

Transcript of the Sheku Bayoh Inquiry

Wednesday, 13 September 2023

(10.05 am)

LORD BRACADALE: Good morning. I am joining this hearing remotely as I am recovering from a COVID infection. I appreciate that my remote participation may require a bit of patience and forbearance on everyone's part and I am very grateful in anticipation of that.

You will also notice that neither of the Assessors is present in the hearing room. Mr Raju Bhatt is not available this week and intends to catch up with the recording in due course. Mr Michael Fuller has arranged to follow proceedings remotely this week.

Let me now turn to the witness. Mr Nicolson, your evidence will be taken by Senior Counsel to the Inquiry, Ms Grahame KC, whom I think you will already have met. Before that, could I ask you to raise your hand and say the words of the oath after me.

MR RUARAI DH NICOLSON (sworn)

Thank you. Ms Grahame.

Questions from MS GRAHAME

MS GRAHAME: Good morning, Mr Nicolson.

A. Good morning.

Q. You are Ruairaidh Nicolson?

A. I am.

Q. And what age are you?

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1 A. I'm 62.

2 Q. You joined the police, as I understand it, in 1983?

3 A. I did.

4 Q. And you retired on 31 October 2016?

5 A. That's correct, yes.

6 Q. And when you retired what rank had you reached?

7 A. I was Deputy Chief Constable for Police Scotland.

8 Q. Thank you. And I think in 2015 am I right in saying you
9 had 32 years service?

10 A. Yes, so in July of 2015 I would have had 32 years
11 service, that's correct, yes.

12 Q. And in 2015 I think you were an Assistant
13 Chief Constable?

14 A. I was, yes.

15 Q. So we have heard a lot of people talking about
16 ACC Nicolson, was that you?

17 A. That was me, yes.

18 Q. There's a folder in front of you on the bench. Would
19 you have a look at it, it's black. We have collated
20 a number of hard copies of documents and what I'm going
21 to do in a moment is just go through all of these
22 documents to make sure that we've got everything you
23 might need today. If there's anything missing please
24 let us know and what we will do is we will try and get
25 hard copies during a break. But feel free to use it, to

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1 refer to it, if you prefer.

2 Now in addition there will be a -- there's a screen
3 in front of you and when I ask you to look maybe at
4 a paragraph in your Inquiry statement I will ask for
5 that to be brought up on the screen, but the screens are
6 quite small so we might only be able to see the
7 paragraph. There might be other things around it that
8 you would find helpful to refer to and so you've got the
9 hard copy and if you want me to bring anything up on the
10 screen, just let me know and we can arrange that.

11 A. Thank you.

12 Q. I'm sure you will get used to that as we go through.

13 A. Thank you.

14 Q. Have you watched any of the evidence in the Inquiry?

15 A. So now and again I have, so when I have seen the news,
16 I have then gone on to see some evidence, but I haven't
17 listened to all the evidence of any individuals, so just
18 dipping in it and out, I would say.

19 Q. But you have maybe seen the process and the form --

20 A. So I have seen the process, yes. It was important --

21 Q. So it might be familiar to you?

22 A. It is.

23 Q. Let's look at what I believe is the first document
24 there, which is a statement. I think you refer to this
25 actually in your Inquiry statement. The reference

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1 I have for it is PIRC 00731 and we can maybe put just
2 the first page on the screen and you will see it is
3 handwritten. Do you have that --

4 A. I do, yes.

5 Q. -- in your folder as well?

6 A. I do.

7 Q. So is this your writing?

8 A. It is my writing, yes.

9 Q. Thank you. Am I a right in saying the date there is
10 given as 21 June 2005?

11 A. Yes, that's --

12 Q. But I wonder if that should have been 2015?

13 A. It definitely should have been.

14 Q. I'm like that myself with dates. Then the time is 1400,
15 so 2 o'clock in the afternoon.

16 A. That's correct, yes.

17 Q. And is this a statement that you prepared yourself?

18 A. It is, yes, absolutely.

19 Q. We have heard some people call these operational
20 statements, is that --

21 A. That's correct, yes.

22 Q. So that is a copy of your operational statement that you
23 prepared on 21 June 2015?

24 A. That's correct, yes.

25 Q. Do you remember why you prepared that statement?

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- 1 A. I think I was asked for it by the PIRC.
- 2 Q. And does it set out your recollection of your
3 involvement with the investigation into Mr Bayoh's
4 death?
- 5 A. Yes.
- 6 Q. And were you doing your best to be accurate and
7 truthful?
- 8 A. I was, yes.
- 9 Q. Thank you. And if there's any difference between what
10 you say today and what you've got here, would the Chair
11 be better to refer to your original operational
12 statement, or your evidence today?
- 13 A. Well, this was taken nearer the time, so my recollection
14 would have been much better at that stage than it would
15 be today.
- 16 Q. We have heard a lot of witnesses say that because that
17 was written so close to the events, or closer to the
18 events than now, sometimes their memory is better then.
19 Is that the same for you?
- 20 A. Yes, that's it, yes.
- 21 Q. Thank you. Then let's look at PIRC 00317. Now, I think
22 this is a typewritten version of the statement that was
23 in your handwriting and so it is just a typed version,
24 same date, same time, same location and written by you
25 as well.

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1 A. That's --

2 Q. Is that correct?

3 A. Yes, so it has been typed up but I see that my first
4 name has been spelled incorrectly.

5 Q. So there might be some --

6 A. It's a typographical error.

7 Q. All right, thank you. But subject to that --

8 A. But other than that, that's my statement.

9 Q. It's the same statement?

10 A. Absolutely is, yes.

11 Q. And that was prepared by you at the request of PIRC?

12 A. That's correct, yes.

13 Q. Then let's move on to the next document in your folder
14 and this is Inquiry statement SBPI00217.

15 A. Yes.

16 Q. Now, we see this on the screen. Now, you will see that
17 there are redactions on the screen but I think your copy
18 probably isn't redacted.

19 A. The first page has redactions but~...

20 Q. Oh, right. Well, you may have the redacted version as
21 well.

22 A. I think I do, definitely.

23 Q. You do, all right. So it was taken by the Inquiry team
24 on 7 October last year and then if we look -- it is
25 68 pages long. If we look at the final paragraph, 346,

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1 that's right at the bottom, and you will see that coming
2 up on the screen, and it says:

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

7 A. Yes.

8 Q. And as I understand it you signed all the pages --

9 A. I did.

10 Q. -- of this, knowing that it would be published on the
11 website.

12 A. Yes.

13 Q. And saying that the facts stated in there are true?

14 A. Yes, that's correct.

15 Q. Thank you. And you signed that on 27 December 2022.

16 A. Yes, that's correct.

17 Q. The end of last year.

18 A. Yes.

19 Q. I take it on 27 December it was done online, through the
20 system.

21 A. It was done online, yes.

22 Q. Thank you. Now, I appreciate that you have been retired
23 for nearly seven years and what I'm interested in is
24 events in 2015 because you're not a serving
25 police officer now.

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- 1 A. No.
- 2 Q. And I'm interested primarily in what was happening in
3 2015 and your best recollection of the events then, all
4 right?
- 5 A. Yes, that's ...
- 6 Q. We know from other evidence that we have heard in the
7 Inquiry you didn't go to Hayfield Road on 3 May 2015
8 when the events were taking place.
- 9 A. No, no.
- 10 Q. But you were appointed as Gold Commander --
- 11 A. That's right.
- 12 Q. -- in relation to that incident?
- 13 A. That's correct, yes.
- 14 Q. Now, I will come on to that and ask you a bit more about
15 the role of Gold Commander but in relation to --
16 I wonder if you can help me in relation to the incident
17 itself. Now, the Chair has heard -- I have just
18 realised I forgot to ask you something. It should also
19 be in your folder. SCOPE records. It might be at the
20 back.
- 21 A. So my career --
- 22 Q. A hard copy of SCOPE records showing your appointments
23 and training and things like that.
- 24 A. Yes, it's at the front of the folder.
- 25 Q. Have you got that as well?

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1 A. I have. Yes, I have.

2 Q. Sorry, that was my mistake and then I just saw
3 a scribbled note I'd left myself.

4 Let's go back to the -- as I was saying, the Chair
5 has heard a lot of evidence about who was in charge of
6 the incident and we have had different answers given by
7 different witnesses and I'm hoping you can clear this up
8 for me. From your perspective as ACC Nicolson at the
9 time, in May 2015, who was in charge of the incident?

10 Now, we have heard that the response team were
11 deployed to Hayfield Road, that this acting police
12 sergeant who was with that response team was called
13 Sergeant Maxwell and he attended with them; that
14 the police incident officer was Inspector Kay, Acting
15 Inspector Kay, he was in Kirkcaldy, so he -- I will come
16 on to his role later, but you have said in your Inquiry
17 statement, at paragraph 94 -- let's put that on the
18 screen -- so that's paragraph 94. So we have heard
19 different witnesses have said Sergeant Maxwell --

20 A. Yes.

21 Q. -- Acting Inspector Kay, and you have said Garry McEwan
22 was in charge of the incident, at paragraph 94, and
23 I just wonder who was in charge?

24 A. Well, so it would escalate up the way so initially you
25 would have the incident and fairly obviously

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1 police officers on the ground, you would have their
2 sergeant that would be looking after them and then it
3 would escalate up the way: inspector, then the police
4 incident officer would become involved in it and
5 thereafter once what happened unfolded, then
6 Garry McEwan would become involved and then once he
7 became involved I would expect that he would be
8 directing resources, understanding what was going on,
9 knew where the police officers were at that point. So
10 it would work up the way, up to the very top to
11 Garry McEwan and then he would delegate responsibility
12 down the way.

13 Q. Right, well, I will have more questions about all of
14 that later.

15 A. Yes.

16 Q. But when the incident was ongoing, who was technically
17 formally in charge of the incident at the time
18 between -- so calls start coming in at ten past seven in
19 the morning.

20 A. Yes.

21 Q. Emergency calls from the public.

22 A. Yes.

23 Q. At 7.16 the ACR deploy officers to Hayfield Road?

24 A. Yes.

25 Q. At 7.17 Acting Police Sergeant Maxwell makes a request,

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- 1 which I will come on to later.
- 2 A. Yes.
- 3 Q. Then the officers arrive at 7.20 at Hayfield Road. So
- 4 when that's happening, who technically -- who formally
- 5 is in charge?
- 6 A. The sergeant initially. The sergeant initially and then
- 7 when the PIO attends then the PIO will become in charge
- 8 of the individuals on the ground and the ongoing
- 9 situation.
- 10 Q. We have heard some evidence that the inspector, PIO,
- 11 Inspector Kay, would be in charge of the incident really
- 12 from the time that the calls are coming in, the team are
- 13 deployed, that he is actually in charge. Do you agree
- 14 with that or not?
- 15 A. Well, he would have to deploy to the location itself, so
- 16 for the initial response, the police officer attending
- 17 and then the sergeant would be in charge and then, as
- 18 soon as it's understood what's actually happening and
- 19 the PIO is going to attend, then he will be responsible
- 20 for and in charge of the police officers on the ground.
- 21 Q. Right, so is that from the time that he arrives at the
- 22 scene, that the PIO is in charge, or prior to that?
- 23 A. Well, I mean it would be really difficult -- so
- 24 presumably he is at an office somewhere and then he goes
- 25 to deploy to the scene, so I suppose it would be

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- 1 difficult to argue that he can take charge of it while
2 he is actually moving, but as soon as he is there in
3 a position to take charge then he needs to take charge.
- 4 Q. Oh, right, thank you. We will probably come back to
5 that as we're going through. I think we heard evidence
6 from Garry McEwan that he envisaged the PIO listening to
7 the calls, listening to the radio transmissions, he
8 would have a computer screen in front of him, he would
9 maybe see the STORM cards as we have heard them called,
10 or call cards, and he would have a watching brief at
11 that point over the incident, making sure he is happy
12 with what's going on.
- 13 A. Yes, if he was aware that the incident was ongoing then
14 you would expect that, yes. But I don't know --
- 15 Q. We have heard that Inspector Kay was aware of the
16 incident going on.
- 17 A. Right, okay, yes.
- 18 Q. All right, thank you. So if he was aware of the
19 incident, do you think a watching brief at that stage is
20 a reasonable description?
- 21 A. Yes, I think that's right.
- 22 Q. Right. I think we heard from Inspector Kay that he was
23 waiting for more information before he got involved. Is
24 that a reasonable approach to take if you're a PIO?
- 25 A. Yes, absolutely. So it depends on the circumstances and

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1 we would need to understand -- I haven't heard his
2 evidence, but we would need to understand from him what
3 information he was waiting for, what else he required
4 before he would deploy to the scene.

5 Q. Right. Well, the Chair has heard from Inspector Kay,
6 thank you.

7 Can I ask you about other evidence that we have
8 heard. The sergeant, who was Sergeant Maxwell, who went
9 along with the response team, he was acting, he made
10 a request at 7.17 that morning for an ARV and a dog unit
11 and all units to attend. Now, we have heard evidence
12 that it wasn't a decision for a sergeant to make as to
13 whether to deploy an ARV, but that a request could be
14 made by the sergeant for that --

15 A. Yes.

16 Q. -- which is what he did. I'm interested in your views
17 about a situation where there are multiple calls coming
18 in from the public -- we have heard that there were six
19 calls, one person phoned twice -- there's an incident
20 created where a man is said to be in the street and he
21 has a large knife and the police sergeant makes
22 a request for an ARV and a dog unit and all units to
23 attend.

24 A. Yes.

25 Q. We have heard that the calls were largely grade 1:

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1 high risk incident.

2 Do you consider it in your experience to be
3 significant that a sergeant for a response team would
4 make that request for an ARV and a dog unit and all
5 units to attend?

6 A. No, I think that's sensible. It's a sensible response
7 to what he understands to be unfolding and it fits into
8 the definition for the deployment of a firearms
9 response.

10 Q. What would you expect to happen once that sensible
11 response has been made by -- or the request has been
12 made by the sergeant?

13 A. Well, so I would expect an ARV to be located, wherever
14 that would be, a dog vehicle to be located, wherever
15 that may be, and ask them to attend to be close -- in
16 close proximity to the location, if they possibly could.
17 That doesn't mean to say that they've got authorisation
18 to deploy with firearms, that requires authorisation,
19 so -- but there's no reason why an ARV couldn't attend
20 to be in the vicinity of the incident.

21 Q. And we have heard that the duty inspector at
22 Bilston Glen would have authority to actually deploy the
23 ARV with firearms.

24 A. Yes.

25 Q. And would you expect -- what would you expect him to do

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1 in relation to that, if the ARV has been deployed to
2 attend the area?

3 A. Well, so he would look for feedback from the officers
4 that were on the ground about what was happening and if
5 it was deemed necessary to have the actual ARV with
6 firearms deployed then he would go through the model,
7 the risk assessment model, and decide whether that was
8 an appropriate response to what was unfolding.

9 Q. How long do you envisage that process taking?

10 A. That process wouldn't take very long, so the first thing
11 would be to get the ARVs heading for the location, the
12 scene, and then secondly to authorise. I don't envisage
13 that that would take very long.

14 Q. Can you help the Chair understand what you mean when you
15 say "not very long"? Can you help give us -- I'm not
16 going to hold you to a precise number of seconds, but
17 can you help the Chair understand or get an impression
18 of the timescale?

19 A. Yes, so the inspector would need to get the detail, the
20 information, the intelligence, everything that was known
21 about the incident, about the individual, and then do
22 the risk assessment, understand whether in fact it was
23 pertinent to authorise firearms. So I think that
24 ten minutes would be -- it could take longer and it
25 would depend on how long it takes to get all the

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1 information that's required, but it shouldn't take much
2 more than ten minutes or thereabouts.

3 Q. And during that period, from what you're saying, do you
4 envisage that the ARV would be heading to the --

5 A. The ARV could be heading -- the ARV doesn't need to be
6 authorised to move to a location.

7 Q. All right, thank you.

8 A. So it's like any other police vehicle, with two officers
9 in it, so it can move wherever it wants to move to, or
10 where it is instructed to move to.

11 Q. Thank you.

12 Can I ask you in relation to the PIO heading to the
13 scene, how long -- we have heard that the journey from
14 Kirkcaldy Police Office to Hayfield Road is about
15 five minutes.

16 A. Right.

17 Q. There or thereabouts. When the PIO is aware of the
18 incident, listening to the Airwaves transmissions, how
19 long would you think they would take to arrive at
20 Hayfield Road; what would be reasonable? Have you any
21 sense of what that would be?

22 A. I would think 10 to 15 minutes. I don't know. I don't
23 know the area at all, so -- but I would expect that they
24 would -- when they understand what's happening, it's
25 unfolding, that they would go and get -- prepare

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1 themselves, maybe lift -- pick up a radio, get car keys,
2 get in a vehicle and then go to the scene, so if it's
3 five minutes away, you know, 10 to 15 minutes might be
4 reasonable.

5 Q. Thanks. Do you have any impression from your experience
6 that day as to whether this ought to have been declared
7 a firearms incident? We have heard evidence it wasn't
8 declared a firearms incident and we have heard evidence
9 from the inspector in charge at Bilston Glen that day.
10 Do you have any impression about whether it should have
11 been declared a firearms incident?

12 A. Not really. I mean you have to take every incident on
13 its own merits and very much it will be dictated by the
14 officers who are on the ground exactly what they
15 require. But, you know, using an ARV and using a dog
16 vehicle -- safety of the officers themselves, safety of
17 the individual involved and the safety of the public,
18 that's the -- these are the considerations and so what
19 do you require and what are the best assets to be able
20 to deal with that in an efficient and appropriate
21 manner. So did they -- were they comfortable that they
22 were able to deal with it themselves, or could they have
23 called for other resources? And they could call for
24 other resources, they could have called for a dog
25 vehicle, and maybe they did, and they could have called

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1 for an ARV, and it sounds like they asked for one at the
2 very least. So these are the kind of resources that
3 they would use and in my professional opinion, you know,
4 these are the kind of assets that support you when
5 you've got someone who is carrying a knife, a lethal
6 weapon, and would help you in terms of resolving the --
7 or could help you in terms of resolving the incident if
8 you aren't able to resolve it or you don't feel
9 confident of resolving it yourself with, you know,
10 either baton or CS or handcuffs.

11 Q. So these are the type of things that -- you have talked
12 about the safety of the officers being important and
13 giving support to police officers. Are these the type
14 of things that can help provide that support and protect
15 the safety of police officers?

16 A. Yes, absolutely.

17 Q. And can they have an impact on the way officers feel
18 about approaching an incident such as this where there's
19 been multiple calls and someone is alleged to have
20 a knife?

21 A. Yes, of course. So, you know, they could attend there,
22 observe, stay a safe distance and then ask for other
23 resources to come and assist if they felt that that was
24 still the level it was at. So observe, have an ARV,
25 have a dog vehicle attend, you know, have -- and that

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1 supports the police officers in terms of what it is that
2 they are actually having to do, so that's looking after
3 their own safety because if they can look after their
4 own safety they look after the safety of the public, and
5 the safety of the individual that they're focused on,
6 so ...

7 Q. We have heard that -- we have heard evidence from two
8 witnesses, a Ms Caffrey and a Mr Graves, and they have
9 talked about four sort of tactical options being open to
10 police officers that day: that a remote -- a rendezvous
11 point -- a remote rendezvous point; observe, wait and
12 feedback to ACR, which could have been just at the side
13 of the road or along the road a little, so not -- remote
14 but not as remote as the first option; there could have
15 been engagement with the subject and attempts at
16 de-escalation.

17 A. Yes.

18 Q. And a verbal dominance approach where they simply go up
19 and try and get him down on the ground. Certain
20 witnesses have called that a hard stop. So four
21 options: remote viewing point; observe, wait, feedback;
22 de-escalation and verbal dominance. Is that your
23 experience of options that would be open to officers
24 attending a knife incident such as this?

25 A. Yes, very much so. Very much so.

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1 Q. Do you have a sense of what would have been the
2 appropriate option for officers to adopt on this day?
3 A. No. So that would be part of the investigation, to
4 understand exactly what took place and what would be the
5 appropriate response.
6 Q. From your experience as Gold Commander did you form any
7 views at any stage?
8 A. No, I was trying not to form any views whatsoever. We
9 need to allow the investigation to take place, make sure
10 that's thorough and get feedback and learn and
11 understand from whatever that investigation -- whatever
12 the outcome of that investigation is.
13 Q. We will come on to this later but we have heard about
14 the three-stages of an investigation and we have heard
15 about hypotheses being sort of thought of and developed
16 as time goes on in an investigation.
17 A. Yes.
18 Q. Is that familiar sort of language to you?
19 A. Yes, it is, yes.
20 Q. And we will come back to that later today.
21 A. Okay.
22 Q. Let's move on to your own involvement as Gold Commander.
23 I think if we look at paragraph 89 of your Inquiry
24 statement and you will see you were asked here about
25 your role on 3 May:

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1 "On 3 May 2015 I got a phone call that a potential
2 incident had happened. I was picking up incidents.
3 Once I'd dealt with that I made my way to Kirkcaldy.
4 I was engaged when I got the phone call at roundabout
5 7.30 am."

