

Transcript of the Sheku Bayoh Inquiry

Thursday, 14 September 2023

(10.00 am)

MR RUARAI DH NICOLSON (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning. Ms Grahame, would you please continue with the examination of Mr Nicolson.

MS GRAHAME: Thank you very much.

Good morning, Mr Nicolson.

A. Good morning.

Q. Yesterday as we reached the end of the day's proceedings we were talking about police securing properties and I had asked you about -- as we looked at the minutes of the Gold Group meetings, there were five loci identified and I was asking questions primarily about the three properties where there were householders, so Collette Bell's house, Martyn Dick's house, and the family home of Zahid Saeed.

If I can begin by just simply summarising my understanding of the position. I think we -- as I understood what you said, the SIO's role would be to identify the properties that were to be secured and to consider what justification there was for securing those properties -- and you're nodding which is good.

A. Yes.

Q. And then we heard that there was a crime scene

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- 1 coordinator appointed --
- 2 A. Yes.
- 3 Q. -- and there were crime scene managers and I think you
4 said that one or other of them would be responsible for
5 delivering an explanation to the police officers, who
6 would then go out and secure the properties.
- 7 A. That's correct.
- 8 Q. And the explanation would be essentially why the
9 property was being identified and was to be secured,
10 what they were looking for, and to answer questions such
11 as when the occupiers would get the property back. That
12 type of thing.
- 13 A. Yes, that's correct.
- 14 Q. And then the officers on the ground would go out to the
15 properties and deal with the occupants and they would
16 know if there was a warrant, they would have been told
17 about that, and if there wasn't a warrant those officers
18 would be responsible for seeking consent from the
19 occupiers.
- 20 A. That's correct.
- 21 Q. And they would have some discretion to provide
22 information and deal with the occupants as they saw fit.
- 23 A. That's correct, yes.
- 24 Q. Is that a reasonable summary of where we were?
- 25 A. Yes, absolutely, yes.

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1 Q. Thank you. And as the proceedings drew to a close
2 I started to ask you questions about if there were
3 conflicts or issues that arose, were those brought to
4 the Gold Group's attention.

5 A. Yes.

6 Q. And I think you said:
7 "Answer: It depends what the conflict is and what
8 it's about. The Gold is more focused on the strategy
9 and making sure that we deliver on that strategy and, as
10 I said, we stabilise and make sure that we don't lose
11 anything~..."

12 A. Yes, that's correct.

13 Q. And I'm interested in exploring what you meant when you
14 said "make sure we don't lose anything", just so that
15 people can understand what you mean. We talked
16 yesterday about -- you talked about productions and you
17 talked about evidence and so when you say "not lose
18 anything", what was it you actually meant by that?

19 A. Well, we would need to secure productions, as I said
20 already, so it would depend on exactly what the SIO is
21 looking for in terms of the house searches, so,
22 you know, an opportunity -- and I'm not suggesting
23 that's what's happening here, but an opportunity to
24 destroy evidence. You know, if there's a drugs search,
25 flush drugs down the toilet, all of that kind of thing,

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1 so it's just in all of these cases making sure that the
2 evidence isn't lost. So from a police service
3 perspective in this kind of incident we're making sure
4 that we can provide everything possible to the PIRC so
5 that they can carry out their independent and effective
6 enquiry. So productions that would be outside and if it
7 was raining or, you know, wind or whatever, then making
8 sure that these productions are preserved, if you can,
9 at the location that they're at, and if you believe that
10 you can't, then to seize them -- have them photographed
11 hopefully and then seize them and bring them back where
12 they're safe.

13 Q. And when you use the word "productions" I'm right in
14 saying that in a criminal trial items, as well as
15 documents, can become either labels or productions, but
16 they're pieces of evidence that the Crown will rely on
17 to perhaps prosecute someone in the future at a trial?

