed back any information and any update.

259. Community constables can benefit from equality and diversity training and keeping up to date with what the issues are. They are engaging with people and understanding what the issues are and feeding that back in to, in this case, CI Shepherd. She then has an understanding of what the issues are.

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260. Fife Migrants Forum was CI Shepherd's decision. I'd have no involvement in contacting them. It's obviously discussed there in the minute and agreed. I was the Chair of the meeting so obviously it's been agreed by me.

261. CIA is a community impact assessment. The CIA looks at all the various aspects of community tension, but also on top of the general CIA there was a suggestion that should also consider the security of Kirkcaldy Police Office. Media will come and try to take photographs and whatever else and if there would be any protest outside the office. I suppose security also means ensuring that nobody can intrude into the office itself. Public areas of the office are open and that's fine, but there will be non-public areas of the office you'll want to make sure are secure.

262. It could also be media intrusion into the office. I have experienced photographs being taken and of media being about the office. Just want to make sure that people are deployed, emergency calls being dealt with and whatever else.

263. I remember a general conversation about the use of PAVA and CS because it was topical. I think at that time there was a challenge about the safety, if I recollect correctly.

Forensic Strategy

264. I have read the Forensic Strategy Agenda (PS17896). I've not seen it before. I didn't attend the Forensic Strategy Meeting.

265. I have read the Forensic Strategy Document (PS01298). I've not seen this before. I've had no involvement in preparation of the Forensic Strategy Document.

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Searches of property

266. I had no involvement or knowledge of what was being done with the loci. I wouldn't be involved at all in the actions of the SIO.

267. I have been asked if I know if Gary McEwan was made aware of which properties were being seized and what the strategy for each loci was to be. I don't recollect at all.

Sheku Bayoh's body

268. I had no involvement dealing with Sheku Bayoh's body beyond the Gold meeting. I can't recollect anything about the repatriation of his body. I've not been involved in any cases where that's happened. Unless it was the request of the family, then I'm not sure why Police Scotland would have any involvement in that. At that moment in time, the body would be under the control of COPFS. It would be a matter for them. If the family had come to Police Scotland asking or requesting this then that would be something that would be passed on to COPFS. I can't think what our involvement would be in terms of that.

Zahid Saeed criminal allegation

269. I remember Zahid Saeed's name. I can't recollect if he was in the office. I don't think I was given any briefings beyond the Gold group meetings, but I can't remember.

270. I assumed that I was satisfied with everything I was undertaking and I'd have other on-call duties. I came through from Glasgow, held the meetings, then I think I went back to Gartcosh or elsewhere. But I was there in Kirkcaldy for a good part of the day. I went back at some stage after the second Gold meeting, at some stage, but I'm not sure exactly when.

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4 May 2015

271. On 4 May 2015 I went through to Kirkcaldy and held a Gold group meeting at 12:30pm. I think that's the extent of it. I was just reassuring myself that everything was still on track.

272. I have been shown the PIM log (PS00387) at page 17: *"Mon 4 May 1115... Phoning round officers at moment for welfare check / see plans for day. ACC decision not operational for remainder of week. Enquiries ongoing re: purchase of boots. No contact today from PIRC."*

273. I can't remember this. It's obviously a decision for the officers not to be operational for the remainder of the week. That is something that I would decide. That kind of decision could be made at any level. I've decided that the officers shouldn't be operational for the remainder of that week. I don't remember. It would be obvious after such an event that you wouldn't want officers to be operational.

Gold group meeting 4 May 2015 at 12:30pm

274. I have been shown the minutes for the Gold group meeting at 12:30pm on 4 May 2015 (PS03161).

275. Page 1:-*"There was a suggestion that deceased may have been in possession of diazepam and had been consuming alcohol (to be confirmed)."*

276. Page 1:- *"Officers were dispatched from Kirkcaldy and on arrival were faced with deceased to engage them physically, assaulting a female officer and fighting with others."*

277. I remember being at this meeting. The part about PIRC being notified has been taken out of the terms of reference but that's obviously because it's

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been done. Gary McEwan, he's gone through Gold Strategy but it's ultimately my Gold Strategy. I don't know if Gary is not present on the 4th but I've obviously done the Gold Strategy. Same reasons for a Gold Strategy as before.