6 Who was the phone call from?

7 A. The phone call was from Garry McEwan.

8 Q. Right. And you have said you were engaged when you got
9 the phone call. What do you mean by that?

10 A. So I was the on call officer for the force and I would
11 be engaged in going through incidents, so we would have
12 a list of overnight incidents, I don't know how many, it
13 would be different on different days, so 10 or 12
14 incidents that I would want to know and understand more
15 about, so that we could deploy resources roundabout the
16 force, wherever we required to have those resources. So
17 I got -- so I was engaged in that, so I would first of
18 all be going through the incidents myself and then
19 I would have phone calls from roundabout the country,
20 from a variety of different people, to update and to let
21 me know what resources they had, what the issues were
22 and what we needed to do as a force to be able to
23 resolve whatever the matter was. So that's what I was
24 engaged with at that time I got the phone call from
25 Garry McEwan around about 7.30.

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1 Q. We have heard by this stage it was Police Scotland and
2 not the legacy forces that had been in place prior to
3 that?

4 A. That's right, yes.

5 Q. So were you the on call ACC for Police Scotland --

6 A. I was, yes.

7 Q. -- or for a particular area?

8 A. No, no, for Police Scotland.

9 Q. For the whole of Scotland?

10 A. For the whole of Scotland.

11 Q. So you said you were getting calls about incidents all
12 over the country that people were --

13 A. That's correct, yes.

14 Q. Right. And we have heard evidence from Garry McEwan and
15 when he called you, tell us, did that trigger some
16 actions on your part?

17 A. So at that time I was just told that someone was in
18 cardiac arrest after being in police custody, so fairly
19 obviously that triggered in my mind that it was
20 something that I needed to be updated on and understand
21 exactly what was happening.

22 Q. And what arrangements did you make with Garry McEwan
23 during that call?

24 A. I just told him to keep me updated on exactly what was
25 happening, so~... and then I carried on with, you know,

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1 the business that I was undertaking, so that was
2 understanding what else was happening in the force with
3 a bit of a focus and understanding of exactly what we
4 were going to face with this incident.

5 Q. So if the person had recovered and you had got an update
6 saying "all is well", would much more have been done by
7 you that day?

8 A. Well, not in terms of that unless it would have required
9 other resources and that would be a request from
10 Garry McEwan, but I would carry on with what it is that
11 I had been doing around about the rest of the force.

12 Q. So can you help me understand, when were you appointed
13 as a Gold Commander to this matter?

14 A. So -- well, actually when I was told that the person had
15 succumbed, so I felt that we needed a Gold structure in
16 place at that stage, so I eventually made my way through
17 to Kirkcaldy and then pulled together the first
18 Gold Group meeting on that morning.

19 Q. So we have heard that life was pronounced extinct at
20 Victoria Hospital shortly after 9 o'clock --

21 A. Yes.

22 Q. -- in the morning.

23 A. Yes.

24 Q. And -- 09.04 -- and that Garry McEwan appointed --
25 declared, I should say, a critical incident at 09.10.

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1 So I think in his evidence he said he heard that
2 Mr Bayoh had died at eight minutes past nine and within
3 two minutes he had declared the critical incident. So
4 can you tell me, when did you hear about Mr Bayoh dying?
5 A. So I heard about it after Garry McEwan obviously heard,
6 so I think it was about 9.15 on that morning.
7 Q. So by which time Mr Bayoh has died, Garry McEwan has
8 declared a critical incident --
9 A. Yes.
10 Q. -- and he then contacts you at quarter past nine --
11 A. That's it.
12 Q. -- to give you the update that you have asked for?
13 A. That's right.
14 Q. And we heard from Garry McEwan that this was the only
15 time he had ever declared a critical incident in his
16 career at that stage.
17 A. Okay.
18 Q. We have heard that these are quite unusual things --
19 A. Yes.
20 Q. -- maybe one or two a year; is that~...?
21 A. Yes, absolutely correct.
22 Q. So when you had that updating call from Garry McEwan,
23 what did you do?
24 A. So what I did then was just tell him that we would have
25 a Gold Group meeting as soon as possible, so I would

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1 make my way through to Kirkcaldy, we would draw the
2 strands off that together, so -- and that's what we did.
3 I think the first meeting was around about 11 o'clock,
4 so we got various individuals who were involved to come
5 together, have the Gold Group meeting and then set out
6 the strategy and set out tasks and actions.

7 Q. Right. Now, correct me if I am wrong, but you were the
8 ACC --

9 A. Yes.

10 Q. -- and you were on call that day for the whole of
11 Scotland?

12 A. Yes.

13 Q. Does that automatically mean you were going to become
14 Gold Commander?

15 A. Most likely, yes.

16 Q. Right, so were you officially appointed by anyone or was
17 it the very fact that you are an ACC and you are on call
18 for the whole of Scotland that you take on that role?

19 A. Yes, I think that's correct but I would have had the
20 brief -- I would have briefed the Deputy Chief Constable
21 and I would probably in this instance have briefed the
22 Chief Constable as well, so -- and I would have said
23 that I was going to take Gold Command, which they have
24 obviously agreed with, so ...

25 Q. Right. So we have heard from Garry McEwan that if

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1 a critical incident is declared, the Chief Constable of
2 Police Scotland is advised --

3 A. Yes.

4 Q. -- because it is such a serious matter?

5 A. That's right.

6 Q. So that was you that advised the Chief Constable and
7 probably the DCC as well?

8 A. Yes.

9 Q. And you have talked about realising you would need
10 a Gold structure and we have heard from various people
11 about the Gold structure but could you give us just
12 a summary of what your understanding of the Gold
13 structure and the benefits of that Gold structure would
14 be in terms of dealing with this incident?

15 A. Yes, so I would set up the Gold Group and then we would
16 have a number of individuals there representing
17 investigation, community reassurance and the divisional
18 response and then set out the strategy so that everybody
19 knew and understood what it is that we expected of them
20 and then expect them to deliver that, so from
21 a strategic -- and that would be my area of business --
22 tactical and operational point of view, so I was head of
23 strategy. From a tactical point they would set out how
24 that would be undertaken and then operational, they
25 would be the day-to-day business, so exactly what was

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1 required to be done.

2 Q. So you were Gold, you're at the top of the structure?

3 A. Yes.

4 Q. And your role is to develop strategy?

5 A. That's correct.

6 Q. And is that with the support of the people lower down

7 the structure than you?

8 A. Yes, it's with the support of -- yes.

9 Q. And we have heard that Garry McEwan was Silver

10 Commander?

11 A. Yes.

12 Q. And so there's only one Silver?

13 A. Well, so Lesley Boal may well also have been Silver, so

14 you had the two, one in charge of the division and

15 public reassurance and the other in charge of

16 investigation.

17 Q. Sorry, say that again. One Silver was Garry McEwan?

18 A. Yes.

19 Q. What was he responsible for?

20 A. So the division and public reassurance.

21 Q. And are you sure that Lesley Boal was a second Silver

22 Commander?

23 A. Well, I assume she was but ...

24 Q. Right. When you say you assume, is that because you

25 can't remember --

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- 1 A. No, I can't remember, yes.
- 2 Q. -- that far back?
- 3 A. Yes.
- 4 Q. Right. And from your recollection of 3 May 2015 what
5 was your recollection about the role -- not the title
6 but the role that Lesley Boal was taking?
- 7 A. So -- well, so she was on call for the force in terms of
8 the CID, so -- and then she supported, I suppose -- she
9 deployed Pat Campbell as the SIO and then she supported
10 Pat Campbell in terms of the investigation, in the
11 initial part of it anyway.
- 12 Q. Thank you. So we have heard from Lesley Boal and she
13 said she helped support Pat Campbell --
- 14 A. Yes.
- 15 Q. -- if there were requests for resources or anything
16 along those lines, she would endeavour to provide him
17 with the support he needed.
- 18 A. Yes.
- 19 Q. In terms of her role in relation to the investigation,
20 what's your recollection about any specific tasks that
21 she did or --
- 22 A. No, I don't recall anything specific. I mean she
23 supported the SIO.
- 24 Q. Right. We have heard then that there are -- as well as
25 Gold and Silver, there are Bronze Commanders. Do you

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1 remember who they were?

2 A. So well Pat Campbell, Nicola Shepherd.

3 Q. We know that Pat Campbell was the SIO.

4 A. Yes, that's right.

5 Q. So in charge of the investigation?

6 A. That's right.

7 Q. What was Nicola Shepherd in charge of?

8 A. So community reassurance.

9 Q. Anyone else?

10 A. I can't recollect just now.

11 Q. We've got the minutes. We will come to those later on

12 today.

13 A. Yes, no problem.

14 Q. Now, you have explained to us that as Gold you were in

15 charge of strategic decisions. Who was in charge of

16 tactical decisions? You have talked about strategic,

17 tactical and operational.

18 A. Yes, so Garry McEwan.

19 Q. So Garry McEwan, tactical?

20 A. Yes.

21 Q. And would it just be Garry McEwan?

22 A. Yes -- well, yes.

23 Q. Sorry, is that --

24 A. Yes, that's right.

25 Q. Then operational?

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- 1 A. So the SIO --
- 2 Q. So is that the Bronze Commanders?
- 3 A. Yes.
- 4 Q. So effectively is it strategic for Gold, tactical for
5 McEwan, Silver, and operational for Bronze Commanders?
- 6 A. That's it.
- 7 Q. And in terms of strategic decisions, can you explain to
8 us how you determine what the strategic decisions will
9 be -- how they will develop?
- 10 A. Well, so it would just depend on the incident, so just
11 looking at the various facets of the incident and what
12 it is that is required to be delivered on at that
13 strategic level, so ...
- 14 Q. So the Gold structure was put in place effectively by
15 you after Mr Bayoh had died?
- 16 A. Yes.
- 17 Q. And after a critical incident had been declared?
- 18 A. That's correct, yes.
- 19 Q. In relation to the declaration of a critical incident,
20 I think in your Inquiry statement you say that it can
21 happen -- either McEwan would phone you and say, "I want
22 to declare a critical incident", or he can tell you
23 afterwards and it can happen both ways.
- 24 A. Yes.
- 25 Q. But what would the normal course of action be if someone

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- 1 is declaring a critical incident?
- 2 A. Well, I think at that level it's absolutely fine for
3 Garry McEwan to declare it, he's a senior officer, so,
4 you know, in this incident it was a critical incident,
5 the truth was whether it was me or whether it was
6 Garry McEwan, or whether it was anyone else, I don't
7 think it matters that much because it was a critical
8 incident, there's no question about that.
- 9 Q. And tell us -- we have heard from Garry McEwan that
10 there was no doubt in his mind, but tell us why you're
11 saying it was a critical incident in such a confident
12 way?
- 13 A. Well, it fits directly into the definition for
14 a critical incident, so --
- 15 Q. And did that -- Garry McEwan told us he was thinking
16 about this as a possibility once he knew that Mr Bayoh
17 was so unwell and was being taken to the hospital.
- 18 A. Yes.
- 19 Q. When you had that initial conversation with Garry McEwan
20 where you asked for the update, was that something that
21 was going through your mind?
- 22 A. Yes, well, it would be, but at that time, you know,
23 you're just waiting to see what unfolds and how it
24 unfolds.
- 25 Q. And can you help me understand, is there a relationship,

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1 or a connection between a critical incident and
2 a Gold Command structure, or are they not connected
3 necessarily?

4 A. So if it's a critical incident then it would be
5 a Gold Command structure.

6 Q. But not necessarily the other way about?

7 A. You could have a Gold --

8 Q. We heard from Lesley Boal that she sometimes used the
9 Gold Command structure, she found that very helpful,
10 although there wasn't a critical incident declared?

11 A. Yes, that's absolutely correct, yes. So you can have
12 many Gold Group meetings managing incidents that aren't
13 critical, that's right.

14 Q. Thank you. Now, I think you have explained to us what
15 was happening after your call with Garry McEwan and then
16 you heard at quarter past nine about the critical
17 incident and the death of Mr Bayoh.

18 We have heard that -- again, thinking about who was
19 in charge and we have talked about who was in charge of
20 the incident, so from the point you become
21 Gold Commander and you are setting up a Gold Command
22 structure, so you have taken that decision at quarter
23 past nine in the morning, who is in charge then from
24 that moment that you have taken on Gold Commander? Does
25 that mean you're then the man in charge?

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1 A. Well, I take responsibility at that point for what goes
2 on, but fairly obviously I was through in Glasgow, and
3 everything and everybody was in Kirkcaldy, so it would
4 be difficult to take charge of everything that's going
5 on in Kirkcaldy at that stage, so I would expect
6 Garry McEwan to be in charge of the various resources
7 that are there at that point in time until we brigade
8 together what's required to actually start the
9 investigation.

10 Q. So Garry McEwan has been updated and involved at that
11 stage; you're still in Glasgow.

12 A. Yes.

13 Q. Do you really need to be in Kirkcaldy and have a proper
14 handover before you can take charge of the situation?
15 We have heard about other officers being given
16 handovers.

17 A. Well, I think that what happens is I move myself from
18 Glasgow to Kirkcaldy and then I sit over the top of
19 what's actually happening, so -- and then we set up the
20 Gold Group meeting to set out the strategy, understand
21 what's happening and then make sure that the Inquiry,
22 public reassurance, all that's on track, so I would
23 really be over the top of the structure that's already
24 in place, or the structure that's developing because we
25 wouldn't have had all the resources available to us at

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1 that early stage so we would be still waiting for
2 a number of resources to complete the picture.

3 Q. Now, we have heard that there was a teleconference at
4 9.30 that morning, which is a sort of customary meeting
5 that takes place. Did you have that when you were still
6 in Glasgow?

7 A. So that was with me, was it?

8 Q. Yes, as I understand it.

9 A. Yes, that's --

10 Q. My understanding from the other evidence is that
11 Garry McEwan talked about having a teleconference at
12 9.30.

13 A. Yes.

14 Q. Do you remember if, once you had said you will be
15 Gold Commander, if you then travelled to Kirkcaldy
16 straight away or was it after?

17 A. Well, I obviously didn't. If we had the teleconference
18 at 9.30 I would have travelled immediately after that.

19 Q. What time did you arrive in Kirkcaldy?

20 A. Before 11 o'clock but I don't remember exactly.

21 Q. Would your original operational statement help you with
22 that?

23 A. It might.

24 Q. Do you want to have a look at that? I don't have a hard
25 copy.

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1 (Pause).

2 A. Yes, so what it says is:

3 "Having concluded other on call duties I attended at
4 Kirkcaldy Police Office where I convened a series of
5 Gold Group meetings which were minuted."

6 Q. All right. Do you have any recollection of arriving at
7 Kirkcaldy?

8 A. No, not at all.

9 Q. All right. If we look at paragraph 95 of your Inquiry
10 statement, it says:

11 "At the Gold Group meetings we had people there that
12 represented each area of policing, some local and some
13 national individuals. Myself and Garry McEwan would
14 have a conversation about who was in charge. I think
15 Pat Campbell was the on call detective superintendent
16 for the area. He naturally became the SIO and if he
17 comes out to deal with the situation anyway there's no
18 decision to be taken there."

19 So we had heard that Lesley Boal had appointed
20 Pat Campbell.

21 A. Yes.

22 Q. So you say there:

23 "Myself and Garry McEwan would have a conversation
24 about who was in charge."

25 Do you remember that conversation?

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1 A. Well, I don't really now but presumably what we were
2 doing was making sure that we had individuals in charge
3 of each area that we required, so Pat Campbell in
4 charge -- as the SIO or -- yes, as the SIO and
5 Nicky Shepherd I think in terms of community
6 reassurance.

7 Q. So it's a conversation about who else was in charge, not
8 between you and Garry McEwan?

9 A. No, no.

10 Q. You're the Gold Commander --

11 A. That's right, yes.

12 Q. -- you're in charge?

13 A. Yes.

14 Q. But you're thinking about who you should appoint to the
15 Bronze Commander positions?

16 A. That's it.

17 Q. So this means that Pat Campbell was already appointed by
18 then?

19 A. That's right, yes.

20 Q. So that decision didn't have to be made?

21 A. No.

22 Q. All right, thank you. I just wanted to clear that up.

23 Was it -- we have heard that Garry McEwan was the
24 local policing commander for Fife that day and this
25 obviously was a serious incident, a critical incident,

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- 1 involving officers from Fife and in particular
2 Kirkcaldy. Did you have any concerns about Garry McEwan
3 being in that role when he had that Fife connection or
4 did that not cause you any concern at all?
- 5 A. No, it didn't cause me any concern at all. I had known
6 Garry McEwan for quite some time and was quite confident
7 in his ability to be able to objectively manage what was
8 going on.
- 9 Q. All right. At that time, or at any time on that day
10 were you aware that the family had said that they knew
11 Garry McEwan and that there was a connection?
- 12 A. I think it was -- I was aware at some stage that the
13 family -- or that Garry McEwan knew the family.
- 14 Q. Did that give rise to any concerns on your part about
15 this connection perhaps impacting on his objectivity?
- 16 A. It didn't cross my mind at that stage and, you know,
17 I would be very surprised -- I would hope that it
18 wouldn't impact on his impartiality or his objectivity.
- 19 Q. When you -- when did you become aware that PIRC were
20 going to be appointed to lead the investigation?
- 21 A. So I think I probably knew at 11 o'clock. There had
22 been a conversation with the Crown Office and Procurator
23 Fiscal Service. But the truth is I knew they would be
24 involved anyway, they have a statutory responsibility to
25 investigate this type of incident, so -- and secondly,

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1 I was told that the Procurator Fiscal had been contacted
2 and had appointed the PIRC as the investigators for the
3 incident.

4 Q. Do you remember when you found out about PIRC being
5 appointed?

6 A. No, I don't, but I would have known from the moment that
7 I was told that the individual had died that the PIRC
8 would be involved.

9 Q. Right. Do you have any recollection about this
10 teleconference that we have heard about that took place
11 at half past nine in the morning? We have heard from
12 various witnesses that there was a sort of standing, if
13 I can say that, conference with other officers of the
14 same rank as Garry McEwan to talk about incidents that
15 have gone on in the past 24 hours.

16 A. That's right.

17 Q. Is that correct that there was a sort of standing
18 meeting?

19 A. Yes, standing, so --

20 Q. Was that every morning?

21 A. That was every morning.

22 Q. Do you remember the one on the morning of 3 May?

23 A. No, sorry.

24 Q. You don't remember who was there?

25 A. It would be the on call people roundabout the country,

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1 but, you know, I had carried out many of these and so
2 I don't recollect that one specifically, or who was
3 there.

4 Q. We have heard that a Conrad Trickett was there and we
5 have heard from Conrad Trickett. He was appointed as
6 post-incident manager.

7 A. Yes.

8 Q. We know he wasn't at the first Gold Group meeting but he
9 gave evidence about having a conversation and
10 volunteering to be post-incident manager. Do you
11 remember any -- does that ring any bells for you?

12 A. Well, I know that I spoke to Conrad Trickett and then he
13 was appointed. Well, the situation was that we had
14 a number of police officers in a canteen at Kirkcaldy
15 and we needed to get a grip of that and from my
16 perspective -- now, he may well have volunteered,
17 I can't remember that, but I felt that someone like
18 that, who had that kind of experience and who had
19 previously dealt with officers who had been involved in
20 an incident, that that was an opportunity for us to get
21 a grip of the officers that were in the canteen, make
22 sure they weren't collaborating, colluding, and also to
23 look after their welfare because from a Police Scotland
24 perspective it's important that we look after the
25 welfare of our officers and staff.

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- 1 Q. You have used a phrase a couple of times there about
2 getting a grip?
- 3 A. I have.
- 4 Q. And just so the Chair can understand what you mean by
5 that, what was it that needed to be gotten a grip of?
- 6 A. Well, as I understood it the officers were in the
7 canteen, on their own, perhaps with a Federation
8 representative but it didn't feel like there was anybody
9 from Police Scotland that was making sure that they
10 weren't talking about the incident, that they weren't
11 colluding, that they weren't collaborating in terms of
12 what had gone on, so I wanted to make sure that there
13 was somebody there -- somebody senior there who had
14 experience, knew what they were doing and could, as
15 I said, take a grip of the situation.
- 16 Q. Now, members of the public are listening to this and
17 they may be interested in -- you have used the words
18 "collaborating or conferring". What is the concern in
19 general about that, or making sure that's not happening;
20 why would you want to avoid that happening?
- 21 A. Well, you want the individual officer's objective
22 understanding of what actually happened, so you don't
23 want them talking so that they come up with a story, or,
24 you know, whatever. Now, I would hope that they
25 wouldn't do that anyway, but we need to make sure and

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1 from a public perspective/perception we need to make
2 sure that that's the case so that we've got someone
3 there from a senior position that can actually make sure
4 that that's not happening.

5 Q. And when were you aware that, as you have said, no one
6 from Police Scotland -- they were on their own with Fed
7 reps but no one from Police Scotland was there, no one
8 senior?

9 A. I can't remember exactly when but it would have been
10 before I have asked Conrad Trickett to take charge of
11 that situation.

12 Q. So was that the primary reason why you wanted
13 Conrad Trickett to be appointed?

14 A. It was the primary reason, yes.

15 Q. We have heard he had to travel to Kirkcaldy from his
16 base.

17 A. Yes.

18 Q. Were arrangements made for a supervisor or a senior
19 person from Police Scotland to be put in the canteen
20 with the officers before he arrived?