18 A. That's correct, yes.

19 Q. And you're talking about evidence being destroyed and
20 that can be where it's lost. Could that also include
21 things like clothing that is washed --

22 A. Yes.

23 Q. -- or burned or destroyed in some other way?

24 A. Yes, absolutely.

25 Q. So if there's any confusion with people who are

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1 listening to your evidence, you weren't just simply
2 talking about losing things, misplacing them --

3 A. No, no.

4 Q. -- you were talking about them being lost to the
5 prosecution at a later trial?

6 A. Yes, that's what I was talking about, yes.

7 Q. Thank you. So effectively that means that that evidence
8 would perhaps not be present at all at the future trial,
9 or it would be rendered inadmissible in some way, there
10 would be some flaw or some issue that caused it not to
11 be available to the prosecution later?

12 A. Yes, that's correct.

13 Q. Thank you. We heard evidence from a DC Finch previously
14 in the Inquiry, on Day 38 in February of this year, and
15 he said -- I asked him about:

16 "Question: In a situation where the police don't
17 have a search warrant or other lawful ground to carry
18 out a search, such as the householder's consent, what
19 would be the consequences if the police were to search
20 a property regardless and seize the evidence?

21 And his answer was:

22 "Answer: The likelihood is that the search and
23 recovery of the evidence would be deemed inadmissible in
24 later court proceedings."

25 Does that sum up really what the problem is?

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- 1 A. That's absolutely right, yes, so~...
- 2 Q. So the police need to have the authority or the
3 evidence, if they receive any -- obtain any evidence,
4 could become inadmissible later?
- 5 A. No, that's right and if they're searching for one thing,
6 for instance, and what happens quite regularly, they
7 search for drugs and they find a firearm, they would
8 need to then go and -- they would obviously hold it
9 there, but they would then go to extend the warrant and
10 they would go back to Crown Office in terms of the
11 firearm.
- 12 Q. And that could be highly significant to the prospects of
13 any criminal trial in the future. You mentioned
14 an example of drugs, if the drugs weren't available it
15 may make it very difficult for the Crown to prosecute
16 someone?
- 17 A. There would probably be no case.
- 18 Q. Right. And we have heard other evidence that if consent
19 is refused by an occupier and there's no warrant, you
20 have to get a warrant and the way of doing that, the
21 procedure is that an officer contacts a Procurator
22 Fiscal, speaks to the Fiscal and prepares an
23 application.
- 24 A. That's right.
- 25 Q. And they then put it in front of a Sheriff and the

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- 1 Sheriff will consider granting the warrant.
- 2 A. That's correct.
- 3 Q. And then the police have the warrant and they can use
4 that to go and search the property.
- 5 A. That's correct, yes.
- 6 Q. Do you know or do you remember now what an officer would
7 require to persuade the Fiscal to put an application
8 before a Sheriff and ultimately persuade the Sheriff to
9 grant a warrant?
- 10 A. Well, so all the information about the incident they're
11 investigating, what they are likely to find, you know,
12 that they believe it's there, any information or
13 intelligence that would suggest that it's there and the
14 details of the house, the property and so it would need
15 to be persuasive evidence to convince the Fiscal in the
16 first place and then to convince the Sheriff thereafter,
17 so as much detail as possible and outlining why it is
18 important in terms of the incident that's being dealt
19 with.
- 20 Q. And if I suggested that they would need to persuade the
21 Fiscal and then the Sheriff there were reasonable
22 grounds for suspecting a criminal offence had been
23 committed and the evidence would be found at the place
24 named in the warrant, does that sound like a reasonable
25 description of what's required?

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- 1 A. Yes, that's correct.
- 2 Q. Thank you. Is it possible for an officer to seek
3 a retrospective warrant, so to carry out a search and
4 then think: oh, we had better get authority, I'm going
5 to go and ask the Fiscal now for a search I have already
6 carried out?
- 7 A. I'm not sure what kind of reception they might get in
8 terms of that, but, well, it would be entirely possible
9 and it might be a route of trying to mitigate the damage
10 that's been done, but I'm not sure it would be granted.
- 11 Q. Right. Do you think you would get that past the Fiscal?
- 12 A. I don't think so.
- 13 Q. Have you ever come across a situation where that's been
14 attempted?
- 15 A. No, I can't think --
- 16 Q. Or succeeded?
- 17 A. I don't think it would have succeeded but it might have
18 been attempted, but I suppose that someone realising
19 that they have made a mistake and then to try and
20 mitigate that mistake and, you know, put their hands up
21 to what's happened, well, you know, they could attempt
22 or try, or try to persuade, but it seems unlikely that
23 that would be successful.
- 24 Q. Right. So not an approach that you would recommend, put
25 it that way?