278. IC3 is an identification code. I can't tell you exactly what that means. Diazpam, this would be part of what the update was. I think this was a factual update of some sort, an overview of what's taking place. It's up to the individual who updates to give what they think should be said to the Gold group. All that is part of the investigation.

279. Gold group need enough detail for individuals to go and undertake their role. For those engaging with the public, the detail of what's actually taken place will be less important. We need to have an overview of what's taken place. Engagement with the community and the public and what tensions, it's not important to know the minute detail.

280. I'm looking for an overview to make sure all various aspects of policing are engaged. These are elements of the investigation, but the important thing is to ensure a full and thorough investigation and identify where the issues are and where responsibility lies.

281. I have been asked if this means the Gold strategy would be the same irrespective of the factual update. To some extent the factual update is important but you still want to understand all the other various facets of it. For my mind it's keeping an open mind in terms of what's gone on and not, at that stage, going one investigative route or the other.

282. By this time the PIRC are involved, it's for them to carry out the investigation and for them to determine what elements are their priority and what they're undertaking and what Police Scotland will undertake. It's identified later in the minutes that PIRC are involved in the family liaison. On 4th May some

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decisions are being made on how they're engaged and what they're going to be doing.

283. I have been referred to the minutes at pages 1 and 2: *"Family seem to have disengaged with Police... Family seem to have disengaged with Police – decision made for C/Supt McEwan and Supt Milton to visit and re-engage."*

284. I can't remember more. I remember that they disengaged with police. Then there was discussion about Gary McEwan going to visit the family. I think he had knowledge of the family previously if I remember correctly. So that was an effort just to reach out to the family and try and keep them engaged with the police. I can't remember if he was there, but I see he was named in the update.

285. I can't recollect why the family had disengaged. I don't know directly of different accounts or misleading information. I can't recollect the actual reason for not wanting to engage. It depends if you believe it will be helpful, if he's had previous engagement with the family and it's positive and if he believes it would be helpful to engage with the family, then that's absolutely fine. Anything he can do to engage with the family and understand what the issues are. If the family disengaged, that's always an area for concern without a shadow of a doubt. We had the PIRC identified as Family Liaison for the family so you would hope that if they don't want to engage with the Police Service, then hopefully having that engagement with them will provide a conduit for whatever issues need to be resolved.

286. I have been referred to the minutes at page 2: *"MIT tasked with tracking the movements of the deceased from Arran Crescent, Kirkcaldy to locus of death."*

287. I always thought Police Scotland were going to be involved in the investigation to some extent. It would be tasked from Holmes I would

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assume. It would be in the auspices of the SIO. It wasn't tasked at the meeting. The expectation is that PIRC are now involved. The PIRC and the SIO provide an update that the investigation was ongoing in conjunction with the PIRC. I'd assume that tasking is in conjunction with PIRC.

288. For example MIT are involved in the wider house to house, these things are being carried out in consultation and conjunction with the PIRC. I've got no role whatsoever in that. My only role is to ensure that PIRC's there, PIRC's engaged and the SIO and the PIRC are having a conversation about who it is that's prioritising whatever element it is. I wouldn't be down in the nitty gritty.

289. At the very beginning there would be many tasks. The PIRC would not have the resources for every task. The key is to identify what's important to them. Differentiation between what they carry out and what Police Scotland carry out. That would be an ongoing process. As the enquiry progresses there would be less and less from Police Scotland. Scene examination would be completed. Less and less actions as you move forward. At some stage there would potentially be only PIRC that's engaged in the investigation.

290. I have been asked if I had any concerns in the handover. Not really, as long as you've got a lead that PIRC were engaged in the process and outlining what Police Scotland tasks are, people just need to get on with it.

291. I have been referred to the minutes at page 2: *"TASK – Advice to be gained from PIRC regarding the disclosure of the PM results to the Officers involved in the incident. Supervisor to be identified to carry this disclosure out"*

292. TASK just means a task. The police officers are very much witnesses. So there's a question, someone's posed the question whether the post mortem (PM) results had to be disclosed. It goes to PIRC whether that should be disclosed or not, if it is, then a supervisor should be identified to carry that disclosure out.