21 A. I can't recollect that.

22 Q. Is that something that even looking back now you think
23 would have been beneficial?

24 A. Yes, absolutely.

25 Q. And you talked about not colluding, not conferring, and

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1 you also talked about welfare. Was this a concern in
2 relation to appointing Conrad Trickett, to look after
3 the welfare of the officers?

4 A. Yes. Obviously they are our staff and it's incumbent on
5 us -- I'm saying "us", I'm retired, but on
6 Police Scotland to look after the welfare of its staff
7 and its officers and the investigation will take care of
8 itself, so we need to be mindful of how they will feel
9 at that point and, as I say, look after them, make sure
10 we look after their welfare issues, food etc, and, as
11 I say, support the investigation in terms of what it is
12 going to do, but we will understand at a later stage
13 exactly what unfolds from the investigation. But at
14 that point in time we just need to stabilise everything,
15 make sure we look after everybody and move forward from
16 there.

17 Q. Can I ask you a little bit about the investigation. You
18 have said it will look after itself. Who -- we have
19 heard that Pat Campbell was the SIO?

20 A. Mm-hm.

21 Q. So when you say it will look after itself, was that
22 under the direction of Pat Campbell?

23 A. Yes, so at that point in time, yes.

24 Q. But you have also used the words "support
25 investigation". To what extent would the appointment of

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1 a post-incident manager support the investigation?

2 A. Well, so in relation to -- well, looking after the
3 officers, anything that was required from them, so
4 looking at operational statements, yes, and just in
5 general managing and making sure that there was
6 confidence that we were going to get the objective view
7 of each individual officer.

8 Q. As Gold Commander, what were your expectations in terms
9 of securing operational statements from the officers who
10 had attended at Hayfield Road?

11 A. Well, the officers -- it is incumbent on the officer to
12 provide initial operational statements.

13 Q. When you say it is incumbent on the officers to provide
14 these initial operational statements, what does that --
15 what was your expectation in terms of how that would
16 look?

17 A. Well, my expectation is that each one would have given
18 what's called an operational statement, so it was just
19 a short statement about their deployment on the day and
20 potentially what happened.

21 Q. We have heard that in terms of post-incident
22 procedures -- we heard evidence previously from
23 Conrad Trickett that there are things called basic
24 facts, or initial accounts can be obtained.

25 A. Yes.

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1 Q. We have heard others talk about operational statements.
2 What was your expectation that day as to what the
3 officers would provide?

4 A. Operational statements.

5 Q. Right, and you have said "basic" and you're gesturing,
6 would that be just a short --

7 A. Yes, very short.

8 Q. What sort of information did you expect would be
9 included?

10 A. Well, what time they deployed at, where they went to,
11 who they engaged with, but just basic -- you know, they
12 won't go into a huge amount of detail at that stage.

13 Q. And would the operational statements have any input, or
14 any reference to -- let me start that question again.

15 We have heard evidence that it is incumbent on
16 police officers, if they use force, to justify the use
17 of force. Any use of force has to be justified --

18 A. Justified, yes.

19 Q. -- by the individual. Would you have expected that
20 there would have been something from the officers that
21 day which would provide that justification of use of
22 force?

23 A. Yes, so I think that -- I think there's -- well, there
24 is a use of force form, so I would expect that that
25 would have been completed on the morning at some stage.

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1 Q. On the morning of the 3 of May?

2 A. Yes.

3 Q. And would that be by all the officers, as well as their
4 operational statement?

5 A. So I think that would be --

6 Q. If they used force obviously --

7 A. Yes, that's it.

8 Q. -- only the officers who used force.

9 A. Well, it could be part of their operational statements,
10 or they could fill the use of force form in, but I would
11 expect that you would see something in relation to that,
12 either in an operational statement ...

13 Q. And would it have been sufficient from your -- in terms
14 of your expectations and what you were looking for if
15 simply an operational statement had been prepared?

16 A. Yes, but if it included some detail of the use of force,
17 yes.

18 Q. We have heard some evidence that there weren't computers
19 available in the canteen. Would you have been able to
20 facilitate arranging some other way of giving
21 operational statements, if officers couldn't access
22 a computer?

23 A. Well, they could be handwritten.

24 Q. And in terms of having the space, a table and space to
25 prepare that, is that something that could have been

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1 arranged in Kirkcaldy that day?

2 A. I think so. I don't know the office that well, but I'm
3 pretty sure that it could have been.

4 Q. All right, thank you.

5 We have heard some evidence that the standard
6 operating procedure that deals with post-incident
7 procedures was to some extent adapted, hadn't been used
8 before in this situation.

9 A. Yes.

10 Q. Do you have any recollection about it being adapted and
11 how it was adapted?

12 A. Well, Conrad Trickett, in terms of post-incident
13 management, would be in terms of firearms, so fairly
14 obviously we didn't have at this stage a firearms
15 incident, so -- but we were utilising the part of -- the
16 initial part of it anyway that took control of the
17 officers in the canteen area, so I felt that that was
18 the best way to get a grip of -- sorry, I've said that
19 a few times, but get a grip of what was going on in the
20 canteen and make sure that we stabilised everything and
21 that we provided the best possible response as far as
22 the investigators were concerned. So that's why the
23 post-incident management procedures were instigated.

24 Q. Can I ask you to look at the SOP, PS10934.

25 A. Do I have it in here?

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1 Q. Now, you won't have a hard copy so you're going to have
2 to look at the screen. You see there it says
3 "Post-incident procedures, standard operating
4 procedures" and I'm interested -- let's look at
5 paragraph 1.4 first of all. You will see that:

6 "The criteria for a Post-Incident Investigation is
7 covered in the APP(AP) ..."

8 There's a reference to Article 2 of the European
9 Convention on Human Rights and:

10 "... a positive duty on the police to carry out
11 a comprehensive investigation into all deaths, whatever
12 the cause."

13 Then can we go down to the bullet points just at the
14 bottom of that and this is just before we go on to the
15 bullet points:

16 "From 1 April 2013 the ... (PIRC) will, under
17 direction from the Crown Office ... conduct
18 investigations into ..."

19 It says:

20 "Allegations of a criminal nature ...

21 "Death or serious injury in police custody ...

22 "Death or serious injury following police contact;

23 "Police use of firearms and other weapons as
24 specified in regulations ..."

25 And then another one about complaints. Can you help

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1 us understand -- we have heard that this SOP was adapted
2 and others have said: well, it wasn't a firearms
3 situation, and we see there that one of the bullet
4 points is about use of firearms, but it also appears to
5 include death or serious injury following police
6 contact --

7 A. Yes.

8 Q. -- it doesn't mention anything about firearms there?

9 A. No.

10 Q. And I'm wondering why there was this sense at the time
11 that it was to be adapted because it didn't quite fit.
12 Do you see what I mean? Can you help me understand why
13 there was this impression that it had to be adapted
14 because on the face of it, it does look like it's
15 designed to deal with that situation where it says:

16 "Death following police contact"?

17 A. Sorry, can we go up to the top of it again please?

18 Q. Yes, please do. Do you want to go right to the top?

19 A. Yes, please, yes.

20 Q. If you feel you would find it easier to look at a hard
21 copy of this we can do it.

22 A. No, that's fine. That's absolutely fine.

23 Q. Do you want it to the very top or are you happy there?

24 A. Please, yes.

25 Q. Yes, very top please and then if we just start coming

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1 down and then you can tell us when you want us to stop?

2 A. No, that's fine. Yes.

3 (Pause).

4 And sorry, and then does it have paragraphs in it in
5 relation to the control of officers?

6 Q. I think maybe what would be better is if we get hard
7 copies of this because it's -- we would anticipate --
8 I'm not pre-judging what the Chair would say, but we
9 normally have a break at half past eleven so let's get
10 a hard copy of this and then you can have a chance to
11 look at it and point us to the --

12 A. Yes.

13 Q. And we will come back to this after the break. Would
14 that be --

15 A. Yes, that's absolutely fine.

16 Q. Well, let's -- we will come back to this and we will get
17 hard copies.

18 Let's look at the minutes of the first Gold Group
19 meeting because I want to ask you about those and those
20 are PS06491 and this, we have heard, is the agenda and
21 contains the minutes of the first Gold Group meeting
22 which was at 11.30 in the morning on 3 May 2015 at
23 Kirkcaldy and do you see those on the screen?

24 A. I do, yes.

25 Q. And you are there as the Chair, as Gold Commander.

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1 Chief Superintendent McEwan is there as Silver Commander
2 and also present Detective Chief Superintendent Boal,
3 Detective Superintendent Campbell, Chief Inspector
4 Shepherd, Detective Inspector Robson who took the
5 minutes, and Kate Finlay who we understand came from the
6 media department.

7 Then if we go on to look at those people, I'm
8 interested in how you -- or how the participants were
9 selected. Now, you have told us a moment ago that you
10 and Garry McEwan had a conversation about who would be
11 put in charge, but in terms of the participants, the
12 people who were present, who decided who to invite to
13 this meeting?

14 A. Well, it would be a discussion but ultimately it would
15 be myself that's agreed that these are the right people
16 to have round the Gold Group meeting.

17 Q. And what was the purpose of all of these people being
18 selected?

19 A. Well, so Chief Superintendent McEwan was Silver.
20 Lesley Boal, in terms of the overall investigation and
21 the support that was required. Pat Campbell in terms of
22 the SIO. Chief Inspector Nicola Shepherd in terms of
23 public reassurance. Robson in terms of taking the
24 minutes and his knowledge of what was -- what the
25 investigation was, and Kate Finlay from a media

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1 perspective.

2 Q. Now, we have heard that no one from PIRC was present at
3 that meeting.

4 A. No.

5 Q. And you were aware and others were aware, as
6 I understand their evidence, that PIRC were going to be
7 leading on the investigation. Now, this is a number of
8 hours after the incident took place and at least
9 a couple of hours since PIRC were appointed. We have
10 not heard evidence from PIRC yet but my understanding is
11 it is a couple of hours since they were appointed to
12 lead the investigation by the Crown Office.

13 A. Yes.

14 Q. Can you recollect now why no one from PIRC was present
15 at that meeting?

16 A. Because I don't think they were available at that time.

17 Q. And do you remember what the reason was that they were
18 not available?

19 A. No, I don't, but I assume that by the time the Fiscal
20 had contacted the PIRC and I assume that someone would
21 have been on call and that that individual would pull
22 together a team of some sort, presumably get an
23 understanding of exactly what was happening and then
24 attend, so that might take quite some time, but that
25 will be a question for themselves.

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1 Q. We have not heard from them yet but we do hope to hear
2 from them in the future hearing.

3 Can you tell us what you thought of that, the fact
4 that no one from PIRC was present or online or remotely
5 connected to the meeting?

6 A. No, I was quite comfortable at that stage. I mean
7 it's -- I had worked with PIRC previously, so -- and
8 you know I understand that it will take them a bit of
9 time to pull together resources. They don't have a huge
10 number of resources, so at 11.30 I wasn't concerned
11 about that at all.

12 Q. Were there any disadvantages to PIRC not being present?

13 A. Well, from a Police Scotland perspective we would want
14 the PIRC to be involved as quickly as possible, it
15 provides reassurance to the public, the family and
16 everybody else that the Inquiry is being investigated
17 independently, objectively and so the sooner they're
18 there and they're taking control and command and
19 leading, then the better for everybody.

20 Q. And do you think that the fact they weren't present,
21 that caused problems for Police Scotland?

22 A. I don't think necessarily at that stage. I think
23 that's, you know -- as long as -- so our task at that
24 stage, Police Scotland's task at that stage is to
25 stabilise everything, make sure that nothing is lost,

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1 make sure that productions -- you know, vulnerable
2 productions, if they're out in the weather, whatever it
3 happens to be, that these are seized, make sure that
4 nothing happens to them and basic stuff like, you know,
5 if CCTV is going to be lost or whatever, that we secure
6 all of that and we make it available to the PIRC when
7 they arrive.

8 Q. All right. And you talk about stabilising. We have
9 heard an expression used by another witness who said it
10 was a "foot on the ball moment"; is that really what you
11 are saying? You used the word "stabilise"?

12 A. Yes, I think stabilise is -- yes, so we want to
13 stabilise everything. We want to make sure that
14 everything's there, that nothing's lost and that we can
15 hand that over to the PIRC when they're in a position to
16 take that from us. So we have to carry out some
17 investigation and we have to carry on carrying out that
18 investigation until they're in a position to take that
19 over. So you can't afford to lose CCTV, you can't
20 afford for anything to happen to productions. We were
21 making sure that the police officers were, you know,
22 controlled and available for whatever was required, so
23 that was our role at that stage, so that's what we were
24 managing, that's what we were doing, so -- and then with
25 an anticipation that the PIRC would turn up at some near

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- 1 future time.
- 2 Q. Did you have any understanding at this meeting as to how
3 long it would take PIRC to arrive?
- 4 A. No, no.
- 5 Q. And -- right. Can I ask also you about someone else who
6 was not present there. We have heard some evidence that
7 it can be useful to have Professional Standards at the
8 Gold Group meetings too because there may be
9 allegations -- when you're investigating a death after
10 police contact, there may be allegations of criminal
11 conduct by police officers, it has been declared
12 a critical incident and it's a good structure to have in
13 place and so Professional Standards may have a need to
14 be aware of the circumstances and be thinking about the
15 possibility of conduct --
- 16 A. Yes.
- 17 Q. -- misconduct, possible disciplinary matters. Can
18 you -- we can see that Professional Standards weren't at
19 the meeting.
- 20 A. Yes.
- 21 Q. Can you help us understand was there a decision taken
22 not to include them, or was there a reason they were
23 left out?
- 24 A. No, I can't recollect that, but as long as they're fully
25 briefed about exactly what was going on I would be quite

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1 comfortable with that if they said they wanted to --
2 when they were briefed that they would attend Gold Group
3 meetings then that would have been absolutely fine,
4 I wouldn't have pressed that from happening and would
5 have encouraged that. But I don't remember that
6 conversation to be honest and -- but if they're -- as
7 long as they're fully briefed on exactly what's going on
8 and that they're updated on any issues that unfold, and
9 I think they would be party to the discussion
10 roundabout, you know, the Crown Office and Procurator
11 Fiscal Service and PIRC involvement in any event.

12 Q. When you say you would encourage, what would the
13 benefits of having Professional Standards --

14 A. Just so that they would have that real understanding of
15 exactly what was going on and when it was going on and
16 who was doing what.

17 Q. Do you think -- looking back now, do you think it would
18 be useful for them to be there at the first Gold Group
19 meeting?

20 A. I'm not sure about that. I mean as long as they're
21 fully briefed and have an understanding of what's going
22 on then I think that's probably sufficient, but they
23 might have a different view on that.

24 Q. Who would be responsible for fully briefing Professional
25 Standards?

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- 1 A. So I assume that it was the SIO that briefed them but
2 I don't know. The answer is I don't know who briefed
3 them but I was aware that they were briefed.
- 4 Q. And when did you become aware that they had been
5 briefed?
- 6 A. Well, it would have been around the time of the
7 Gold Group meeting but I can't recollect.
- 8 Q. Right. We see the name Campbell, we see the name Robson
9 there. We have heard from both officers, we have heard
10 from Pat Campbell that he was SIO and a number of other
11 witnesses have given us that evidence. We have heard
12 from Detective Inspector Robson that he was the on duty,
13 on call SIO for Fife that day.
- 14 A. Yes.
- 15 Q. Am I correct in understanding there is only ever one
16 SIO?
- 17 A. There's only ever one SIO but straightforwardly he would
18 have been in the initial phase of this, the SIO, and
19 then when Pat Campbell became involved then he would
20 become the deputy and would -- so he would give
21 Pat Campbell an understanding of what's already happened
22 and then Pat Campbell would take over as the SIO at that
23 point.
- 24 Q. So there's no such thing as a senior SIO and an SIO;
25 there's an SIO -- one SIO and maybe a deputy SIO?

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- 1 A. That's it.
- 2 Q. All right, thank you. As Gold Commander do you have
3 authority to influence the actions of the SIO, or alter
4 the course of the investigation, or require something to
5 be included as part of the investigation?
- 6 A. If I felt that that was necessary then obviously I do
7 have the power to do that, but in the main these are
8 experienced people who you want to allow to get on with
9 their work and their job and unless something is going
10 completely awry -- and if it was then I would obviously
11 intervene.
- 12 Q. We have heard them describe -- we have heard Campbell
13 and Robson described as "match fit" and having
14 a currency of experience in relation to investigations.
15 Is that how you saw these officers?
- 16 A. I wouldn't describe it as "match fit", but they
17 definitely had the experience, there's no question about
18 that, so I would have every confidence in them being
19 able to carry out the investigation as it was required
20 at that time. So again it's -- you know, it's this
21 piece about stabilisation and the handover to the PIRC
22 so absolutely no question in my mind about their
23 abilities.
- 24 Q. And in relation to your position as Gold Commander on
25 this day, was there any point at which you intervened or

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1 microphone closer to you and making sure that that is
2 just at the point of your voice.

3 A. Okay.

4 Q. And we will see if that maybe helps the situation.

5 A. Sorry, sorry about that.

6 Q. No, no, not at all. I will try and get you to speak
7 just a little bit louder, but I'm sure someone will tell
8 me if the problem continues.

9 A. Please do.

10 Q. All right, thank you.

11 Now, I said to you just prior to the break that we
12 would get a hard copy of the standard operating
13 procedure and I have also got a hard copy here. We can
14 have this brought back up on to the screen. It may
15 be -- I will leave this to you, but paragraph 3.8 might
16 be the one you were thinking about, but if you just tell
17 me what the relevant part is. We will just get this up
18 on the screen now, so it is PS10934 and I was asking you
19 to help me understand why, when there's bullet points
20 about it applying to deaths after police contact, there
21 seemed to be this impression that it only related to
22 firearms incidents?

23 A. Yes. Well, so if you have a look at, yes, pages -- the
24 first few pages then fairly obviously on page 4,
25 paragraph 1.4, they talk about the various types of

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1 incidents, but when you get to paragraph 2 onwards in
2 the document, and I have only had the opportunity to
3 scan it when I was out for a few minutes there, but it
4 talks about nothing else but firearms, so every
5 paragraph will talk about the SFC, strategic commander,
6 post-incident -- all the various bits, principal
7 officers and referral criteria.

8 Q. Can you make sure the microphone is quite near your
9 mouth. Thank you.

10 A. Sorry.

11 Q. No, no, not at all.

12 So a lot of the references within the body of the
13 documents are to firearms.

14 A. That's right.

15 Q. Do you think that encouraged people to think that it
16 only related to firearms, regardless of the fact there
17 was other things mentioned at paragraph 1.4 about police
18 contact and deaths?

19 A. Yes, so the only reference to police contact and deaths
20 is at page 4.

21 Q. Let's look at page 4. Is this the page that I referred
22 you to earlier?

23 A. It was, it was, yes.

24 Q. And that's the bullet points at the end --

25 A. That's right.

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- 1 Q. -- where it specifically mentions deaths in police
2 custody or following police contact?
- 3 A. That's correct, yes.
- 4 Q. So as far as you are concerned there was no other
5 reference to those in the body of the --
- 6 A. I can't see any reference whatsoever. When you go in to
7 look at the initial action and the other various
8 paragraphs it talks predominantly about firearms, so
9 that's why people felt that it had to be adapted for the
10 type of incident that we were dealing with. So,
11 you know, when it talks about who has to be present, it
12 talks about firearms people being present and fairly
13 obviously that wasn't appropriate in terms of what we
14 were dealing with.
- 15 Q. Looking back now, do you feel that this maybe wasn't as
16 clear as it could have been in terms of the procedure?
- 17 A. No, I think that's absolutely right. I mean we should
18 have a document that clearly outlines the different
19 aspects -- sorry, the different aspects of what's
20 referred to at page 4.
- 21 Q. If there had been different sections dealing with each
22 of these bullet points, would that have assisted in
23 terms of the understanding of how and when it should be
24 implemented?
- 25 A. I think that's correct, yes.

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1 Q. Thank you. If people have said it only relates to
2 firearms can you understand that that may not have been
3 the correct impression but it was an impression because
4 of the content and the way the SOP is set out?

5 A. I think that's right, yes. It's the way it's set out,
6 yes.

7 Q. Thank you. Now, there's one other thing that I would
8 like to go back to very briefly just to clarify in case
9 there's any confusion. I asked you some questions about
10 who was physically present at the scene and we talked
11 about the officers attending as a response team, that
12 the Acting Police Sergeant attended and we talked about
13 the PIO being remote in this Kirkcaldy Police Office.
14 And if anyone has the impression that you cannot take
15 command or control remotely, would you agree that that's
16 not the case because if, for example, it had been
17 declared a firearms incident, the control room inspector
18 could have taken command and taken charge remotely?

19 A. Yes, I agree.

20 Q. And would that also be the position if the inspector,
21 the PIO had said, "I've got concerns about this
22 incident, I'm going to take charge"; is that something
23 he could have done remotely?

24 A. Yes.

25 Q. And when we say remotely, could that have been

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1 communicated over Airwaves, over the police radios?