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- 1 A. No, it would be better to get -- to apply for the
2 warrant and then execute the warrant in the proper
3 format and the likelihood of success would be much
4 higher.
- 5 Q. And the proper format is apply in advance before you do
6 the search?
- 7 A. Exactly.
- 8 Q. Can I move on to some evidence we have heard about the
9 three properties, Collette Bell, Martyn Dick and
10 the home of Zahid Saeed. We heard from Garry McEwan in
11 evidence, on 30 August, about this issue about authority
12 and he said:
- 13 "Answer: To go for a warrant you have to stipulate
14 on the warrant predominantly what it is you're going
15 there for, what purpose. ... At that early stage ..."
- 16 So at the early stage in matters, 3 May we were
17 talking about:
- 18 "Answer: ... I'm not sure that level of information
19 and detail would be known."
- 20 He then agreed that officers may not have been in
21 a position to secure a warrant because they wouldn't
22 have all the details and they were very much dependent
23 on consent being given by householders.
- 24 A. Yes.
- 25 Q. From your recollection of events on 3 May 2015 does that

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1 accord with your --

2 A. Yes, I think that's right, yes.

3 Q. So the police were very much dependent on consent?

4 A. They were.

5 Q. We heard also from Pat Campbell in evidence about
6 Collette Bell's house and this was on Day 47, 9 March
7 this year, and I asked him if he personally had carried
8 out any checks in relation to the properties to ensure
9 that the correct authority was in place, whether
10 a consent or a warrant, and this is for Collette Bell's
11 house, and he said no, that he would be delegating
12 various responsibilities to individuals, he named
13 Stuart Houston and he said:

14 "Answer: ... I knew that what he would put in place
15 would be sufficient to basically account for the search
16 by consent and if there were any issues he would have
17 made me aware of them as such, so I wasn't particularly
18 aware and drilling down into~..."

19 The detail effectively.

20 And he said, in relation to Stuart Houston:

21 "Answer: ... he would have deployed crime scene
22 managers to all the different locations, who would have
23 engaged with the householders around what we were
24 planning to do about the return of the property how long
25 it was likely to take and so on."

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1 And he said:

2 "Answer: And if there was any feedback coming or
3 there were any issues with any of the consent that was
4 given or implied."

5 So he would expect feedback from Stuart Houston if
6 there were any issues about getting consent.

7 Does that description of Pat Campbell's role in
8 proceedings sound like a reasonable explanation?

9 A. Yes, absolutely. So we train the crime scene
10 coordinator and the crime scene managers in terms of
11 their roles, so the expectation is that they would go
12 and get on with what they're trained to do, so ...

13 Q. And so it's reasonable for the SIO to delegate
14 responsibility --

15 A. It is.

16 Q. -- and assume that that will be carried out properly?

17 A. Yes, absolutely. You know, like -- as I said in terms
18 of the strategic role, my strategic role, I can't look
19 at every aspect of what's going on, there's too much to
20 be done in terms of that, and it will be the same in his
21 role, he has a wide role with a number of different
22 issues ongoing, so it would be very difficult for him to
23 dip down and check that absolutely everything is in
24 place. At some stage he will learn, I have no doubt,
25 get feedback in terms of what happened and -- but at

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1 that stage it is reasonable to think that he delegates
2 down and that the crime scene coordinator and the crime
3 scene managers get on with their job and their work.