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293. In an ordinary investigation we wouldn't be disclosing the PM results to witnesses. It would depend on who the witnesses are, depends on the detail in the PM results, a whole range of considerations. I have been asked if disclosure of the PM results could influence the officers' evidence. That's absolutely right. I don't know what happened with that.

294. I have been referred to the minutes at page 2: *"TASK – Media (Lucy Adamson) to be made aware of the PM results"*.

295. So there's an awareness of what was happening. I think she might have been head of media. She was leading on this in terms of the media strategy. Just making her aware of the PM results. From a media perspective this is normal. That's not to say they're going to give that detail out to the media. The PM result can determine if you've got a crime or not. If the PM result was a stab wound to the back, that immediately changes whether you go from having a dead body and actually understating what's happened. If it's a stab wound you've got a criminal enquiry.

296. I have been told William Little of PIRC states (PIRC-00370 at page 3) the following: *"About 12.35 hours same date whilst en route to Edinburgh City Mortuary, I was contacted by Assistant Chief Constable Rhuraidh Nicolson, Police Scotland. During this telephone call Mr Nicolson indicated that he had some concerns regarding the handover of the investigation from Police Scotland to the PIRC, in particular it could be viewed that Police Scotland were still dealing with this incident. I advised him that I had been in contact with Detective Superintendent Campbell and arrangements were being made for the handover in line with the terms of reference I also assured him that Mr Campbell was fully aware that the PIRC were the sole investigators of the interaction between the deceased and the police."*

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297. I'm not denying the conversation took place. The Gold meeting was 12:30pm. The call might've been 12:25pm or whatever. I do remember that call. His statement jogged my memory. It's straightforward, it's obvious that I had concerns. I thought PS were involved in too many aspects and I wanted reassurance that PIRC were leading the enquiry and that they were dictating what elements they were going to undertake and what Police Scotland were going to undertake. I think I was reassured that that's what I wanted to hear.

298. I knew Billy Little for quite some time, he worked in the Police Service. I knew I could trust what he said to me. I wanted to challenge what I could see myself and just make sure that what I hoped was happening was happening.

299. I don't think this call would go in the PIM log. It's a straightforward call, it doesn't necessarily need to be recorded.

Community issues and perception

300. I have been shown the Gold meeting minutes for 4 May 2015 (PS03161) at page 3: "5. *Community issues – (Safer Communities/CI Shepherd) TASK – Identify a command structure for potential change in community opinions i.e. potential marches or demonstrations...* 8. *Resources – (CI Shepherd)...* TASK – *Confirm resourcing is in place for the next 3 days in regards to any change in social media or community tension.*"

301. If I remember correctly, there was potential for some demonstrations and some marches. We needed a structure for lawful protests and marches to take place. And make sure we had enough resources to allow that to happen and some command structure locally to facilitate that protest.

302. It could be from the local community, or it could be from an ethnic minority group. It could be the family themselves. I can't recollect exactly now, but we were told there was potential for protest from the local community.

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303. I suppose it would depend on the substance of what the demonstration would be about. That would be taken account of in terms of the investigation. The protest is going to be in terms of the police and the fact that the police are engaged with the individual and the individual has died. There will be perceptions round about that. And so we'd need resources or accommodate peaceful protest. Also need cognisance of the investigation and to understand exactly what's happened. Protestors are going to have a perception of what's happened and then whatever that perception is, the investigators will need to be cognisant of that. So they can have an understanding of what all the issues are.

304. In the Kirkcaldy community, there would be different views in terms of what's happened. So everybody will have different views. This goes back to what I stated already in having an open mind, understand all the issues and report that to the Crown Office to make decisions. Different people and parts of the community will have perceptions of what's happened.

305. In the ethnic minority community and their perceptions there's a danger of stereotyping. We must be careful to understand it's not just the whole community having the same perception. Different individuals will have different perceptions and different communities will have different perceptions. There will be perceptions that are straightforward, police have intervened, or at the other end, a perception that because of the police action the individual has died.