2 A. It could.

3 Q. And in terms of the sergeant of the response team, is
4 that something that he can also do, take command of
5 a situation, even though he is not physically present at
6 the scene?

7 A. He could, yes.

8 Q. Thank you, thank you for clearing that up.

9 I think we were at the first Gold Group meeting
10 minutes and I would like to go back to those, PS06491,
11 and I was asking you questions about those present at
12 that meeting --

13 A. Yes.

14 Q. -- and those who weren't present. We have heard from
15 a number of witnesses about something called a handover
16 where perhaps one person has been receiving all the
17 information and then they hand it over to another who
18 comes in to take over and we have heard about that in
19 relation to Police Scotland handing over to PIRC, I will
20 come back to that.

21 A. Yes.

22 Q. I'm also interested in we see here the name Detective
23 Inspector Robson, who was the on call duty SIO that day,
24 and then we have heard from you that Detective
25 Superintendent Campbell was the SIO.

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- 1 A. Yes.
- 2 Q. In terms of your expectations as Gold Commander, what
3 would you envisage as a handover between Robson, who was
4 initially on call, and then handing over to Campbell who
5 was then appointed by Lesley Boal as SIO?
- 6 A. Well, so he would be the SIO in the initial phase of the
7 investigation and then Pat Campbell was appointed and so
8 initially I would expect that we had an SIO and a deputy
9 SIO. I would expect the deputy SIO to fully brief the
10 SIO in terms of what's already been undertaken, what the
11 actions are, what staff are on the ground and what
12 investigations are being conducted.
- 13 Q. Would you expect that to be in writing or face-to-face?
- 14 A. Face-to-face. You could have done some of that by
15 telephone conversation while Pat Campbell was en route.
16 I honestly don't know the detail of that, but it's
17 possible to do that and it's possible to do it
18 face-to-face, yes.
- 19 Q. So when we say face-to-face, it could also be by
20 telephone?
- 21 A. Yes, yes.
- 22 Q. Would you expect there to be written records of that
23 handover?
- 24 A. So I would expect there to be a policy document and
25 whether that details in that or not, I don't know, but

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1 it could be. But as long as there's a real
2 understanding of what actions there are -- and there
3 would be a list of actions and tasks and what was going
4 on in terms of the investigation, so that would be
5 a continuation of what had already been taking place.

6 Q. We have heard that Pat Campbell prepared a policy
7 document, would that accord with your understanding of
8 procedure?

9 A. Yes, that's right.

10 Q. I'm interested in one of the paragraphs in your Inquiry
11 statement if I can ask and this relates to a handover of
12 strategic direction, so paragraph 226 of your Inquiry
13 statement please:

14 "I think the 4 pm meeting is just getting towards
15 the end of the day. I would be Gold for the next
16 24 hours, no hand over to another."

17 Now, this is just before we come on to the second
18 Gold Group meeting where you're being asked about, but
19 I'm interested in this comment, "I would be Gold for the
20 next 24 hours, no hand over to another." What about
21 handover of the strategic direction of the
22 investigation? You have talked about Gold Commander
23 being in charge of strategic --

24 A. Yes.

25 Q. -- matters; what about a handover from you, if you were

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- 1 only there for 24 hours?
- 2 A. Well, I was there for longer than 24 hours, so --
- 3 Q. So what does this mean?
- 4 A. I suppose what I intended from that was that I would
- 5 have the next Gold meeting the following day, aye, and
- 6 I had a Gold meeting on the next four days I think,
- 7 so -- and so I didn't hand over to any other person.
- 8 I mean I kept Gold Command and I kept Gold Command over
- 9 these days.
- 10 Q. So can I just be clear, you weren't only there for
- 11 24 hours?
- 12 A. No, no.
- 13 Q. And is that simply a mistake then in that paragraph?
- 14 A. Well, I'm not sure it's a mistake but it refers to the
- 15 fact that I had a Gold Group meeting, I finished up in
- 16 the afternoon and I would still be holding Gold over
- 17 that 24-hour period. It's a reference to the fact that
- 18 I wouldn't be handing over to someone for eight hours or
- 19 whatever, it's a reference to the fact that I was
- 20 Gold Command and I would be retaining Gold Command.
- 21 Q. I see. I just wanted to clear that up.
- 22 A. No, no, sorry, it doesn't seem very clear there.
- 23 Q. So you were Gold and remained Gold for a period of time.
- 24 A. That's it.
- 25 Q. And there wasn't any handover to someone else as Gold?

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1 A. No, not at all, no.

2 Q. Thank you. Can I ask you to look back at the minutes
3 again please, the 11.30, PS06491. And I would like to
4 look at item 1 on the agenda, so the Terms of Reference.
5 Now, we have heard evidence about this from Garry McEwan
6 and you will see the list in italics of different items
7 or bullet points, whatever you want to call it, and then
8 at the end, the final one says:

9 "Ensure the integrity, interest and reputation of
10 the Police Service of Scotland and its staff is
11 maintained and safeguarded."

12 A. Yes.

13 Q. And then underneath that in red it says:

14 "Agreed that wording of terms of reference would be
15 considered and amended for future meetings to provide
16 terminology specific to circumstances of incident."

17 Do you remember this part of the meeting?

18 A. I do, yes.

19 Q. Can you tell us a little bit about this?

20 A. Yes, so I would have asked for a Gold strategy to be set
21 out and it looks like Garry McEwan has come up with
22 points for the Gold strategy, but I assume what he has
23 done is gone to a previous meeting and lifted these
24 Terms of Reference from that meeting and so -- and
25 that's fine for a starting point in terms of what we

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1 were doing, so we would sit down, we would review each
2 one of the pointers, we could add strategic pointers in,
3 or we could take some out during the course of the
4 meeting depending on what was required. And fairly
5 obviously at the bottom it was agreed that we would
6 review the Terms of Reference to make them more specific
7 to the circumstances that we were actually dealing with
8 at that time.

9 Q. What would be the purpose of having the final point
10 there about ensuring the reputation of Police Scotland
11 is safeguarded?

12 A. Well, so if we do all the right things then we will
13 safeguard the reputation of Police Scotland, so it's
14 making sure that everybody knows and understands what
15 they need to be doing and they do that and that will
16 maintain -- however, that's not in my mind the most
17 important strategic intention here and so for the next
18 meeting that point was removed completely.

19 Q. Can you see that some people reading that may have
20 concerns --

21 A. Yes.

22 Q. -- that --

23 A. I had concerns reading it myself, so it's -- as I say,
24 it has been lifted from another meeting. It's -- it's
25 arguable whether it should have been taken out before we

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1 had the meeting, but from my point of view the most
2 important thing at that time was to get up and running,
3 set out the strategic intention, make sure that
4 everybody knew and understood what they were doing, make
5 sure that we had the right resources in place and with
6 an anticipation that the PIRC would arrive and take
7 leadership of the Inquiry and then follow on from what
8 we had already done, so -- yes.

9 Q. Can I ask you, just to be clear, in your role as
10 Gold Commander and the approach that you took to the
11 Gold Command, was any part of that, or any part of the
12 actions you took designed to protect the reputation of
13 Police Scotland?

14 A. No.

15 Q. Thank you. And do you remember -- it says there:

16 "Agreed that wording ... would be considered and
17 amended~..."

18 A. Yes.

19 Q. Do you remember if anyone else raised this issue with
20 you at that meeting?

21 A. No, I can't remember at that stage.

22 Q. Thank you. We have heard from Lesley Boal that it is
23 one of her -- or was one of her pet hates, as she
24 described it. She didn't like to see that reference to
25 reputation in the Terms of Reference.

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- 1 A. Yes.
- 2 Q. Would you have similar concerns to that?
- 3 A. Yes.
- 4 Q. Especially in an incident involving a death after police
5 contact?
- 6 A. That is not the most important thing in terms of this
7 kind of investigation, so when the investigation is
8 carried out thoroughly and objectively and if there are
9 difficulties with the reputation of Police Scotland at
10 that time we will understand what that is and we can do
11 something about it at that stage, but we should not --
12 that should not be the most -- an important
13 consideration in terms of a strategic intent.
- 14 Q. And if there's concerns about the reputation of
15 Police Scotland, what would you do?
- 16 A. Well, if any particular aspect of it was brought to my
17 attention, or I saw it for myself then I would do
18 something about it at that point in time.
- 19 Q. Right. Can you give the Chair an example of something
20 that might be raised with you?
- 21 A. I can't really, no, but ...
- 22 Q. Looking at the Terms of Reference and the strategy that
23 was being adopted and thinking now about the reassurance
24 to be given to the family, but also to the community,
25 what more do you think could have been done to give

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1 reassurance to the community in relation to this
2 incident?

3 A. Well, it's about engaging with the various aspects of
4 what's there, so the family, the various communities,
5 engagement with them, providing them with as much
6 information as you can without breaching any
7 confidentiality in terms of the investigation itself.

8 Q. Thank you. By this stage of the day, at the first
9 Gold Group meeting, what was your understanding about
10 the identity of the male who had died? Did you know or
11 have an impression as to who it was?

12 A. Yes -- well, I didn't know the person, but obviously
13 I was told who it was, yes.

14 Q. So by this first Gold Group meeting were you aware it
15 was Mr Bayoh?

16 A. Yes, yes.

17 Q. Or that that was --

18 A. Yes.

19 Q. Were you aware by this meeting how Mr Bayoh had been
20 identified as the male who had died?

21 A. No, I don't think so.

22 Q. Were you aware of any concerns in relation to the method
23 of identification? We have heard evidence from
24 Collette Bell that she had phoned the police at about
25 8.30 in the morning.

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- 1 A. Yes.
- 2 Q. She had had a call from a friend of Mr Bayoh,
3 Mr Zahid Saeed, and she couldn't find her partner -- she
4 had gone back home, she couldn't find her partner, there
5 was some disarray at home and she had contacted
6 the police.
- 7 Do you know anything about the method of
8 identification at all?
- 9 A. I don't but I assume it was through the initial
10 investigations ...
- 11 Q. And who would be carrying those out?
- 12 A. Well, so police -- local police officers and then under
13 DI Robson from a CID criminal investigation perspective.
- 14 Q. So when it says at the top of this -- if we go right
15 back to the top of these minutes, they are combined sort
16 of minutes, when it says, "Death of unidentified male",
17 was he still unidentified at that time?
- 18 A. I assume that -- I assume there's no formal
19 identification at that stage so ...
- 20 Q. And what would be required for a formal identification?
- 21 A. Well, so physical identification, or DNA at some stage.
- 22 Q. What's involved with a physical identification?
- 23 A. Well, a member of the family identifying.
- 24 Q. Is that how it is commonly done?
- 25 A. So that's how it is commonly done, yes.

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1 Q. We have heard that sometimes the family will go prior to
2 the post mortem --

3 A. That's right, yes.

4 Q. -- and identify the person?

5 A. That's right, yes.

6 Q. Is that what you expected to happen here?

7 A. Well, it would depend on the circumstances as the SIOs
8 saw it, but normally that's exactly what would happen,
9 yes.

10 Q. Then if we can look down we see that a factual update,
11 item 2, was given by Detective Inspector Robson. We
12 have heard that he knew something of the circumstances
13 at that time and gave the update. Do you remember that
14 happening?

15 A. Yes.

16 Q. And Collette Bell is mentioned on the next page, final
17 paragraph of item 2, she provided:

18 "... details of an incident that occurred prior to
19 police and involvement and which led to identification
20 of male."

21 Was that your understanding?

22 A. Yes.

23 Q. Then item 3, "Investigative process", and the names next
24 to this are DCS Boal and Detective Superintendent
25 Campbell and it says:

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1 "Initial actions and investigation strategy outlined
2 by D Supt Campbell in respect of the following
3 areas ..."

4 So is Campbell giving a summary here --

5 A. Yes.

6 Q. -- so you can effectively approve his strategy, or you
7 can contribute to the strategy?

8 A. Yes, that's right. So it's an update.

9 Q. So he gives an update and is there a general discussion
10 amongst the members of the Gold Group?

11 A. So I -- potentially as he went through each item, but
12 I would have expected to see something about
13 a discussion about the various items, if in fact there
14 had been discussion around about them, so ...

15 Q. We see a number of priority actions there, statements to
16 be taken:

17 "... from Martyn Dick/Saeed Zahid/independent
18 witness speaking to male with knife."

19 Four loci had been identified and they were to be
20 secured.

21 A. Yes.

22 Q. A number of other things. Now I want to ask you in
23 relation to one of the bullet points, which is number 9,
24 so it begins with the words, "CT considerations". Now,
25 I will read this out and then I'm going to ask you to

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1 look at your Inquiry statement, so it will be
2 paragraph 40, but we will have it on the screen. You
3 can have it as we go through it. So the minutes here
4 say:

5 "CT considerations -- raised by ACC and to be
6 reviewed by NIB."

7 That's what I'm going to ask you about. Let's look
8 at paragraph 40 first of all of your Inquiry statement.
9 You were asked by the Inquiry statement about this
10 matter:

11 "I have been asked if the race of the individual
12 could be a basis for understanding this to be
13 a terrorist attack. No. I have been told the officers'
14 PIRC statements suggest Sheku Bayoh being black factored
15 into their understanding of what incident they were
16 going to. I have been asked if this is what I was
17 intending with the memo. Absolutely not. For years the
18 highest threat from terrorism in Scotland was Irish
19 related terrorism. Race, colour of skin, whatever, is
20 not an issue in terms of what is intended from this."

21 Now, I know that at this time -- and we have heard
22 evidence that you had a particularly high role in
23 relation to counter terrorism. I don't want to really
24 ask you about that, I want to focus specifically on your
25 role as Gold Commander at this particular incident.

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1 A. Yes.

2 Q. So any questions I ask in relation to that really are
3 about your role that day at the Gold Group meetings --

4 A. Yes.

5 Q. -- rather than any other information that you may have
6 become aware of as a result of your other role in
7 relation to being head of Counter Terrorism. So bearing
8 that in mind, what I am interested in is why you
9 raised -- or you are said in the minutes to have raised
10 an issue about counter terrorism and whether that had
11 any particular reference to the fact that Mr Bayoh was
12 a black man.

13 A. Yes.

14 Q. All right.

15 A. So it had no reference to that whatsoever. So the
16 information that we had at that stage was that an attack
17 was likely from a lone individual who would be
18 potentially carrying a knife, and there had been
19 a number of incidents across the world at that time, so
20 we had Australia, Canada, Paris and we had Copenhagen
21 when five police officers were injured during an attack,
22 and that's what stimulated the memo in terms of all of
23 that, outlining what it was that police officers needed
24 to be cognisant of, but it bore nothing in relation to
25 ethnicity, apart from the modus operandi which was to be

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1 a lone individual with a knife, or, you know, a bladed
2 weapon -- that's police jargon -- and that it would be,
3 you know, an attack on members of the public or on
4 uniformed personnel.

5 Q. And we have heard from Garry McEwan in evidence. He
6 said there was never anything at any point that
7 suggested this was terrorism.

8 A. No, that's right.

9 Q. And you agree with that?

10 A. I agree with that.

11 Q. So never at any point was there a suggestion it was
12 terrorist-related?

13 A. No, that's correct.

14 Q. It was mentioned by you in the minutes, raised by you in
15 the minutes, and we understand that there were some
16 checks done --

17 A. Yes.

18 Q. -- on the back of what you have said at the Gold Group
19 meeting.

20 A. Yes, yes.

21 Q. But there was never any basis for suggesting it was
22 terrorist-related.

23 A. No, to the contrary, it was to suggest it wasn't
24 terrorist, so what we wanted to do -- what I wanted to
25 do was get -- sorry, get messages out to our own people

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1 but also to communities to say, you know, this is not
2 a terrorist-related matter. So various communities at
3 that stage, with all the events, the number of racially
4 motivated incidents were up and we were at pains to make
5 sure that we could alleviate any concerns. So what
6 I wanted to do was, you know, say, "This is not
7 terrorism related", so that we then quell any fears
8 whatsoever and we try to make sure that we don't have
9 a spike in racially motivated incidents at that time.

10 Q. Did you have a concern at this time that the public may
11 have concerns that because Mr Bayoh was black that it
12 was possibly a terrorist-related event?

13 A. Well, you know, I don't know whether the public -- well,
14 I suppose that's right and some sections of the public
15 may well have believed that and we saw that from the
16 events that I have actually spoken about in Sydney
17 Australia, in Canada, Paris, Copenhagen, so we saw,
18 you know, a spike in racially motivated incidents, so
19 it's just trying to make sure in terms of community
20 concerns that we alleviate that concern, we make sure
21 that everybody knows and understands that that's not
22 what we have here and that that wasn't what we had here.

23 Q. We have heard evidence from a number of witnesses about
24 how hypotheses are developed as part of the
25 investigation.

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1 A. Yes.

2 Q. And that the hypothesis in relation to counter terrorism
3 could be -- was this one of the hypotheses that could be
4 very quickly excluded by the checks that you asked to be
5 carried out?

6 A. Yes.

7 Q. Thank you. Thank you very much.

8 Can I go back to some of the other bullet points
9 here that we see in item 3 of the agenda and the
10 minutes, which is PS06491, and we see that it says:

11 "Loci -- 4 loci identified and to be secured~..."

12 And here we have Hayfield Road, where the incident
13 occurred; Collette Bell's home address, Arran Crescent;
14 deceased at Victoria Hospital and home address of
15 Martyn Dick. There's no mention at this stage in the
16 Gold Group meeting of Zahid Saeed's family home. So
17 there's four loci identified there. What were your
18 expectations as Gold Commander in relation to how these
19 properties, or these loci would be secured?

20 A. Well, police officers would attend and secure the
21 property.

22 Q. And what would be the basis or the authority on which
23 properties would be secured?

24 A. Well, it would be part of the investigation, ongoing
25 investigations, so that would have to be justified by

Transcript of the Sheku Bayoh Inquiry

- 1 the SIO, but -- yes.
- 2 Q. And when you say "secured", what does that mean to
3 a police officer, securing a property?
- 4 A. Well, it means that the police have control of the
5 address, that nobody else can get access to the address
6 or -- aye, get access to the address.
- 7 Q. And we have heard about officers turning up doing
8 something called locus protection and having a scene
9 entry log --
- 10 A. Yes.
- 11 Q. -- and noting who goes in and out. Is that the type of
12 thing you would expect officers to be doing?
- 13 A. That's absolutely what they should be doing.
- 14 Q. And it would be the SIO who would identify those
15 addresses that are to be secured?
- 16 A. Yes.
- 17 Q. And we have heard about the police having the ability to
18 seek a warrant for a property.
- 19 A. Yes.
- 20 Q. Or alternatively they can seek consent from the
21 occupants, or the occupiers?
- 22 A. Yes.
- 23 Q. What were your expectations at this stage in the day
24 about what the police would do, what the SIO would do in
25 terms of securing these properties?

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1 A. So I would have no input to that whatsoever. I was just
2 interested in what was ongoing. We've got two SIOs and
3 Lesley Boal, who are highly experienced, and so they're
4 telling us at the Gold Group that these are the loci
5 that need to be secured, so I accept that that's the
6 case.

7 Q. Was it your expectation that that would be taken forward
8 by Pat Campbell as SIO and that the proper authorities
9 or consents would be in place?

10 A. Yes, absolutely.

11 Q. We have heard that the Gold meetings are at quite a high
12 level.

13 A. Yes.

14 Q. And they maybe don't go into the minutiae. Would you
15 call the -- whether it is a warrant or consent, would
16 that be part of the minutiae?

17 A. It would be, yes, but ...

18 Q. Sorry, that's maybe a --

19 A. So sometimes, I mean --

20 Q. The small details, perhaps I should have said.

21 A. You can't control what people really talk about at the
22 Gold Group meetings, so we will end up with some
23 minutiae, but there's a reasonable expectation on my
24 part that an SIO with the experience that Pat Campbell
25 has will know how to go about getting the authority to

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1 search whatever property it is that needs to be
2 searched.

3 Q. And was it part of your expectation that that authority
4 would be obtained in some way, either by warrant or by
5 consent?

6 A. Yes, absolutely. Yes, of course.

7 Q. In relation to the bullet point regarding FLO, it says,
8 "Establish a working strategy". Do you remember the
9 discussion about FLOs? What were your expectations in
10 relation to that?

11 A. Well, so that we would deploy FLOs to the family,
12 identify who the best FLOs were in terms of that and
13 then deploy them.

14 Q. When you say "we would deploy", are you talking about
15 Police Scotland?

16 A. Sorry, I'm talking about Police Scotland, yes.

17 Q. Was it any part of your expectation that PIRC would
18 provide the FLOs?

19 A. Well, that should be a discussion between the SIO and
20 the PIRC to make sure that we know and understand what
21 elements of the investigation they're going to carry out
22 because at the end of the day the PIRC are going to only
23 have a few resources and they're going to rely on
24 Police Scotland to provide resources for certain aspects
25 of the investigation, so -- but that's a discussion with

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1 the PIRC and the PIRC deciding where it is that they're
2 going to deploy to and what they want us to support in
3 terms of carrying out the investigation.

4 Q. Who was going to be tasked with establishing a working
5 strategy for the FLOs?

6 A. So Pat Campbell would delegate that to either his deputy
7 or one of the other officers that would be under his
8 command.