4 Q. And the feedback could be: we can't get consent, we will
5 need to get a warrant --

6 A. That's correct.

7 Q. -- and there will need to be an application made, and
8 that can be discussed at that point?

9 A. That's correct, yes.

10 Q. And I think yesterday you said in that situation
11 the police would remain at the property and then try and
12 secure the warrant?

13 A. That's correct, yes.

14 Q. And then we also heard from Pat Campbell about
15 Martyn Dick's house and we heard evidence from him where
16 he said:

17 "Answer: There was no indication from any of the
18 householders that there was any conflict with consent to
19 search the properties. There was nothing to indicate
20 they weren't consenting~..."

21 And I asked him if he was satisfied that the
22 officers had obtained consent for a search of
23 Martyn Dick's house when Martyn Dick and his partner
24 were removed from the house, and he said "Yes". He
25 said -- he mentioned the forensic strategy meeting, the

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1 officers who dealt with Martyn Dick were not present at
2 that forensic strategy meeting but the information is
3 coming second-hand and that was from Colin Robson and
4 Stuart Houston:

5 "Answer: ... and they are feeding into the forensic
6 strategy meeting which I'm chairing so the information
7 I'm getting is that consent has been agreed for all the
8 properties to search."

9 Again, is it reasonable for someone in
10 Pat Campbell's situation as SIO to rely on the feedback
11 coming to him through Stuart Houston, the crime scene
12 coordinator, and perhaps DI Robson?

13 A. Yes, absolutely, that's how he should get the feedback.

14 Q. And would that be the normal sort of procedure that's
15 adopted in these situations?

16 A. It would be, yes.

17 Q. And then again finally we heard from Pat Campbell on the
18 securing of Zahid Saeed's family home. This was on
19 10 March and he again said that he understood that that
20 house was seized on the basis of consent and it was
21 consent that gave him the authority to have the search
22 carried out on the property.

23 A. Yes.

24 Q. So again it appears in relation to all of those
25 properties that consent was the basis?

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1 A. Yes.

2 Q. And did you hear anything to suggest that that wasn't
3 the position in the Gold Group?

4 A. No, not that I recall.

5 Q. We haven't heard from Stuart Houston but we do have
6 a signed Inquiry statement from Stuart Houston, the
7 crime scene coordinator. He says he arrived in
8 Kirkcaldy after midday and there was a briefing at about
9 12.30 that day and then he speaks about attending --
10 speaking to SPA Forensic Services at about 1.30 and then
11 having the forensic strategy meeting after 4.00. So he
12 wasn't at Kirkcaldy first thing in the morning, he came
13 in the afternoon.

14 He has given the Inquiry statement in relation to
15 Martyn Dick and Collette Bell's house. I wonder if we
16 can have his Inquiry statement on the screen because
17 I would like to refer you to some of his evidence.
18 SBPI00214. You will see this is a statement taken from
19 DCI Stuart Houston last year and if we go down to
20 paragraph 249 and I will deal with a few of -- what
21 I will do is I will go through these paragraphs with you
22 and then I will ask you some questions at the end.

23 A. Yes, no problem.

24 Q. If we start with 249, so this is Stuart Houston, crime
25 scene coordinator:

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1 "My understanding of this address ..."

2 This is a passage in his Inquiry statement that
3 relates to Martyn Dick and also Collette Bell's house:

4 "My understanding of this address ... is that the
5 deceased was at these addresses so it's about preserving
6 them. The legal basis is that they are scenes that may
7 be linked to his death. As far as I was aware there
8 were no warrants at the location. But you'd protect the
9 loci in order to get warrants further down the line.
10 We're within our rights to do this."

11 And if we carry on:

12 "You would need to ask people to move. It's quite
13 common that we do as police. You don't know what's
14 there until you search it. The deceased had been there
15 prior to his death, that's the reason for searching.
16 I'm not sure if the occupiers were asked to move, that
17 was done before my involvement. I was made aware that
18 police officers were present at each location."