306. Taking cognisance of all these different issues, that's forming part of the investigation, an understanding of what the issues might be. It's important that we have a thorough independent investigation that allows the various communities, whoever they are, to trust the investigation to be transparent and objective.

Signature of witness.....

307. We knew there was going to be a protest from a local community. I can't recollect exactly what the composition of the community was.

308. I have been asked what I understood the Bayoh family's perception to be and how this influenced the investigation. Some members of the family perceived that Sheku Bayoh died as a result of the police response. That thorough investigation would take you to what the potential issues are and keeping an open mind. At certain stages of the investigation we would address that possibility.

309. We take cognisance of what their perceptions are and understand what is factually following from their perception. So for example if the community thinks it's the fault of the police officers, then the investigation has to address that.

310. I have been asked if racism was a perception of the community the investigation was required to address. I take cognisance of that. I was aware and open to it.

Firearms post incident procedure SOP

311. I have been shown the PIM log at page 17: *"1300 Discussion with Supt McKenzie regarding provision of statements. Reference SOP section 10. Email to Supt Campbell / McKenzie / CI Shepherd / Amanda Givan (Fed Rep) to inform."*

312. I assume this is referring to the police officers' statements. I don't know the SOP. I will have seen it before, the Post Incident Procedures.

313. I have been shown a Firearms Post Incident Procedures SOP (PS10934). I've seen this many times before. Many incidents I've been involved in are with police shootings.

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314. I have been referred to the SOP at page 14 section 10.1: *“10.1 Detailed accounts (Stage 4 – Detailed Accounts / Evidential Statement) should not normally be obtained immediately. Officers will be provided with at least 48 hours to detail their account, which should include, if relevant, why they considered the use of force and discharge of firearms to have been absolutely necessary.”*

315. I have been asked if there is a difference between a detailed account and an initial statement. Yes, the detailed account would be a later stage. I refer to page 13 Section 9.1 – that would be their operational statements. This PIP SOP is very focused on firearms. I think it’s suitable for these circumstances but it’s just different terminology.

316. I have been shown the Firearms SOP at page 14 section 10.3: *“As a matter of general practice, officers should not confer with others before making their accounts. If however, in a particular case a need to confer does arise then officers must document that this has taken place, highlighting:*

- *Time, date and place where conferring took place;*
- *The issues discussed;*
- *With whom;*
- *The reasons for such discussion.”*

317. I don’t remember that being discussed in Gold meetings.

318. I have been shown the PIM log at page 17: *“1300 All officers except Nicole Short (...) attend per for duty. Queries on Trim – not yet. Advise officers on cause of death? (Update from Nicky Shepherd). Discussion.”*

319. I don’t remember the outcome of this.

5 May 2015

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320. I have been shown the PIM log at pages 17 and 18: *“Tuesday 5 May... Spoke with Jane Combe (am/pm) She updated me that cause of death was advised last night pending toxicology and did not result from blunt trauma. Officers had been told last night.”*

321. I can't recollect my involvement on 5 May. I can't remember that at all. I don't see an issue for Police Scotland if the PIRC have been consulted and that was agreed.

322. That seems to suggest to me that there wasn't blunt trauma. I thought that the outcome of the PM was that it was unascertained what was the cause of death. I have been asked if this gives me concerns. It depends on the detail of what they're being told.

6 May 2015

323. I have been shown the Gold meeting minutes on 11:00am on 6 May 2015 at Kirkcaldy Police Station (PS09779).

324. I have been referred to the factual update at page 1: *“Door to door has confirmed that deceased was engaged in a fight at Arran Crescent and numerous witness are speaking to him being in possession of a knife, one witness suggests deceased stated – “KNIFE IS BLUNT””*

325. I don't remember who took these minutes. I can't remember if I've seen the minutes at the time or not. I don't know which witness was speaking to this.

326. I have been referred to the minutes at page 1: *“Question raised regarding contact with Connie Barck – confirmed PIRC have been made aware regarding the need for contact however no update to confirm this has taken place.”*

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327. That's Sheku Bayoh's partner. I think PIRC were dealing with the family and it would be the FLO.