9 Q. And when did you expect that FLOs would actually be
10 deployed to deal with the family?

11 A. Well, as soon as possible.

12 Q. Right. So this is a meeting at half past eleven in the
13 morning.

14 A. Yes.

15 Q. Mr Bayoh was taken by ambulance from Hayfield Road at
16 7.30 in the morning. You've got this meeting at 11.30.
17 When would you be expecting the FLOs as soon as possible
18 to be sent out to the family?

19 A. Yes, so presumably -- so I don't know whether there
20 would be FLOs readily available in the area at that
21 time, so that might take some time to actually have FLOs
22 out and on the ground, but you could start to build
23 a working strategy prior to that and when they then
24 attend you could deploy the FLOs.

25 Q. Did you have any sort of timescale in mind that you

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1 could help the Chair to understand?

2 A. No, no, I don't. I mean it's -- it depends. If there
3 were FLOs on duty then that could be quite quick, but if
4 there's no FLOs on duty then they would have to be
5 recalled to duty and then briefed and then deployed, so
6 that could take quite some time, but I don't know the
7 detail of that.

8 Q. All right. The second last bullet point is:

9 "Police officer statements -- Federation reps
10 providing advice to officers concerned regarding this
11 matter."

12 Do you recall this part of the update and
13 discussion?

14 A. Well, so my understanding was that the officers were
15 refusing to give statements at that point.

16 Q. You knew that by then?

17 A. I think so, yes.

18 Q. And what was the strategy in relation to that? How did
19 that strategy develop then, knowing that the
20 police officers were refusing to give statements?

21 A. Well, so I would expect that they were asked to provide
22 initial operational statements and if it they had
23 refused to do that then the investigation must carry on,
24 so it will be undertaken in a different way from having
25 the statements.

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- 1 Q. So was it your expectation that they would have been
2 asked to provide operational statements?
- 3 A. Yes.
- 4 Q. And would it surprise you if we have heard evidence that
5 they weren't actually asked to provide them?
- 6 A. I would be surprised.
- 7 Q. And what would you have expected to have been done?
- 8 A. Well, purely and simply ask them if they were going to
9 provide operational statements.
- 10 Q. Would that be individually or collectively?
- 11 A. Well, they were all together in the canteen, so it would
12 be a case of someone asking them to provide operational
13 statements at that stage.
- 14 Q. Let's deal with officers who maybe were in the canteen
15 but had not taken part in the restraint, who had not
16 used any force as part of the events in Hayfield Road.
17 For those officers, if they have been told they are
18 witnesses not suspects, was there any leverage that
19 could be used by Police Scotland to get statements from
20 them, operational statements, basic facts?
- 21 A. Well, leverage is a very difficult thing. You know, if
22 we've got to leverage people into giving statements, you
23 know that can cause difficulty at some later stage.
24 That's not any different for a police officer or
25 a member of the public. So I think it's asking people

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1 to give statements and outlining their obligation,
2 I suppose, to provide a statement, but at the end of the
3 day if someone refuses to give a statement then I am not
4 sure how you can compel them or leverage them into
5 giving a statement.

6 Q. You say outlining their obligation to give a statement;
7 what obligations are or were on police officers at that
8 time to give statements?

9 A. Well, it is incumbent on them to provide an operational
10 statement and I think in terms of the firearms it's an
11 initial account, so from my perspective either one, as
12 long as they give some account of the initial stages of
13 what took place then that's fine.

14 Q. And you have said you can't compel them, so other than
15 asking and outlining their obligation, you would take
16 the view that if they refuse that's not something you
17 can push against in any way.

18 A. Well, it depends what -- at some stage you expect
19 a police officer -- so at that stage they're not going
20 to provide operational statements, but you expect at
21 some stage they are going to provide statements so what
22 you don't want to do is undermine that by, you know,
23 threatening discipline or whatever it happens to be, so
24 I think -- so not any different to any other enquiry
25 that you would have, if you don't get a statement from

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1 the individual, you work your way around that, so you go
2 and you get the CCTV, you -- you know, all various other
3 aspects. And actually in terms of the interview you
4 might be better informed, you might have a better
5 interview strategy once you have actually collected all
6 that information, so witness statements, CCTV footage,
7 all the various aspects of that and then you are better
8 equipped to carry out a thorough forensic interview with
9 the individual to know and understand exactly what's
10 happened and taken place.

11 Q. And for those officers who were gathered in the canteen
12 who maybe had used some level of force at Hayfield Road
13 that day, we have heard evidence that they may have been
14 concerned about their status.

15 A. Mm-hm.

16 Q. We have heard evidence about whether they were witnesses
17 or suspects and we have also heard that they may have
18 been concerned that that position may change as the
19 investigation progressed.

20 A. Yes.

21 Q. Is that something that you were advised about at the
22 first Gold Group meeting, that there may have been these
23 concerns?

24 A. No, I think what we were told was that they were
25 refusing at that point to provide statements, so -- and

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1 of course they would have concerns, but, you know,
2 a police officer knows that it is incumbent on them to
3 give an initial statement -- an initial account and an
4 initial statement. It's not -- it doesn't go into
5 a huge amount of detail. The detail will come later,
6 but of course they would have concerns, yes.

7 Q. And was that something that was raised at the Gold Group
8 meeting?

9 A. No, I don't -- well, it might have been but I don't
10 recollect anything being raised in relation to that.

11 Q. Thank you. I'm interested in forensic considerations.
12 You will see the final bullet point there:

13 "Forensic considerations - officers' clothing and
14 PPE to be taken possession of."

15 So what was your expectation in relation to that
16 matter, forensic considerations?

17 A. Yes, so just exactly what it says there, that the SIO
18 obviously wanted to seize the officers' clothing and
19 PPE, so, you know, my understanding of that is that
20 that's what would take place.

21 Q. And did you have any expectations about when this would
22 be carried out?

23 A. No, not really. I mean the sooner it is carried out the
24 better I suppose in terms of evidence, forensics, if
25 that's what's subsequently what was wanting to be

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1 undertaken, but ...

2 Q. And who would be responsible for implementing that?

3 A. Well, the SIO.

4 Q. The SIO, and again presumably that wouldn't be something

5 he would do personally --

6 A. No, no, not at all.

7 Q. -- but he would appoint someone to do that?

8 A. Yes, exactly.

9 Q. And you said, if I remember correctly, something about

10 the sooner it was done the better.

11 A. (Nods).

12 Q. Did you have an impression of how long it would take for

13 that to be done?

14 A. No, not at all.

15 Q. Any hindrances that you were aware of, or that were

16 raised that would prevent that being done quickly?

17 A. No, I can't think, I can't recollect anything.

18 Q. We have heard evidence that it was a number of hours

19 before that was actually done.

20 A. Right.

21 Q. Does that cause you any concern?

22 A. Well, it would have been much better to do it -- if we

23 know at that stage that's what we want to do, then it

24 would be much better to undertake it as quickly as we

25 can, but we would want, fairly obviously, to have

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1 clothing for the officers, so I don't know how that's
2 been undertaken, but it may well be that they had to go
3 to officers' homes or wherever, I don't know, but we --
4 I don't have the answers to that but someone else will.

5 Q. Someone else would have been responsible for the
6 operational tasks that were required to recover the
7 clothing --

8 A. Absolutely.

9 Q. -- and the equipment?

10 A. Yes.

11 Q. We have heard evidence that some of the clothing and
12 equipment was in the canteen left lying on the floor,
13 leaning against walls, on a table. Do you have any
14 concerns about that?

15 A. Yes, well, that shouldn't have been so -- but this is
16 back to what I had said some time ago about getting
17 a grip of what was going on in the canteen.

18 Q. What would you have expected to happen with the
19 equipment or clothing that was lying about?

20 A. Well, I would expect each of the officers to have their
21 clothing and PPE beside them in the initial parts of
22 that and then when we spoke about, you know, to be taken
23 possession of then that would be taken possession of
24 from there.

25 Q. We have heard a suggestion that it would have been

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1 possible for equipment to be kept in a separate room, or
2 kept in a separate area, away from the canteen which had
3 people walking about and moving about. What do you
4 think of that suggestion?

5 A. Well, yes, if it's kept separate in a separate room then
6 fairly obviously that would be beneficial, but if it's
7 just put into one room then you've got the same forensic
8 concerns as you would have if it was lying about in the
9 canteen. So again it's back to getting a grip of that
10 and taking possession of the clothing and the PPE as
11 soon as possible.

12 Q. Thank you. In terms of recovering clothing or
13 equipment, we have heard about the role of Pat Campbell
14 as the SIO.

15 A. Yes.

16 Q. We have also discussed Conrad Trickett's presence as
17 post-incident manager.

18 A. Yes.

19 Q. And I'm interested, in terms of recovering of clothing
20 or equipment would they both have a potential role, or
21 would it be one or the other?

22 A. So the SIO would want possession of the clothing and PPE
23 in terms of forensics, whatever had to be undertaken, so
24 he could either delegate that to Conrad Trickett or
25 delegate that to one of his own CID officers.

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- 1 Q. So Campbell as SIO could have delegated it to
2 Conrad Trickett?
- 3 A. Absolutely.
- 4 Q. That was an option open to him?
- 5 A. Absolutely.
- 6 Q. Would it have been any responsibility of Conrad Trickett
7 to volunteer to gather in equipment, or sort of offer?
- 8 A. Not really I don't think. You know, I think it's the
9 SIO -- whether the SIO wants to secure clothing and PPE,
10 so it will depend on whether there's an investigative
11 advantage of gathering that kind of -- gathering the
12 clothing and the PPE, but that's a decision -- initially
13 a decision for the SIO and how they're secured, so are
14 they forensically secured, and then to delegate that to
15 whoever it is that's going to secure the clothing and
16 the PPE.
- 17 Q. So it's within the discretion of the SIO to decide who
18 is maybe best placed to organise the forensic recovery?
- 19 A. Yes.
- 20 Q. We have heard some evidence about a particular vest that
21 one of the officers was wearing and a mark or marks that
22 were on that vest. Was that something that was
23 discussed at any point in the Gold Group meeting?
- 24 A. No, I don't recollect that at all.
- 25 Q. No. Was there ever a discussion about possibly

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1 collecting soil or surface traces from the road where --

2 A. No, I don't --

3 Q. -- it happened, no?

4 A. And I wouldn't expect that level of detail, I don't
5 think, at the Gold Group meeting. I would expect the
6 SIO to be getting on with -- and forensics -- to be
7 getting on with whatever it was that they thought they
8 required in terms of the investigation.

9 Q. Thank you. Let's move on to item 4 please, "Review of
10 policy decision log", and I think everyone has
11 a discussion about this:

12 "Only policy decision made at that time was in
13 relation to Chief Superintendent McEwan declaring the
14 situation a critical incident at 0910 ... also
15 recognition that the circumstances would be
16 investigation by the PIRC."

17 And I think you have said earlier today you were
18 aware that PIRC would be involved --

19 A. Yes.

20 Q. -- from the moment Mr Bayoh died really.

21 A. Yes.

22 Q. I'm interested at this time of the day, so at the first
23 Gold Group meeting, what your understanding was as to
24 the scope of the investigation by PIRC. We have heard
25 evidence that -- and we have not heard from PIRC yet, we

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1 have not heard from the Crown yet, but there's some
2 evidence available to the Chair that suggests that the
3 role of PIRC and the nature of the investigation
4 expanded as time went on and I'm interested in what your
5 understanding was at that time about what they would be
6 doing?

7 A. Well, at that stage I don't think they had attended at
8 Kirkcaldy office because I think that -- well, so they
9 could have been there for quite some time, but their
10 attendance, or when I became aware of their attendance,
11 I think that stimulated the second Gold Group meeting.

12 Q. So PIRC haven't turned up to that meeting?

13 A. Well, not -- no, no.

14 Q. They're not at that meeting?

15 A. No.

16 Q. So do you feel that at that stage, at that first
17 Gold Group meeting, you had a clear idea of what the
18 scope of their investigation would be?

19 A. No.

20 Q. No. And did that have an impact on what you could do as
21 Gold Commander at this first Gold Group meeting?

22 A. Well, as I said before, you know, our role is about
23 stabilisation and making sure that no evidence is lost.
24 The SIO has identified a number of locations and so in
25 securing all of that and waiting for a PIRC senior

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1 investigator to attend, have a discussion with the SIO
2 and decide, as I said previously, what actions the PIRC
3 are going to undertake and what actions Police Scotland
4 are going to undertake. So you would expect the PIRC to
5 undertake the investigation roundabout Hayfield Road,
6 close proximity to the incident, and in terms of
7 house-to-house, extended house-to-house, it may well be
8 that they were comfortable with Police Scotland
9 undertaking house-to-house, securing locations, but at
10 the end of the day, you know, PIRC are leading the
11 investigation so it's for them to determinate at that
12 moment in time what it is that they're going to do and
13 what it is that Police Scotland are going to do.

14 Q. And in terms of the role of PIRC, am I right in
15 understanding your answers that PIRC would be dealing
16 with the actual incident and maybe the lead up to the
17 incident?

18 A. Yes, well, that's my personal take on it. You would
19 need to ask them in terms of, you know, what they
20 believed their part of the investigation was, but, as
21 I said before, you know, we need -- Police Scotland need
22 the PIRC to be there on the ground, be leading the
23 investigation, directed by the Crown, and to carry out
24 the actions that they believe are important from their
25 perspective because we need the investigation to be as

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1 objective and independent as it possibly can, and then
2 await the outcome of their investigation to understand,
3 you know, exactly what happened and whether
4 Police Scotland did everything they possibly could, or
5 whether Police Scotland got something -- or something is
6 wrong.

7 Q. Can I ask you to look at COPFS 02539. Now, this should
8 be a letter from Crown Office to PIRC dated 5 May 2015,
9 so it's two days after Mr Bayoh died and we have not
10 heard evidence about this letter yet, but we have it
11 available and I'm going to use it as a way of asking you
12 some further questions about the role of PIRC.

13 Could we look at the body of this letter which is,
14 as I say, from Crown Office to PIRC and it's what
15 I would call a letter of instruction, setting out
16 Crown Office's authority being given to PIRC to carry
17 out the investigation and you will see in the second
18 paragraph it says:

19 "There are 2 areas which require investigation.

20 These are:

21 "(1) The circumstances leading up to the incident,
22 namely Mr Bayoh's movements late on Saturday 2 May and
23 during the early hours of Sunday 3 May, prior the
24 contact with police, including his attendance at a house
25 at ..."

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1 And this is the house of a witness we have heard
2 evidence from, Martyn Dick, who lived there at the time
3 with his then fiancée Kirsty MacLeod, now his wife:

4 "... and events following his attendance there.

5 "(2) The incident in which the police became
6 involved with Mr Bayoh shortly after 7 am on 3 May."

7 So from 5 May it would appear that the Crown Office
8 have given authority to PIRC to investigate two areas:
9 leading up to the incident in the early hours, but also
10 the incident at Hayfield Road. But that appears to be
11 an extension -- we have not heard evidence from them
12 yet, but that appears to be an extension and on 3 May,
13 as far as we know at the moment, they were only asked to
14 investigate the interaction between the police and the
15 deceased at the time of his arrest and the events
16 thereafter. So it would appear initially they were
17 asked to look at events in Hayfield Road, in this letter
18 dated the 5th they were asked to look at the events
19 leading up to it.

20 Were you aware on 3 May that, as far as we know, on
21 that date they were only asked to look at the events on
22 Hayfield Road?

23 A. No, I wasn't aware of that, but what I would say from my
24 own experience is that it is really difficult just to
25 focus on the incident without considering all the other

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1 aspects of it, which obviously they've got to on 5 May.
2 But as I said before, they've got a statutory
3 responsibility to investigate deaths in custody in the
4 circumstances that we're talking about here. So,
5 you know, you could argue that the death in custody is
6 in the location at Hayfield Road, but I'm not sure how
7 you can carry out an investigation without knowing and
8 understanding how the individual got there, Mr Bayoh got
9 there, why he was there and all the various aspects of
10 that, all the police radio communications, everything
11 else around about it, so it's difficult to see how they
12 would be able to undertake a thorough, objective
13 investigation without considering the various aspects
14 that are in that letter of the 5th.

15 Q. And in terms of your understanding on the 3rd, as
16 Gold Commander, was it brought to your attention in any
17 way at any time that day that the remit of PIRC appeared
18 to be just in relation to Hayfield Road and the events
19 at Hayfield Road?

20 A. No, no.

21 Q. How practical would that have been? Would the police
22 have continued with investigating events prior to
23 Hayfield Road and PIRC take over the Hayfield Road
24 investigation?

25 A. It's just not practical at all. I mean, I just can't

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1 see how -- because they need to get CCTV around
2 Hayfield Road and that will take -- sorry, if there's
3 CCTV round Hayfield Road then that's presumably going to
4 take them to CCTV prior to that, you know, so either
5 Police Scotland are going to carry out that part of the
6 investigation and then the PIRC are going to carry out
7 the limited investigation and then at some stage that's
8 all going to have to be joined together, but the
9 appropriate way, in my opinion, to carry that out is for
10 one person to be in charge of the whole thing.
11 Police Scotland can carry out whatever investigation the
12 PIRC want, so CCTV, seize that, you know, whatever
13 productions, but as long as it's under the
14 auspices/direction of one person, that's what you would
15 look for. I think it's very difficult to discern,
16 you know, one element of the investigation and then the
17 rest -- where does it join together and where is the
18 differentiation along Hayfield Road of where the police
19 start the investigation and where the PIRC end their
20 investigation?

21 Q. We heard evidence from Lesley Boal and she said she was
22 under the impression that PIRC would deal with the whole
23 investigation, all the matters, but they would be
24 supported --

25 A. Yes, absolutely.

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1 Q. -- as required by Police Scotland?

2 A. 100%, yes.

3 Q. Does that accord with your understanding that day?

4 A. Absolutely.

5 Q. Thank you. If there's a suggestion that on 3 May, so
6 the day that Mr Bayoh died -- we have heard evidence
7 that Mr Dick's house was secured as one of the loci that
8 had been identified. If there is a suggestion that that
9 was Police Scotland that were investigating that because
10 it related to matters in the lead-up, you know, it
11 wasn't related to Hayfield Road and the matters there,
12 and that was all down to Police Scotland, was that your
13 impression at the time?

14 A. No, my impression at the time was that it would be an
15 overall investigation led and directed by the PIRC.
16 Now, fairly obviously -- if that's not where they were
17 directed at the initial stages, they were eventually
18 directed to that, it feels like -- from my perspective
19 it feels like that's what they ought to have been doing
20 in the first place, understanding the circumstances.

21 Q. Thank you. Let's go back to the minutes if we may and
22 item 5 on the agenda. It's at the bottom -- here we
23 are. This is, "Family concerns", spoken to by
24 Detective Inspector Robson and it says:
25 "Circumstances discussed regarding Collette Bell

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1 contacting Police and being informed that male believed
2 to be her partner (Sheku Bayoh) was deceased but subject
3 to formal identification."

4 I think we touched on that earlier:

5 "She provided details of [next of kin], his sister
6 who she did not have contact with her. Decision to be
7 made re FLO department by MIT officers."

8 And what was -- do you remember this part of the
9 discussion?

10 A. Yes, I do.

11 Q. Tell us about your recollection?

12 A. It was just an update in terms of what -- you know, his
13 partner was informed that her partner was deceased, but
14 there had to be formal identification carried out and
15 then -- and she goes on to detail the next of kin and
16 then there's discussion about the FLO deployment by the
17 MITs.

18 Q. And FLO deployment by MITs is Police Scotland officers?

19 A. Yes, it would be.

20 Q. And that deployment of a FLO was to be done by them?

21 A. Yes, that's what --

22 Q. Was this part of the working strategy that was to be
23 developed?

24 A. Well, so the MIT presumably had FLO officers available
25 and then so that wouldn't be the working strategy, but

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1 the working strategy would be developed from that, the
2 fact that they were to be deployed.

3 Q. Right, and it says:

4 "She provided details of [next of kin], his sister
5 who she did not have contact with~..."

6 So in terms of that entry there in the minutes it
7 appears she gave details to the police as to the next of
8 kin.

9 A. Yes.

10 Q. What were your expectations, knowing that Collette Bell
11 had -- we have heard she was in Kirkcaldy Police Office
12 at the time -- had provided details of the next of kin?

13 A. So that the next of kin would be engaged with, informed
14 of the death, and then FLOs deployed.

15 Q. Did you have a view at that stage about how long that
16 would take?

17 A. No, not at all. I mean in terms of Gold you need to
18 allow the officers to undertake their role in terms of
19 their expertise, so as I said before, it depends where
20 the FLO -- where the FLOs were coming from, by the time
21 they get briefed, by the time is strategy is developed
22 and then they're actually deployed, so that could take
23 a bit of time, a fair bit of time.

24 Q. We have heard that the next of kin, his sister, weren't
25 told until around about ten past three, there or

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1 thereafter, in the afternoon, so Mr Bayoh was taken away
2 from Hayfield Road in an ambulance at 7.30 in the
3 morning, a critical incident is declared at ten past
4 nine in the morning, the first Gold Group meeting is at
5 11.30, by then the police have discussed or are
6 discussing matters with Collette Bell in Kirkcaldy
7 Police Office and she has given details of next of kin.

8 A. Yes.

9 Q. We have heard from other police officers that they had
10 concerns about the delay in speaking to the next of kin,
11 which I have said we have heard took place after ten
12 past three. Do you also have concerns about that
13 timescale for the FLOs going to the family?

14 A. Yes, so -- well, initially the family ought to be told
15 of the death by someone other than the FLO and then the
16 FLO should be deployed, so it seems a long time.

17 Q. Could you give me one moment please.

18 A. Yes, certainly.

19 (Pause).

20 Q. Sorry, I have perhaps said something -- misspoken. It
21 wasn't the FLOs who went at ten past three, or
22 thereabouts, that was two DCs who went to deliver the
23 death message, so in fact the situation is that there
24 was an even greater delay than I have suggested to
25 you -- I suggested to you the FLOs went at ten past

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1 three and that's not correct, I misspoke about that, but
2 do you continue to have concerns --

3 A. Yes, I do.

4 Q. -- perhaps even greater concerns about the delays in
5 FLOs becoming involved with the next of kin?

6 A. I do.

7 Q. Yes. And what were those concerns about the impact of
8 not sending FLOs in to speak to the family?

9 A. Well, I mean the first thing we need to do is deliver
10 the death message and two DCs or detective officers
11 anyway, I don't know whether they were DCs or DSs, but
12 delivering the death message, that's appropriate and
13 then the FLOs being deployed after that, so -- but the
14 timescales are very long and should have been much
15 shorter than what's happened.

16 Q. We heard evidence from an earlier witness who said he
17 thought it was wholly inappropriate for the delays in
18 relation to the FLOs becoming involved with the family.
19 Would you agree with that?

20 A. I think that's right, yes.

21 MS GRAHAME: Now I'm conscious of the time. Would you give
22 me a moment please and I would like to address the Chair
23 about the time. Thank you.

24 I'm conscious that it is close to lunchtime now and
25 I wonder if this might be an appropriate moment to

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1 adjourn?

2 LORD BRACADALE: Yes. We will stop for lunch and we will
3 sit again at 2 o'clock. Thank you.

4 (1.00 pm)

5 (The luncheon adjournment)

6 (2.00 pm)

7 LORD BRACADALE: Good afternoon. Could I mention that
8 I intend this afternoon to adjourn a little earlier than
9 usual, at about ten to four, so Ms Grahame, can we aim
10 to take the 15-minute break at about 2.45 and then sit
11 again between 3 o'clock and ten to four, depending
12 obviously on you finding a suitable break point in the
13 evidence, so please continue with the evidence now.

14 MS GRAHAME: Thank you very much.

15 I would like to ask you some more questions about
16 the arrangements that were being made in Kirkcaldy
17 Police Office at the time and what had been happening
18 that morning on 3 May. This is against the background
19 we have been talking about, the minutes of the
20 Gold Group meeting which was at around 11.30 in the
21 morning. I'm particularly interested in the
22 arrangements in relation to Collette Bell. We have
23 heard that Collette Bell was the partner of Mr Bayoh and
24 she had recently had a baby and that was a babe in arms,
25 if -- weeks old and being breast fed.

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1 I think we touched on her name and your awareness of
2 her within the minutes before lunch.

3 We have heard that Collette Bell had been taken to
4 Kirkcaldy Police Office. I'm wondering -- you have said
5 before lunch you were aware that Collette Bell was being
6 questioned by the police; you knew she was in the police
7 office at that time, is that right?

8 A. Yes, that's right.

9 Q. What were your expectations in relation to how she was
10 going to be dealt with by police officers in Kirkcaldy?

11 A. She is a relative, so I would expect her to give details
12 about other relatives and giving whatever information
13 was available at that stage.

14 Q. We have heard that she was asked to go to Kirkcaldy
15 Police Office and wanted her mum to go with her to help
16 with her baby at that time and she felt that the
17 officers weren't -- if I can summarise that evidence,
18 they weren't very keen on that idea. She felt there was
19 some resistance. Did you expect her to be taken to
20 Kirkcaldy Police Office with her baby?

21 A. Well, I don't know the circumstances of that, but if she
22 wanted to go to the police office and take her baby with
23 her then that's absolutely fine, I mean it's --
24 you know, that's -- I don't see any issue with that. If
25 she wanted her mother to be there, I don't see any issue

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1 with that either. I mean it's -- she is coming there as
2 a member of the family basically.

3 Q. We have heard it suggested by one witness that there
4 were maybe nicer facilities in a family-friendly suite
5 elsewhere in Fife that she could have been taken to.
6 The same witness also suggested that perhaps she could
7 have been taken to the home of a family member and
8 spoken to there. Would you have had any difficulty with
9 either of those options?

10 A. No, not at all.

11 Q. Do you have any concern about a young mother being asked
12 to go to a police station to speak to police officers in
13 the circumstances she was in that day?

14 A. Yes, well, it depends on what it is that they want her
15 to come to the police office for, you know, so if it's
16 to clarify a few points or whatever then I think that's
17 absolutely fine. If it's more detailed than that then
18 I would expect it to be somewhere that's much more
19 conducive to what's happening, so ...

20 Q. We have heard that they delivered the death message to
21 Ms Bell at Kirkcaldy Police Office and then asked for
22 a detailed statement from her which took a number of
23 hours. Do you have concerns about that approach?

24 A. Yes, well, it would be much better not to have taken
25 a detailed statement at that point, they would need some

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1 basic details but not a detailed statement.

2 Q. And what sort of basic details would be appropriate?

3 A. Next of kin, you know, I think she had reported him as
4 being missing, you know, the details about that, get an
5 understanding of the background.

6 Q. And is there any reason why those couldn't be taken
7 either at a family member's home, or a family-friendly
8 suite elsewhere?

9 A. Not that I can think of, no.

10 Q. In terms of taking basic details, would it have been
11 necessary to take those at a police station?

12 A. No, I don't think so.

13 Q. We have also heard evidence that in delivering the death
14 message to Ms Bell that one of the officers who did so
15 said that he was -- it was a direction -- I'm reading
16 from what he said:

17 "It was a direction from our supervisors that we
18 weren't to mention anything to do with police contact
19 until it was properly investigated."

20 And that was relayed to them by the detective
21 sergeant who was their senior in rank. Can you tell us
22 what views you have about that?

23 A. My view is straightforward: she ought to have been told.
24 There's absolutely no point whatsoever in not telling
25 her because she is going to find out from other sources

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1 in any event, so better coming from the Police Service
2 being upfront about what's happened, being honest.

3 Q. And what would the advantages be to being honest about
4 that?

5 A. Well~... so I don't know exactly when she found out but
6 she would have found out from -- she would have enough
7 people on the ground that would be able to tell her
8 exactly what happened so the advantage would be that it
9 came directly from Police Scotland.

10 Q. Other officers have given evidence about concerns that
11 it would damage the relationship with the investigation
12 and the officers involved in the investigation and the
13 trust they would have in Police Scotland. Do you agree
14 that not telling the truth could have those
15 implications?

16 A. I absolutely agree. It feels like we have -- if that's
17 the case, it feels like we've got something to hide when
18 we shouldn't have.

19 Q. And in terms of responsibility for delivering the death
20 message, who on the ground in Police Scotland would be
21 responsible for that? Who would be in charge of that?

22 A. Well, the SIO would direct someone, detective officers,
23 to deliver the death message and they should be separate
24 from FLOs, so FLOs should be deployed once the death
25 message has ...

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1 Q. Just to be clear, so you understand the evidence we have
2 heard, we have heard that Pat Campbell had no
3 involvement in this.

4 A. Right.

5 Q. But that DI Robson at that time was involved. So when
6 you say the SIO, would -- if Pat Campbell wasn't in
7 position at that stage, would you --

8 A. Well, so it's the relevant SIO, you know, so, as I said
9 earlier, Robson was the initial SIO and then
10 Pat Campbell came in and took over, so I don't know
11 exactly when that happened, but if DI Robson was the SIO
12 at that point then he would direct that the death
13 message was delivered.

14 Q. Thank you. Can I ask you to go back to the minutes
15 please. So these are the minutes of the first
16 Gold Group meeting, PS06491, and I'm interested now in
17 item 6 on the agenda, "Community issues". You will see
18 this is "Safer Communities" and it is spoken to by
19 Chief Inspector Shepherd:

20 "Allocated to CI Shepherd who was to make local
21 elected members aware and also liaise with Fife Migrant
22 Forum and the Independent Advisory Group.

23 "Community impact was to be considered including
24 community reassurance."

25 And then there was a request to be made. Can you

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1 tell us if more could have been done in relation to
2 dealing with issues -- community issues?

3 A. Well, I suppose more can always be done. Perhaps as
4 a police service we can't do enough in terms of
5 community relations, but that was the starting point at
6 the first Gold Group meeting was to begin to engage with
7 communities to understand what the communities were and
8 to engage with other relevant bodies around about Fife
9 at that stage. But, you know, this potentially could
10 have community issues right across the whole of
11 Scotland, the whole of the UK, so we would be looking
12 for -- you know, why it has got Safer Communities there
13 and Chief Inspector Shepherd is there would be an
14 expectation of Chief Inspector Shepherd that she would
15 deliver on a local basis, but there's also -- so Safer
16 Communities came under my remit and they would have
17 a national remit in terms of understanding communities
18 right across the whole country and delivering exactly --
19 or engaging with communities and understanding exactly
20 what the issues would be in terms of this incident more
21 broadly than Fife.

22 Q. We have heard some evidence that there was monitoring
23 being done in relation to social media. Is that
24 something that Police Scotland did at the time in
25 relation to monitoring community issues?

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1 A. Well, so there would be -- it wouldn't necessarily be
2 community issues but, you know, they would monitor in
3 terms of social media and understand whether issues were
4 bubbling on to the surface as far as, you know, the
5 communities were concerned.

6 Q. Thank you. Who would have been doing the monitoring of
7 social media?

8 A. So that would have been -- well, so via SCD -- and I'm
9 trying to reflect on whether -- now whether -- but that
10 would have been done centrally, you know, having a look
11 in general terms about -- from a social media
12 perspective of whether there were any issues bubbling
13 that were of concern.

14 Q. And in terms of what you were advised of at the first
15 Gold Group meeting, were there concerns about social
16 media or community issues bubbling away?

17 A. At the first Gold Group meeting I don't think so.
18 I mean these are all just making sure that we've got the
19 right people in the right place, understanding what's
20 going on and understanding what the temperature is with
21 communities in Fife and also external to Fife.

22 Q. Now, we have heard from a number of officers who in
23 summary have said they had very little or perhaps no
24 contact with black people in the community in Kirkcaldy
25 and I wonder if you could help us understand in terms of

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1 your role and your interest in addressing community
2 issues as the Gold Commander, what factors were you
3 thinking about in terms of engagement with the community
4 and improving relations with the community at this time?

5 A. Well, so the first thing would be to -- in terms of
6 engagement, understanding what the issues were and then
7 dealing with these issues as they manifested themselves,
8 so an expectation that Chief Inspector Shepherd was
9 engaging with elected members and others, including the
10 Fife Migrant Forum, and any other forum that would reach
11 out to the various communities that would be impacted in
12 relation to this and, as I say, Safer Communities on
13 a more national basis doing exactly the same thing.

14 Q. And did you expect Nicola Shepherd to consider
15 a Community Impact Assessment as part of the strategy
16 for dealing with the community?

17 A. Yes, so between herself and Safer Communities more
18 broadly, a Community Impact Assessment.

19 Q. And in relation to the actions taken by Nicola Shepherd,
20 what level of engagement did you expect that she would
21 have with members of the community? Did you expect her
22 to reach out to these independent groups or ...?

23 A. Well, if she didn't then to delegate someone else to
24 reach out to them. So there would be community officers
25 that would be cognisant of who the elected members are

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1 and the various communities are, the various community
2 leaders were, so I would expect -- so she might herself
3 not be able to do that, but in terms of her -- she would
4 be able to delegate that to other people who had that
5 understanding, who were involved in that on a day-to-day
6 basis.

7 Q. So I think earlier today you talked about
8 Nicola Shepherd being a Bronze Commander in relation to
9 community issues and she would then coordinate that
10 matter and operationally appoint or delegate actions to
11 other officers?

12 A. That's it.

13 Q. Thank you. Can I ask you about staff welfare for
14 a moment. We have talked about Conrad Trickett. This
15 is item 8 on the agenda. We talked about
16 Conrad Trickett and we see there:

17 "Allocated to Conrad Trickett and Police Federation
18 Reps~..."

19 And the name PC Givan is given.

20 A. Yes.

21 Q. Was there an expectation that Police Federation reps
22 would be involved in taking care of staff welfare?

23 A. So they would support the staff -- the responsibility
24 for staff welfare is Police Scotland and PC Givan would
25 be there to represent the officers and make sure that

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1 Police Scotland were actually undertaking that function.

2 Q. And prior to Conrad Trickett's arrival at Kirkcaldy, who
3 was taking care of staff welfare up until then?

4 A. Well, I don't know. I don't know who that was. I mean,
5 that was part of why Conrad Trickett was asked to come
6 and engage and use his expertise in terms of that kind
7 of situation where we had a number of officers, looking
8 after their welfare. So up until that point that he
9 arrived it would be local supervisors, but that's the
10 point that from my perspective that when he engaged,
11 that's the point that we would be -- should be seriously
12 looking at all the various issues I have already spoken
13 about, including welfare.

14 Q. And we have heard that there wasn't anyone from
15 Police Scotland supervising the officers in the canteen
16 prior to Conrad Trickett arriving and taking on the role
17 of post-incident manager.

18 A. Yes.

19 Q. So were you aware that nobody was supervising?

20 A. Well, I think that's -- that was my concern when we
21 appointed Conrad Trickett was to make sure that --
22 because at that stage it felt like the officers were in
23 the canteen on their own and we just needed to, as
24 I said before, get a grip of that, so from a number of
25 different stances that I have already outlined,

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- 1 including their welfare, so I felt that was the best
2 option at that time.
- 3 Q. But in any event I think you have said Police Scotland
4 have an obligation to have regard to staff welfare?
- 5 A. Yes.
- 6 Q. And I think we have heard that SPF have some sort of
7 statutory remit to have regard to welfare of officers as
8 well.
- 9 A. Yes.
- 10 Q. All right, thank you. Can we move on to number 9,
11 "Resources", and we see there the names Boal and
12 Shepherd and the phrase, "Business continuity". Can
13 I ask you did you consider at this stage, in considering
14 business continuity, the issue of conflict or potential
15 conflict arising between officers who were maybe part of
16 the investigation or being involved in the investigation
17 being from Fife, and officers who had been at
18 Hayfield Road being Kirkcaldy/Fife police officers? Did
19 you consider that as part of your arrangements for
20 business continuity?
- 21 A. Sorry?
- 22 Q. Sorry, it's a long question. When you were thinking
23 about business continuity --
- 24 A. Yes.
- 25 Q. -- was one of the factors that you considered the issue

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1 of conflict or potential conflict because the officers
2 who were being -- had been involved in the events at
3 Hayfield Road were from Fife, they were Kirkcaldy
4 officers, and the question of whether officers being
5 brought in to help with the investigation were also from
6 Fife?

7 A. Well, potentially there is but you need to use the staff
8 that you've got available to you at that stage and so,
9 you know, we as a service were being investigated by the
10 PIRC, you know, so at that stage, as I have said on
11 a number of occasions, it's about stabilising everything
12 that we've got, it's about gathering whatever
13 information we can and then it is about handing over to
14 the PIRC to carry out the investigation.

15 So at that point in time the officers from Fife who
16 were there and available were the best people, I think,
17 to carry them, otherwise we would have had to have
18 officers attend from potentially E Division, C Division,
19 D Division, which would take some considerable time, so
20 it's a -- I know it's a fine balance, but it's having
21 confidence that where we were at that time we could be
22 objective enough, we could gather the information, we
23 could secure the information and productions and CCTV
24 with the sound knowledge that the PIRC would at some
25 stage take over and lead the investigation.

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1 Q. So there was never a point where the Gold Group said no
2 officers from Fife are to be involved?

3 A. No, not at all.

4 Q. And would that have been possible given the resources
5 issue?

6 A. Well, we could have got officers, as I said, from
7 D Division, Dundee and Perth; or E Division, Edinburgh
8 and the surrounding areas; or C Division, Central
9 Scotland, Stirling, Falkirk, but that would take some
10 time to draw the resources, to get them to attend in the
11 numbers that we would require to undertake that at that
12 time. So, you know, we could have considered that at
13 a later stage and if we were continuing the
14 investigation, you know, to be impartial then it would
15 have been better to have undertaken that. But one of
16 the things is that the MITs were involved so many of
17 them wouldn't be from Fife itself.

18 Q. So looking back now with the benefit of hindsight do you
19 think there would have been benefit in requiring
20 non-Fife officers to be involved with the investigation,
21 only non-Fife officers?

22 A. I'm not sure that that would be possible at that stage
23 to be honest. I mean we needed to carry -- you know,
24 we -- we needed to secure production, scene, CCTV,
25 you know, and that was always going to be carried out by

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1 local officers who were there on the ground. Then the
2 MIT becomes involved, so they would be independent.
3 You know, in their midst there might be one or two
4 officers from Fife, but the vast majority would be from
5 elsewhere, so -- and, you know, the consideration at the
6 end of the day was that the PIRC were going to take over
7 the enquiry so it would be them that would be
8 investigating certainly the more sensitive parts of the
9 enquiry.

10 Q. Can I ask you about potential conflict between
11 Police Scotland officers and PIRC officers or
12 investigators. Did you know that certain people from
13 PIRC had been former police officers?

14 A. Yes.

15 Q. Did that cause you any concern?

16 A. Well, you know, when PIRC was put together, which was at
17 the beginning of Police Scotland, then they drew from
18 police officers across -- retired police officers across
19 the country, so -- but they have been involved in quite
20 a few investigations and there was no concern whatsoever
21 in terms of how objective, how impartial they could be,
22 how they carried out their investigations, how they
23 reported on Police Scotland, and there were quite a few
24 investigations before this which will be available so
25 I didn't really have any concerns that they were

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1 police officers. At the end of the day you're looking
2 for someone who is a good investigator, is going to be
3 impartial, is going to carry out the investigation in
4 a thorough manner and understand what the issues are.

5 Q. And were you satisfied that the investigators who came
6 from PIRC on 3 May to deal with this incident were good
7 investigators who could be impartial and thorough?

8 A. Yes, well, I've got no reason to -- I mean if they come
9 to the Inquiry you will be able to ask them their
10 background and their experience, but some of them
11 I knew, they had investigative background. They would
12 have had training from the PIRC and -- but the most
13 important thing is for them to get on the ground and to
14 lead the enquiry.

15 Q. And I think in particular you said you knew
16 John McSporran, who we have heard was an investigator
17 for PIRC and I think you say you had previously line
18 managed him; is that correct?

19 A. That's right, yes. Billy Little, who no doubt we will
20 speak about later, I line managed him, and
21 Keith Harrower but I don't recollect line managing him.

22 Q. But you knew him?

23 A. But I knew him.

24 Q. Can I ask you about item 11 please, "Media
25 strategy/communications plan", this was obviously spoken

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1 to by Kate Finlay whose name we saw earlier.

2 A. Yes.

3 Q. Were you aware at that stage -- you obviously say -- in
4 the minutes it says:

5 "Update that circumstances of incident were in
6 public domain via social media including that an officer
7 had been stabbed."

8 Were you -- was it explained to you how that
9 information had found its way into the public domain?

10 A. No.

11 Q. Did you ever find out how that --

12 A. No, I don't think so.

13 Q. I mean, who could have shared that information with the
14 press at that time?

15 A. I don't know.

16 Q. You don't know. Before we leave these minutes I would
17 like to talk to you again about something to do with the
18 statements. We touched on this earlier. We spoke about
19 operational statements. Can I ask you to look at
20 paragraphs 164 and 165 of your Inquiry statement please.
21 You will see in the Inquiry statement what you have been
22 asked here:

23 "I have been asked who was in charge of ensuring the
24 officers completed their paperwork on their return, this
25 being their operational statements, their notebooks, use

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1 of force forms and any use of spray forms. The officers
2 themselves are responsible. Their supervisor is also
3 responsible for making sure these documents are being
4 completed.

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

13 I'm interested in this because we did hear from
14 witnesses who said they thought perhaps sergeants had
15 a responsibility to make sure that paperwork was
16 completed. Does that remain -- or did that remain the
17 position in 2015, even though this particular practice
18 about signing notebooks had fallen by the wayside?

19 A. Yes, I mean the officers themselves have
20 a responsibility to complete the documentation, but
21 their sergeants and their inspector should be making
22 sure that they're actually completing the paperwork.