328. I have been referred to the minutes at page 2: *"Extended family is starting to arrive in the Kirkcaldy area and Police Scotland have accepted the responsibility to locate accommodation and transportation for them. Police Scotland has also confirmed they will cover the costing for these actions. Family have been contacted by C/Supt McEwan and Supt Milton who have confirmed both the Police and PIRC involvement."*

329. I have been asked if this was normal practice. It would depend. Transporting members of family, assisting them with finding accommodation and requests to pay for the accommodation; I can't specifically say an incident where all that has happened before but that seems reasonable.

330. I have been referred to the minutes at page 3:

"9. Media Strategy/Communications Plan – (Kate)

It was identified via the Federation that there may have been concerns being raised by Divisional Officers not attached to the incident that the incident may have connections to CT.

It was confirmed by ACC Nicholson that an internal, national electronic circular was in the process of being developed and would be disseminated to alleviate this issue."

331. CT is Counterterrorism. The suggestion is that the incident was somehow related to terrorism and officers have raised concerns. One concern was that a lone individual attacking members of the public or police officers, that ties into the briefing that I've given previously. I've obviously said that there's going to be some circular which would be disseminated to alleviate the issue

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that it wasn't anything to do with terrorism, but I can't remember what that was.

332. The idea is that from the information available, at that time, the threat was from an individual attacking members of the public or police officers, people in uniform. There was a concern that it could happen again.

333. I would say this was definitely not terrorism. You can rule out terrorism because there's no indication from anyone that it was terrorism.

334. I've been told Pat Campbell states Keith Hardie was there on my instruction and there was a handover. It's entirely possible. I don't remember that specifically. If the SIO was changing over. That meeting would be the appropriate time.

Tasks document

335. I have been referred to a tasks document (PS04432): "*10. Protest Liaison Officer*"

336. This was pure and simply to engage with protestors to understand what they're about and to allow them to carry out a peaceful protest. I don't know what the outcome of that was.

337. After 6 May I had very little involvement. I can't remember if I had any involvement.

9 November 2015

338. I have been shown the Policy Log (PS05890), it states that on 9 November 2015 it was agreed that Gold Command for this incident would be transferred from ACC Nicolson to ACC Thomson, the rationale being that the incident

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has moved from initial management to support of PIRC enquiry and has greatest focus on Local Policing and P Division.

339. I remember the handover. It's purely and simply that it was a local policing matter and it was handed over to the local policing ACC Kate Thomson. More a local policing matter. I don't know why it was at that time, I can't remember why. I think it would just be a discussion and I had a completely different role in organised crime and CT so I assumed I had other things to focus on.

340. I can't recollect if it was a meeting and if I was at that meeting.

Race

341. I don't recollect any training about unconscious bias. It means we're all conditioned in some way and because of our conditioning we have a bias towards particular elements, whether that's race, religion, or other elements such as LGBT.

342. I have been asked what policies and practice has changed in Police Scotland since I joined in 1983. There will be changes. I can't recollect, not off the top of my head. As part of the investigation I might remember. But now 6 years on you move on from the organisation so I can't recollect.

343. Obviously Sheku Bayoh's race is really important. We have to make sure the Police Service take account of his race and cultural background. It's about taking cognisance of that and what the issues are for the community, and understanding community tensions.

344. The truth is that it's for other people to decide if Sheku Bayoh's race affected what I did when looking in. I'm sure it's at some point for Lord Bracadale to make a decision on that. I hope that race played no part in anything I did, in a negative sense. I hope I took cognisance of the individuals, the family. If there's something wrong in that then I expect I'll accept that. I'm outside the

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organisation so there's no learning for me, but if there is that's for learning for the organisation for the future.

345. I have been asked if I know of any examples of discriminatory behaviour in Kirkcaldy. I can't give a specific instance. When I was the Deputy at Strathclyde, many incidents would've passed my desk. I can't remember any more specifics such as who was being discriminated against. I am not aware of any racist views held by police officers. I've not heard any racist views or comments by police officers.

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

December 27, 2022 | 6:08 PM GMT

Date.....Signature of witness.....