23 Q. Does that include use of force forms and use of spray
24 forms?

25 A. It would, yes.

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- 1 Q. We have heard evidence that these forms should be
2 completed by the end of the officers' shifts; is that
3 correct?
- 4 A. Yes, that is.
- 5 Q. Unless there's particular reasons it can't be done?
- 6 A. Yes.
- 7 Q. And that if they can't be done for any particular
8 reason, it should be done as soon as possible?
- 9 A. That's right.
- 10 Q. Is that accurate?
- 11 A. That's accurate, yes.
- 12 Q. Is there a -- was there a way in 2015 that if officers
13 failed to complete any of the paperwork such as
14 notebooks, use of force forms or use of spray forms,
15 that Police Scotland could have requested that that be
16 done or completed?
- 17 A. Well, I would expect it to be done through their
18 supervisors.
- 19 Q. And when you say "done through their supervisors", what
20 would you expect the supervisor to do?
- 21 A. Ask them.
- 22 Q. And that would be the sergeant in charge?
- 23 A. That would be the sergeant and then if it was
24 appropriate, instruct them.
- 25 Q. And tell us what the difference is between asking and

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- 1 instructing?
- 2 A. So asking is what you are doing at this moment in time,
3 asking questions, but instructing is telling people to
4 do what it is that you want them to do.
- 5 Q. And if this sergeant in charge of the response team has
6 been engaged in the incident, who would the
7 responsibility fall to?
- 8 A. It would go up the command chain to an inspector.
- 9 Q. Would that be the PIO, the inspector involved, or would
10 it be someone else?
- 11 A. Well, if there's -- so I don't know the structure for
12 Fife that morning now but normally there would be police
13 constables on the street, there would be a sergeant in
14 charge of -- or several sergeants perhaps and then an
15 inspector sitting above that with responsibility for the
16 whole group. Now, I don't know if that's what it was in
17 Fife on that day, so I probably can't answer your
18 question as well as I might do, but it would -- if the
19 sergeant required to fill in the forms then it would
20 naturally go up the chain to the inspector.
- 21 Q. Right, and if it wasn't done by the inspector or the
22 forms still weren't completed, who would then hear about
23 it?
- 24 A. Well, so the SIO would want to see and understand these
25 forms and they would become productions at some stage in

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1 terms of the enquiry, so it would be -- you know, if the
2 SIO wanted to have these, it would be the SIO
3 instructing the officers to complete the various
4 documentation.

5 Q. And in terms of the circumstances in May 2015, on this
6 particular day, the 3rd, is there any reason why the SIO
7 could not have instructed officers to complete use of
8 force forms, if they had used force, or use of spray
9 forms, equally if officers had used sprays?

10 A. No, I don't think there's any reason.

11 Q. And if they had declined to complete those forms, use of
12 force or use of spray, despite an instruction from the
13 SIO, what would have then happened in consequence?

14 A. Well, so potentially it would be a disciplinary matter,
15 but it's back to what I have already said is, you know,
16 what do we want to achieve in terms of all of this? And
17 we want operational statements, we would want all of
18 this, but if they aren't supplied then it's back to how
19 you compel the officers to provide all of that detail
20 and at some stage the officers are going to provide the
21 detail that's required, so it's just -- it's one of
22 those balances that, you know, you could go down the
23 route of lawful order, disciplinary, but you then begin
24 to alienate the officers when actually what you want to
25 do is get a statement, and further statements at some

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1 later stage, that gives a real understanding of what
2 happened in the incident.

3 Q. We have heard these forms were never completed.

4 A. Right.

5 Q. But the officers did give operational statements on
6 4 June 2015. Can I ask whose responsibility would it be
7 more ensuring that these forms were ultimately completed
8 by the officers?

9 A. Well, so -- I mean it would be -- in terms of the local
10 supervisors, but I suppose the -- I don't know this, but
11 if the statements that were given contained the detail
12 of what would be in the use of force forms and the spray
13 forms, then presumably that supersedes~... But I don't
14 know, I don't know that level of detail, so~...

15 Q. Is it possible to say: well, I have given my operational
16 statement, it's got all the detail you need, so I'm not
17 going to complete these particular forms? Is that
18 a sufficient explanation?

19 A. Well, if all the detail is there in the statements that
20 they provided then it would be better, there's no
21 question, for them to have completed the forms, but the
22 argument is going to be the detail and if all the detail
23 that's required is in their operational statement, or
24 the statement they provided presumably to the PIRC at
25 some stage, then that'll probably suffice.

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1 Q. So is it possible that a decision could be taken at some
2 stage to not pursue any disciplinary proceedings in
3 relation to the failures to complete use of force forms
4 or use of spray forms because the statements are
5 sufficiently detailed?

6 A. Yes, that's correct.

7 Q. And who would take that decision, if that was a decision
8 that was taken?

9 A. Well, so it would -- so I don't think that anybody went
10 down the route of discipline at this time. As I said
11 before, you know, once you go down the route of
12 discipline you're potentially alienating people that you
13 want to actually get a full statement from about all the
14 circumstances, so it will be a real balance of what you
15 do.

16 Q. And if someone was looking at this situation and
17 deciding whether to -- say after 4 June, when statements
18 were available, someone is looking at it and saying: we
19 have still not got these use of force forms, use of
20 spray forms, we have to decide what we're going to do
21 about that, who would be taking that decision, either
22 disciplinary or we're happy where we are?

23 A. Well, the ultimate decision, if it was ever reported to
24 him, would be to the Deputy Chief Constable Designate,
25 which would be Neil Richardson I think at that stage, so

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- 1 he would make an ultimate decision about discipline.
- 2 But that would have to be reported up through the chain
- 3 of command to him that, you know, there were omissions
- 4 in what was supplied.
- 5 Q. And who would be monitoring whether these forms were
- 6 completed or not?
- 7 A. Well, I mean in terms -- so, you know, once all of this
- 8 is handed over to the PIRC then I would expect the PIRC
- 9 would be looking for these forms and the statements, so
- 10 I assume that the PIRC would report back to the
- 11 organisation that these forms weren't submitted, if in
- 12 fact that's what they believed was pertinent, so I don't
- 13 know the detail of that or what they believed.
- 14 Q. We have not heard from PIRC yet about the circumstances
- 15 to do with that, but after 4 June they had the
- 16 statements from the officers, they took statements, so
- 17 it would be at some point after that that they could
- 18 consider whether they wanted the forms as well?
- 19 A. Yes, and it would be in the round of their investigation
- 20 in terms of what was expected of the police officers and
- 21 the investigations, so ...
- 22 Q. In relation to the forms in particular, would there have
- 23 been any role for Professional Standards?
- 24 A. Yes, so --
- 25 Q. And the failure to complete those forms, is that --

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- 1 A. Well, potentially there would be, so --
- 2 Q. How would that arise?
- 3 A. Well, I assume the PIRC would report back to the force
4 and then it would go through Professional Standards and
5 then it would go to the -- ultimately potentially go to
6 the deputy.
- 7 Q. And would there be any role -- anyone with a role in
8 Police Scotland who would have responsibility for
9 monitoring the completion of these forms, regardless of
10 PIRC?
- 11 A. Well, it's a fine balance in terms of allowing the PIRC
12 to get on with their investigation and Police Scotland
13 not becoming involved in the various aspects of that, so
14 I think -- you know, it's allowing the PIRC to get on
15 with their investigation and then report back in terms
16 of whatever omissions there were and in terms of how the
17 police officers went about their duties.
- 18 Q. Did this come to the attention of the Gold Group at any
19 time, the fact that these forms hadn't been completed?
- 20 A. I can't remember now to be honest, but --
- 21 Q. Do you remember any discussion about the forms?
- 22 A. No, I don't remember, I don't remember any discussion
23 about the forms whatsoever.
- 24 Q. And we have -- the Inquiry haven't seen any forms, it
25 would appear they were never completed.

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1 A. Okay.

2 Q. Were there any obligations to monitor these things and
3 have these forms audited or completed as part of
4 monitoring for Police Scotland?

5 A. I don't think -- I mean, you know, once we come to have
6 the full statements and the detail then presumably it
7 was felt that they were superfluous in terms of,
8 you know, if you've got the detail then you just move on
9 from that.

10 Q. Right. I'm interested in the impact, if any, of the
11 privilege against self-incrimination. Now, we have
12 heard that some of the officers understood that the
13 legal advice was not to give operational statements,
14 concern -- I think we mentioned earlier this morning --
15 that their status might change from witness to suspect.

16 Was there any discussion at the Gold Group meetings,
17 or as part of your role, about this privilege that was
18 being relied on not to give operational statements?

19 A. No, not at all.

20 Q. Was there any discussion that you remember about
21 involving Professional Standards or Craig Blackhall in
22 relation to looking at these matters?

23 A. Well, so Professional Standards were briefed and were
24 involved from the beginning, but, you know, what
25 specific matters that they were briefed on, I don't

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1 know. They were obviously informed about the incident
2 and then -- and so they would have an interest as it
3 unfolded and -- yes.

4 Q. We have heard that Professional Standards may have
5 a dual role in relation to wanting awareness about
6 possible criminal proceedings against police officers,
7 but also being interested in possible misconduct
8 proceedings. Were you aware of any discussions going on
9 with Professional Standards about that dual role, or how
10 matters would be resolved?

11 A. No, no, not at that time, no.

12 Q. At any time at all did you --

13 A. No, I can't remember being involved in any discussion
14 with Professional Standards about that.

15 Q. Would you have expected Professional Standards to
16 consider the possibility of disciplinary proceedings at
17 some stage?

18 A. Well, it depends on what comes back from the
19 investigation, so I don't know the level of detail that
20 Professional Standards had at that stage.

21 Q. Once officers have -- leaving aside the forms, the use
22 of force forms for the moment, once the officers had
23 given their operational statements on 4 June, or they
24 had given statements to PIRC, I should say, on 4 June --
25 they have not completed the use of force forms but they

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1 have given their detailed statements on 4 June, who
2 would be responsible -- we have heard that they have to
3 justify using force and each officer has to do that.

4 A. Yes.

5 Q. Who is responsible for considering their statement and
6 saying that is a justification for the use of force or
7 it's not a justification?

8 A. So the statements were given to PIRC, I assume?

9 Q. Yes, they were.

10 A. So, you know, we -- Police Scotland would have no sight
11 of the operational statements, or the statements anyway
12 at that stage and we wouldn't expect to have, so it
13 would be a decision for the PIRC in terms of if they
14 noted any omissions in terms of what the police or the
15 officers had undertaken at that time.

16 Q. So even if Police Scotland had wanted to take that
17 forward, you didn't have access to the statements --

18 A. No.

19 Q. -- so you couldn't then consider whether it was
20 a justified use of force or not, that wouldn't have been
21 possible?

22 A. Well, you know, we need to -- PIRC need to be
23 independent, so Police Scotland shouldn't, ought not be
24 involved in steering, directing, wanting to see
25 statements or whatever. It's allowing the PIRC to get

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1 ultimately PSD, but I'm not sure at this point to be
2 honest.

3 Q. Right. You said before the break:

4 "Answer: It's allowing the PIRC to get on with their
5 investigation and then to report in terms of what's
6 happened, what's happened in terms of the investigation,
7 and then to report back in terms of that. They would
8 report to the Procurator Fiscal at one level and then
9 back to the force."

10 So I said to you earlier that statements were given
11 to PIRC by the officers on 4 June 2015 and we heard
12 Police Scotland never saw those statements, so you would
13 never have had the information that would have allowed
14 Police Scotland to determine whether the use of force
15 was justified. Do you agree with that?

16 A. Yes.

17 Q. Now, we -- we have not heard from PIRC yet, but
18 I understand that the PIRC did report their
19 investigation to the Crown Office and Procurator Fiscal
20 Service but that the PIRC report was never sent to
21 Police Scotland.

22 A. Okay.

23 Q. Did you know that?

24 A. No.

25 Q. Because what seems to be the case here is that although

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1 there was a report to the Fiscal, there was never
2 a report sent to Police Scotland, Police Scotland would
3 never have had access to that report with the
4 conclusions of their investigation. So from
5 a Police Scotland perspective there's no statements ever
6 been seen by Police Scotland, no use of force forms, no
7 use of spray forms, so how would Police Scotland satisfy
8 themselves in that particular situation that the
9 officers had justified every use of force, or use of
10 spray?

11 A. I'm not sure in these circumstances.

12 Q. Can you think of any other way that Police Scotland
13 could satisfy themselves about use of force without
14 those documents?

15 A. No. I mean Police Scotland would then have to carry out
16 their own investigation in terms of -- you know, and be
17 potentially undermining the PIRC's investigation. So as
18 I said already it's a fine balance, but it's allowing
19 the PIRC to get on with their investigation without
20 the police seeming to interfere into that investigation,
21 but to support the PIRC in everything, but if we had got
22 no -- if we got no report back then we don't know what's
23 in the statements, it's really difficult to take that
24 forward.

25 Q. So as things stand with PIRC reporting to the Fiscal but

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1 not responding to -- or reporting to Police Scotland,
2 does that make it very difficult for Police Scotland to
3 assess whether the use of force or use of sprays were
4 justified?

5 A. It absolutely does.

6 Q. And is there any mechanism whereby Police Scotland could
7 have said: we will carry on some sort of parallel
8 investigation into the use of force?

9 A. I don't think there is. I mean, I would have expected
10 that if the Crown had concerns in relation to the use of
11 force or how that had come about, then that would have
12 been reported back to Police Scotland to carry out an
13 investigation into that, so ...

14 Q. So you would have perhaps expected communication from
15 the Crown Office to Police Scotland if there were
16 concerns?

17 A. Yes.

18 Q. And had there been communication from Crown Office to
19 Police Scotland about concerns being raised, is that
20 something that Police Scotland could then have
21 investigated themselves?

22 A. I would expect that they would have been instructed by
23 the Crown Office to carry out an investigation.

24 Q. Thank you. Now, in relation to specifically use of
25 spray forms we have heard some evidence about these,

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1 that it was a legal requirement, a statutory requirement
2 that these forms be completed by officers who had
3 discharged sprays. Now, we have heard that there were
4 three officers who discharged sprays, CS or PAVA, on
5 3 May 2015 and in relation to those three officers, as
6 I understand it, no forms were completed. So again with
7 regard to how the Police Service can monitor the failure
8 to complete those forms, which is a legal requirement,
9 what was being done in Police Scotland in relation to
10 those specific forms, the use of spray forms?

11 A. I don't know is the answer to that, but I would have
12 expected that Police Scotland would have awaited the
13 outcome of the investigation and if that had been
14 highlighted as an issue, because presumably if it's
15 a statutory requirement -- if it's a statutory
16 requirement, then it would require a report to
17 Crown Office, but presumably Crown Office didn't raise
18 any concerns, or it wasn't in the public interest, but
19 that would be a question for them in terms of the
20 completion of the forms.

21 Q. Now, we have heard evidence that in terms of the
22 procedure that was in place in 2015 the use of spray
23 forms ought to have been completed within 24 hours of
24 the discharge of the spray and that that form would have
25 then been sent to PIRC. Within that period, that

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1 timescale, you are Gold Commander.

2 A. Yes.

3 Q. Did anyone from PIRC come to you and say: we have

4 noticed that these use of spray forms haven't been

5 completed within that 24-hour period --

6 A. No.

7 Q. -- there's a statutory requirement that they be

8 completed, we want you to go and get these forms

9 completed from the officers?

10 A. No.

11 Q. At any time when you were Gold Commander did the Crown

12 come to you and say: officers haven't completed these

13 forms --

14 A. No.

15 Q. -- would you please make arrangements to get them?

16 A. No.

17 Q. At any point did you consider going -- delegating to

18 someone to go to the officers and say: we instruct that

19 you complete these forms, the use of spray?

20 A. No. So as I said earlier, my role is strategic and,

21 you know, my expectation is that all of these tasks will

22 be carried out, if they can be carried out, and -- so

23 I don't recollect an issue being raised with me in terms

24 of the non-completion of the forms and I don't see that

25 as being my role to actually proactively go and

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1 understand why they aren't, or to instruct, or whatever,
2 so ...

3 Q. Whose role would it have been to come -- or to speak
4 about the use of spray forms to try and get them?

5 A. Well, so it would be -- you know, if it was a concern
6 and -- you know, it ought to have been escalated through
7 the chain of command to understand and to instruct the
8 completion of the forms.

9 Q. And that chain of command would be the sergeant, the
10 inspector and moving up the normal chain of command?

11 A. That's correct.

12 Q. As Gold Commander could you have influenced that or
13 assisted with endeavours to obtain these use of spray
14 forms?

15 A. Well, short of going and ordering people to do that,
16 you know, you've got an expectation -- a reasonable
17 expectation that people will undertake what they -- what
18 their responsibilities are without me having to check.
19 I can't check on every single aspect of this, I mean,
20 you know, so I -- and so -- I could if it was brought to
21 my attention and -- but back to what I said already,
22 what you want to do is try to ask people to complete
23 forms and statements and, you know, whatever else
24 without at that stage alienating them, until the PIRC
25 have the opportunity to come and take up the

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- 1 investigation and lead on that investigation.
- 2 Q. If Pat Campbell had come to you and said: I'm getting no
3 statements, no initial accounts, no basic facts, I've
4 got no use of force forms, I've got no use of spray
5 forms, I would like something to be done at the very
6 least about the use of spray forms, is that something
7 the Gold Group could have assisted with?
- 8 A. Well, it could have been discussed at the Gold Group but
9 then, you know, we would delegate it back down to
10 someone to actually tell the officers to submit the
11 forms.
- 12 Q. Did you know at the first Gold Group meeting that sprays
13 had been discharged?
- 14 A. I think we -- yes, I would think so, yes.
- 15 Q. Thank you. Could Professional Standards have assisted
16 in any way in gaining the use of spray forms?
- 17 A. Well, you know, it's back to what I said at the very
18 beginning, it's how do you compel officers who are
19 refusing to give statements, as I understood it, and
20 presumably they don't want to complete the use of force
21 forms or the spray forms because that will give detail
22 of what it is that happened at that time, so, you know,
23 we could have Professional Standards involved, we could
24 have lawful orders from their own line management, they
25 could have me giving an instruction, but at the end of

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1 the day, you know, how do you compel an individual who
2 is concerned about what's happening? I mean they're not
3 any different to any other member of the public in terms
4 of all of that, so it's, you know, how do you compel
5 them to complete the forms or to give the statements?
6 I'm just not quite sure about that.

7 Q. Right. And if the officers are told they are witnesses
8 and not suspects, does that make any difference to what
9 you have just said about not wanting to compel them?

10 A. So I don't think that I'm saying we don't want --
11 ultimately we would want them to complete their
12 operational statements and the various forms, but if it
13 they're that concerned about -- and they're refusing to
14 do that, then what I'm saying is, you know, it's really
15 difficult to know how you're going to compel them to do
16 that. So you could go down the disciplinary route and
17 they still refuse and then we embark on a route where we
18 alienate the officers when actually what we want them to
19 do is provide an operational statement that gives the
20 detail of what's actually happened and give us the best
21 possible opportunity of understanding what's happened at
22 the incident.

23 Q. Sorry, I may have been mistaken, it may not be 24 hours,
24 it may be 48 hours. I don't suppose that will make any
25 difference whatsoever.

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- 1 A. No.
- 2 Q. If the officers are told, "You are witnesses not
3 suspects", and if at a later stage, after statements
4 have been given, they're told there's not going to be
5 a prosecution, does that make any difference to
6 the police -- could they go back and say, "Can we have
7 these forms?" Or, "Can we get completed forms?" Or
8 would that be seen as well as this is a matter for PIRC
9 and we should leave all of that to PIRC?
- 10 A. I think that's part of the PIRC investigation, led by
11 the Crown, so presumably, you know, Police Scotland
12 could go back, but if we didn't have the statements and
13 didn't have an understanding of exactly what that was,
14 the report was directly to Crown, so it's difficult to
15 understand, you know, how we could -- Police Scotland
16 could intervene into that and then presumably carry out
17 a further investigation not knowing the details of the
18 previous investigation, you know, so to some degree we
19 were beyond that point, I would think.
- 20 Q. Had you ever in your career come across a situation
21 where officers declined to provide operational
22 statements or to complete forms?
- 23 A. No, I don't think so.
- 24 Q. Never?
- 25 A. No, I can't think of a situation where they have, but of

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1 course there might be, but in most instances where,
2 you know, incidences where there's police shootings,
3 you know, whatever, my experience has been that the
4 officers have given operational statements on a later
5 stage, either given statements to -- well, as far as
6 police shootings are concerned, you know, that was
7 Strathclyde Police when I was part of Strathclyde Police
8 so that would have been initially an internal
9 Strathclyde Police and then handed to an external force,
10 so two police shootings and the individuals fortunately
11 didn't die but they were investigated by Lothian and
12 Borders, one of them, and Grampian the other, so ...

13 Q. Had you ever been involved in disciplinary proceedings
14 being taken against officers because of failures to
15 complete paperwork?

16 A. Well, so I was the Deputy Chief Constable at
17 Strathclyde Police so at some stage -- but not --
18 I don't recollect in terms of use of force forms and the
19 spray forms, but in terms of other paperwork, not
20 submitting cases to the Fiscal, whatever that had
21 happened to be, then yes disciplinary cases as far as
22 that was concerned.

23 Q. In those cases where you were on the one hand no doubt
24 keen to get the officers to complete the paperwork, as
25 you were here, keen to get the officers to complete the

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1 statements, but the officer had not done so, at what
2 point was the decision taken to pursue disciplinary
3 proceedings for that?

4 A. Well, so in terms of failing to submit cases then it
5 would be on the statutory limit before there was an
6 understanding that that had happened, so it would be
7 a clear case in terms of discipline.

8 Q. Sorry, can you explain that in a little bit more detail?

9 A. Well, so if you -- I don't know, if you arrest someone
10 for, I don't know, going through a set of traffic lights
11 or whatever there's a -- there would be
12 a statutory limit in terms of the prosecution, so
13 officers, having stopped someone, charged them with
14 failing to stop at a red traffic light and then failing
15 to submit the case in the time limit.

16 Q. And would the disciplinary procedures be instigated
17 after say six months after the statutory time limit had
18 expired?

19 A. Yes. Well, in most cases, so it would depend -- it
20 would depend on the circumstances, but mostly that's how
21 it would come to light, that the case hadn't been
22 submitted.

23 Q. And so in relation to say a use of spray form where
24 there's a statutory requirement to complete it and the
25 period of time which is given to complete it has

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1 elapsed, why would there be no disciplinary proceedings
2 instigated after that?

3 A. Yes, well, back to what I said before, this is a fine
4 balance of the PIRC being allowed to get on with their
5 investigation and Police Scotland carrying out an
6 investigation, so it would potentially mean that we
7 would -- Police Scotland would be carrying out an
8 investigation and the PIRC would be carrying out an
9 investigation at exactly the same time and, you know,
10 the ramifications for that -- or the implications for
11 that, you know, are that there would be no public
12 confidence in what the police were doing. So it needs
13 to be separated, the PIRC need to be allowed to carry on
14 with their investigation, they need to be able to free
15 to take whatever statements and, you know, carry out
16 whatever actions they want to carry out and at some
17 later stage, as I said previously, if there was a report
18 back from either the PIRC or the Crown Office in
19 relation to the evidence that had been gathered, then
20 presumably if it was deemed to be in the public interest
21 then Police Scotland would have carried out further
22 enquiries in relation to the disciplinary aspects of it.

23 Q. So if PIRC hadn't existed in May 2015, could
24 Police Scotland have pursued disciplinary proceedings at
25 least in relation to the use of -- failure to complete

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1 the use of spray forms shortly after that (inaudible -
2 overspeaking) --

3 A. Well, if there was no other investigation then yes, of
4 course. So there will be instances where the spray has
5 been deployed and then there would be an expectation
6 from the force that the officer will complete that.
7 Where there isn't an incident like this though, so~...

8 Q. So if PIRC weren't involved in the incident,
9 Police Scotland would have had freedom to consider
10 disciplinary proceedings if an officer fails to complete
11 a use of spray form?

12 A. Yes, absolutely.

13 Q. Right. And have you come across any other situations
14 where the existence of PIRC and the existence of a PIRC
15 investigation has maybe inhibited or resulted in
16 Police Scotland not considering disciplinary
17 proceedings?

18 A. I haven't come across that because normally, you know,
19 we would get a PIRC investigation in, we would get
20 a report coming back from PIRC -- well, it depends on
21 the circumstances obviously but we would get a report
22 coming back from the PIRC which would outline what their
23 concerns were and then considerations could at that
24 point be given to disciplinary matters.

25 Q. So in other -- in relation to other incidents you would

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1 hear back from the PIRC in relation to their report?

2 A. Yes.

3 Q. And would that report then be considered and acted upon
4 in relation to their findings?

5 A. Yes, absolutely.

6 Q. But it wasn't done here?

7 A. Well, I didn't have -- you know, you have told me that;
8 at this moment of time I didn't know or understand where
9 exactly the reports went to.

10 Q. All right, I'm sure we will hear more about this in the
11 future.

12 A. No doubt.

13 Q. Thank you. Can I move on then please and deal with
14 something that happened later in the day. We have heard
15 evidence from a DS Dursley which related to a telephone
16 call that he made to Zahid Saeed. You will remember
17 looking at the minutes it was a priority action to get
18 a statement from Zahid Saeed and we heard from him that
19 he had a telephone conversation with Mr Saeed and at
20 that time Mr Saeed was at his family home and DS Dursley
21 sent officers to go and pick him up.

22 When he spoke to Mr Saeed he explained that
23 the police were concerned for his friend -- that's
24 Mr Bayoh -- this was around about 11 o'clock, or shortly
25 after 11 o'clock:

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1 "... concerned for his friend and the police
2 required to speak to him."

3 And I wonder if you have any concerns about
4 an officer telling Mr Saeed, who is a good friend of
5 Mr Bayoh, that they were concerned for Mr Bayoh and
6 wanted to speak to him.

7 A. Well, it's back to I think what we said already,
8 you know, it's a case of they already know what the
9 outcome is and they should have been upfront and told
10 him exactly why they wanted to speak to him.

11 Q. And what would the benefits to the investigation have
12 been if it they had been honest about the fact that
13 Mr Bayoh had died at that point?

14 A. Well, in terms of the family, the friend -- family and
15 friends, you know, the police would be seen to be
16 upfront and then they would be able to take a statement
17 with him knowing what the outcome was, or what had
18 happened at the incident, so -- or the police
19 involvement at the incident, I should say.

20 Q. Do you remember when you were at the first Gold Group
21 meeting, which started at 11.30, if you had any
22 understanding as to why the police wanted to talk to
23 Mr Zahid Saeed?

24 A. No, I can't, but it would be part of the investigation.
25 I don't know exactly.

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1 Q. Do you have any recollection about the family home of
2 Mr Saeed and why that was later identified as one of the
3 loci?

4 A. I don't.

5 Q. We noted it wasn't noted as a loci at the first meeting.

6 A. No.

7 Q. I'm wondering when you became aware that it had been
8 subsequently identified?

9 A. I don't -- I assume that -- well, I don't know whether
10 it's updated in the second Gold Group, I can't recollect
11 now, but --

12 Q. We will come on to that.

13 Were you aware at the time of the first Gold Group
14 meeting that officers had been sent out to go and
15 collect Mr Saeed?

16 A. No, no I don't think so.

17 Q. Can I ask you about the properties and the loci.

18 I think the next Gold Group meeting was at 14.40.

19 A. Yes.

20 Q. And I would like to look at those minutes. PS07268.

21 The second Gold Group meeting is at 14.40 on 3 May 2015,
22 and again you were chairing the Gold Group meeting.

23 I think we heard at this time that PIRC had arrived by
24 then, but let's look first of all at item 3 on the
25 agenda and we see there that:

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1 "Loci strategy ..."

2 This relates to item 3, "Investigative process":

3 "... (5 locations being secured~...)"

4 And it was the same locations as previously noted in
5 the minutes but this time it included the home address
6 of Mohammed Zahid Saeed. Do you remember when you
7 became aware that the home address, or the family home
8 address of Mr Saeed had been identified as an additional
9 locus?

10 A. No, but presumably it's at that meeting but ...

11 Q. Right. When this item on the agenda was mentioned, was
12 there any discussion about issues that had taken place
13 at that address, or that home?

14 A. I can't recollect now.

15 Q. You don't remember anything?

16 A. No.

17 Q. We have heard evidence from various witnesses, and
18 I think you touched on it this morning, that the police
19 will either seek the consent of the occupants to seize
20 the property, or they will seek a warrant. Is there any
21 other legal basis for a police officer or officers to
22 seize a house?

23 A. There may well be, but I can't recollect now.

24 Q. Do you remember the basis on which police officers could
25 require a person to provide their name, address, date of

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- 1 birth, place of birth, nationality?
- 2 A. Potentially, but yes no doubt -- I can't specifically
3 remember, but it rings a bell.
- 4 Q. I appreciate it's a while since you retired.
5 Do you remember how -- if police are seeking
6 consent, that that would be recorded by the officers
7 that they have obtained consent to seize a house, enter
8 a house, search a house even?
- 9 A. Well, it would just be them engaging with the individual
10 and seeking that permission. That would be it. They
11 might record it at a later stage or whatever.
- 12 Q. We heard evidence profile, on Day 38 of the Inquiry
13 in February this year, from a DC Finch who said he would
14 have it noted in his notebook and get the occupant to
15 sign it. Is that -- would that be good practice as far
16 as you remember?
- 17 A. Yes, yes, that's -- no, that's good practice.
- 18 Q. He gave evidence that he would explain to the witness
19 that they were under no -- occupant, I should say --
20 they were under no obligation to allow officers to
21 seize, enter, move around the property. Is that
22 something that you would consider good practice?
- 23 A. Yes.
- 24 Q. Is it fair to say that if people consent they can
25 withdraw that consent at any time?

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- 1 A. Yes.
- 2 Q. Have you heard of officers having authority, a legal
3 basis for seizing a property that isn't a warrant, that
4 isn't consent but is something to do with SIO
5 instruction? Is that a basis for seizing, entering and
6 securing a property and maybe searching a property, if
7 the SIO gives you an instruction to do that; is that
8 good enough?
- 9 A. I would -- no, I don't think so. So under normal
10 circumstances you would be looking for either a warrant
11 or -- yes, a warrant, if the people were refusing to
12 allow you access.
- 13 Q. So if you go to a house and people refuse, do not
14 provide consent, is it then open to the police to go and
15 seek a warrant?
- 16 A. Well, they would have to justify it, but they would
17 apply to the Procurator Fiscal and then to the court and
18 their warrant would either be agreed or denied.
- 19 Q. And if the police can't justify that warrant, they make
20 an application, they can't persuade a Sheriff or the
21 Fiscal will refuse to put it before a Sheriff and the
22 occupants refuse to consent, what do the police do in
23 that situation?
- 24 A. Well, they would need to carry out the investigation and
25 get enough justification for carrying out such a search

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- 1 and then go and reapply.
- 2 Q. So there's nothing to stop police reapplying at a later
3 stage --
- 4 A. No, not at all.
- 5 Q. -- in light of new information that's maybe come to
6 light?
- 7 A. No, not at all.
- 8 Q. Is there, or was there in 2015, a common law power to
9 seize properties that you're aware of?
- 10 A. No, I can't recollect.
- 11 Q. Right.
- 12 A. Do you mean inside property?
- 13 Q. It was -- one of the witnesses referred to it as
14 a common law power to seize the property, so not
15 a warrant, not consent, but some other type of common
16 law power?
- 17 A. I can't -- no, I can't recollect that.
- 18 Q. We also heard from other witnesses that there was
19 emergency powers, for example if somebody was running
20 off with drugs, that they could enter into a property
21 essentially to chase the perpetrator?
- 22 A. Yes.
- 23 Q. Was that a power that was available?
- 24 A. Yes. I can't tell you the statute or -- but ...
- 25 Q. No, no, I won't ask for that. So there could have been

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- 1 emergency situations which permitted --
- 2 A. Yes.
- 3 Q. -- the police to enter a property?
- 4 A. Yes.
- 5 Q. When an officer attends a property and it's to be seized
6 or secured in some way, what instructions would you
7 expect them to be sent with? Would they just be sent
8 with an instruction, "go and seize that property", or
9 would the officer expect to be given information about
10 whether there was a warrant, whether they were to secure
11 consent, that type of thing?
- 12 A. Yes, I would think so and also what was to be seized.
- 13 Q. What about information about the circumstances, you know
14 why the property had been identified, why it was being
15 seized, why they were looking to enter the property,
16 search the property?
- 17 A. Yes, that would be good practice, yes.
- 18 Q. Would you expect officers to be given that information?
- 19 A. I would, yes.
- 20 Q. Would you expect officers to be given no information and
21 just simply told to go and seize a property?
- 22 A. No.
- 23 Q. Why not?
- 24 A. Well, so they have to make decisions themselves in terms
25 of what it is that they're carrying out, so having the

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1 best possible information -- because if they don't get
2 given any information, they don't know why they're
3 seizing the property, they don't know what they're
4 actually looking for, they don't know who they're
5 looking for, they don't know why they're there -- you
6 know, they need to know all these things.

7 Now, of course if it's an emergency situation and
8 it's somebody saying "urgently seize that property", for
9 whatever reason, then of course that's a different
10 matter, but otherwise it would be a --

11 Q. What sort of situation would constitute an emergency?
12 Could you help the Chair understand that; can you give
13 us an example?

14 A. Someone is in a house with a firearm, is discharging it,
15 or whatever, or likely to discharge it, then -- so that
16 would be an emergency situation, but there would be
17 other emergency situations, but -- so it would be all on
18 its own merits, but ...

19 Q. You will see in the minutes, at item 3, that DCI Houston
20 was identified as a crime scene coordinator. Now, I'm
21 interested in that role. Is that different from a crime
22 scene manager?

23 A. Yes.

24 Q. Can you explain the difference?

25 A. So there would be a crime scene manager for each

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- 1 location and then the coordinator would coordinate all
2 of the managers.
- 3 Q. So there's five loci identified?
- 4 A. Yes.
- 5 Q. DCI Stuart Houston would be the coordinator in relation
6 to all five?
- 7 A. Yes.
- 8 Q. But each one individually would have a separate
9 manager --
- 10 A. Should have, yes.
- 11 Q. -- crime scene manager. And was that something that was
12 discussed in any detail?
- 13 A. No.
- 14 Q. Were you aware of who the crime scene managers would be?
- 15 A. No.
- 16 Q. Would you -- what would you have expected DCI Houston to
17 be doing in that role?
- 18 A. So just making sure that each location was secured and
19 then in terms of crime scene protocols, that they
20 would -- so if it was about forensics or if it was about
21 seizure of property, or -- so coordinating all the
22 resources to make sure they get the best evidential
23 return from all five, depending on what it is they're
24 looking for from each.
- 25 Q. And depending on the circumstances there might be

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1 different approaches taken in relation to each of the
2 five loci?

3 A. Yes.

4 Q. Now, in terms of securing authority, or making sure the
5 right authority was in place, obtaining a warrant or
6 saying: this is going to be on the basis of consent, and
7 sharing information about the circumstances as to why
8 they are interested in the property, would it be the
9 crime scene coordinator's role to -- to use a word that
10 we have heard -- cascade that information down, or would
11 it be the individual crime scene manager's role to share
12 that information with the officers who are going to be
13 involved operationally in the work?

14 A. So -- well, I don't know exactly what's happened here,
15 but it could be either one, so you would expect the
16 crime scene manager for each property to know and
17 understand exactly what was required and to cascade that
18 to the officers that were deployed to that location.
19 But of course you could have -- and I don't know whether
20 he did or not, but DCI Houston, he could give a briefing
21 to all the people that were involved, so I don't know,
22 that would be a question for himself about exactly how
23 that came about.

24 Q. Right. So in terms of authority -- securing authority
25 for these loci to be secured, seized, entered, searched,

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- 1 we've got the SIO identifying the loci --
- 2 A. Yes.
- 3 Q. -- and appointing a crime scene coordinator, who in this
- 4 case was DCI Houston, and then five individual -- or
- 5 a number of individual crime scene managers in relation
- 6 to these properties or loci. Who would be
- 7 responsible -- whose job would it be to make sure that
- 8 the necessary consent or warrant was in place to secure,
- 9 enter, search these properties?
- 10 A. So the officers that attended to obtain either the
- 11 consent or otherwise. If they didn't get consent then
- 12 to feed that back up the chain and to look for authority
- 13 to enter and search.
- 14 Q. So in terms of giving an explanation, that would be
- 15 either the crime scene coordinator or the crime scene
- 16 manager, would it?
- 17 A. Yes.
- 18 Q. And then the individual officers would then have to go
- 19 and determine if they could rely on consent --
- 20 A. Yes.
- 21 Q. -- or they need to go and get a warrant?
- 22 A. Yes, that's right.
- 23 Q. Is that correct?
- 24 A. Yes, that's correct.
- 25 Q. So it could be the crime scene coordinator sharing

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1 information, or it could be the individual manager?

2 A. Yes.

3 Q. But in terms of making sure if you can't get consent you
4 need to get a warrant, that would be the officers who
5 are at the door of the house speaking to the occupier?

6 A. Yes.

7 Q. Right.

8 Who would be responsible in terms of sharing
9 information about -- we will come on to this, but
10 a number of occupiers might have said, "Well, how long
11 do you need the house for?" Who would be responsible
12 for sharing information about that? Would it be the
13 crime scene coordinator, or the crime scene manager, or
14 would that be something that you would expect individual
15 officers on the ground to respond to?

16 A. Well, so the individual officers on the ground, in
17 consultation I assume with the crime -- yes, crime scene
18 manager, would know and understand how long it was
19 likely to take to complete the process that they wanted
20 to undertake, so between them they would be able to
21 inform the occupant of roughly -- you know, so some of
22 these things will take much longer because they come
23 across, you know, whatever it is and then that has to be
24 dealt with, so that might extend the time that they are
25 within a property.

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1 Q. So if an occupier says to a police officer, "How long is
2 this going to take? How long do I have to be out of the
3 house?" Would you expect that officer to then contact
4 the office and speak to the crime scene manager or the
5 crime scene coordinator and discuss it with them; what
6 would you expect that officer to do?

7 A. Well, I think that officer would have -- would know
8 roughly how long it's going to be, is it going to be
9 four hours, or is it going to be a day, or is it going
10 to be a couple of days, so as I said before you couldn't
11 be accurate, so you couldn't say, "It's going to be one
12 hour 30 minutes" or whatever, but you might be able to
13 say, "Well, it will be the morning" or "It will be the
14 full day", or "We might need to hold the property for
15 a couple of days".

16 Q. And who would have provided the officer with that type
17 of information?

18 A. Well, the officers themselves that go into the property,
19 knowing what it is that they're looking for, should be
20 in a position to understand how long it's likely to
21 take.

22 Q. We have heard that at this stage anyway investigations
23 were at an early stage and what happens if this
24 investigation is at an early stage and the police are
25 attempting to secure addresses but they don't really

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1 know what's required at that stage? What information
2 could be given to occupiers in that situation?

3 A. Well, they would have some indication of what they're
4 looking for, as I said, and it would be based on that
5 initial information. But, as I said, it could be
6 extended so, you know, depending on what they come
7 across, depending on what they find, depending on what
8 they're looking for, then they might have to go back and
9 say, "We need the house for another two days", or
10 three days or whatever. But it would be dictated by
11 what it is they came across and from their own expertise
12 and knowledge, and presumably most of them will have
13 undertaken that kind of seizure and search previously.

14 Q. You think the individual officers would have had some
15 indication of what they were looking for even at that
16 stage?

17 A. Yes, I mean they must have been -- you would expect to
18 have some justification for these locations being
19 identified and if it that's the case then, you know,
20 what is it that these -- I don't -- you know, so
21 I suppose if you didn't know an awful lot you could send
22 someone along and seize the property and then garner
23 some information at a later stage, but that -- you know,
24 there must have been a reason for identifying the
25 properties in the first place so there would be some

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1 reason and some indication of what was required at the
2 beginning. Of course that might extend as either the
3 forensic search or search of the property ensues, but at
4 the beginning they must have some notion of roughly how
5 long it would take.

6 Q. And was the justification for each of those addresses
7 brought to the attention of the Gold Group meetings?
8 Obviously Hayfield Road and Victoria Hospital it is
9 quite clear, but what about the address of Martyn Dick,
10 the home address of Mohammed Zahid Saeed and
11 Collette Bell's address?

12 A. No, there would be no great detail about any of that, so
13 it would be purely and simply outlining his strategy and
14 telling the Gold Group what locations are going to be
15 secured, but I don't think it was any broader than that.

16 Q. And would it be for the SIO to consider the
17 justification for securing properties?

18 A. Yes.

19 Q. Either at that meeting or any subsequent meeting was it
20 ever drawn to the Gold Group's attention that there may
21 have been issues or conflict with occupants giving
22 consent to the police to secure, enter, search
23 properties?

24 A. I don't recollect at this moment in time but ...

25 Q. Is that the type of information that the Gold Group

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1 would wish to have brought to their attention?

2 A. Well, it depends what the conflict is and what the
3 conflict is about. The Gold is more focused on the
4 strategy and making sure that we deliver on that
5 strategy and, as I said, we stabilise and make sure that
6 we don't lose anything, so I wouldn't expect a huge
7 level of detail, but -- about the detail of every single
8 house, you know, if we did that the Gold Group would be
9 extended for hours and we want people to get on with
10 their work. So it should be -- and of course we will
11 get some more detail than we expect but it should be
12 short, sharp and focused, telling us what they're doing
13 and then get on with it.

14 Q. And you say it depends what the conflict would be about.
15 Can you think of any examples where you would, as
16 a Gold Group, expect to have conflicts or issues brought
17 to your attention?

18 A. I can't think of an example at this moment in time,
19 but ... no, sorry.

20 MS GRAHAME: All right, thank you.

21 Again, I understand that the Chair would perhaps
22 wish to rise at the moment. I wonder if you could give
23 me just a moment to speak to the Chair and see what he
24 wants to do at this precise time, thank you.

25 I'm wondering whether you would wish to rise now for

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1 the remainder of the afternoon?

2 LORD BRACADALE: Yes, thank you.

3 Mr Nicolson, you will return tomorrow to continue
4 with your evidence. The Inquiry will now adjourn until
5 10.00 am tomorrow morning. Thank you.

6 (3.50 pm)

7 (The Inquiry adjourned until 10.00 am on Thursday,
8 14 September 2023)

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