19 Then 251:

20 "The fact is, we're not going to get to them on
21 3 May. My thought process was, as long as they're
22 preserved, I don't need to go there at this time. I'm
23 making a guess, but I think they were secured by
24 uniformed police, so you can seize anything that's
25 relevant to an investigation. To be blunt, because

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1 they're protected by police, I maybe didn't give those
2 loci the attention they needed at that time. That's
3 prioritisation in doing the things that need to get
4 done."

5 And then at 252:

6 "I can't speak to what happened before I was there.
7 My interpretation is if you've got something that might
8 be subject to an investigation, you'd tell them and ask
9 them to leave and examine it as a consensual crime
10 scene ..."

11 So I think he is referencing consent there:

12 "... or take a warrant. That would be from the
13 people who were there. I know the [redacted] one,
14 something happened at that address, the [redacted] one
15 I'm not too sure about."

16 We have redactions on the screen because the
17 individual addresses are actually redacted because of
18 data protection but I'm telling you they are Martyn Dick
19 and Collette Bell's houses. So this is what he is
20 referring to at that time and when we look back at
21 paragraph 250 and he says:

22 "I'm not sure if the occupiers were asked to move,
23 that was done before my involvement."

24 You will see that on the screen now. He did not --
25 as I said earlier, he did not arrive until the

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1 afternoon, so although he was appointed as crime scene
2 coordinator it wasn't until later on that day.

3 Then 254 please. He says:

4 "My understanding is the searches were done long
5 after I was done. I've no detail of anybody searching
6 those houses in the time I was involved. I don't know
7 what was found in the searches."

8 So again he has come in the afternoon, appointed as
9 coordinator, but he was not aware of searches being done
10 until long after he has left Kirkcaldy, so that seems to
11 be the sum total of his involvement as coordinator.

12 Then can I ask you to look at paragraph 258. And
13 this -- you will see at the top it says it is
14 Zahid Saeed's address, that's the family home for
15 Zahid Saeed. He says:

16 "... you're not needing the whole house as such.
17 It's not the whole house that needs to be secured. It's
18 focused to what's relevant. You're only going to get
19 the clothing and the car and that was it. I don't think
20 the house was seized as a locus. I don't think that
21 house was ever actually secured for any period of time.
22 That was my understanding of what was going to happen.
23 Officers took possession of the vehicle."

24 So in Stuart Houston's recollection the only objects
25 they were really interested in, in relation to the

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1 family home of Zahid Saeed, was clothing and the car.
2 So he doesn't seem to think the whole house needed to be
3 secured.

4 Then finally, 266:

5 "I have been told the occupiers' position is that no
6 permission was given for the police to secure the
7 property and that a complaint was made."

8 Again, this follows on in relation to the home of
9 Zahid Saeed's family:

10 "I wasn't aware of this. I would dispute that they
11 said they didn't give permission. If we didn't have
12 permission then we'd stay there until we had a warrant."

13 So he seems to be of the same view as you that if
14 there's no permission you have to seek a warrant and the
15 police remain there until that's obtained?

16 A. I agree, yes.

17 Q. But as crime scene coordinator he doesn't seem to
18 understand -- or have been told that no permission was
19 given to secure Zahid Saeed's property and that consent
20 wasn't given. Now, reading that, does that concern you?

21 A. Yes, it does.

22 Q. And why does that concern you?

23 A. Well, there's obviously a different view on whether
24 permission was given or not, according to Stuart's
25 statement, so we should be quite clear that we've got

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1 consent and if we don't have consent then we ought to
2 get a warrant and there seems to be confusion in terms
3 of what Stuart's understanding is of what was going on,
4 but --

5 Q. And -- sorry.

6 A. Yes, but I suppose my question is what was he actually
7 coordinating at that stage because it seems to be that
8 he has arrived and he says, I think, if I understood it
9 correctly, that the searches were carried out long after
10 he was gone, so he obviously wasn't coordinating the
11 searches.

12 Q. And if we go back to Collette Bell and Martyn Dick's
13 houses -- I read those paragraphs to you earlier, that
14 was from 249 down to 252. At 250 he says he isn't sure
15 if the occupiers were asked to move:

16 "That was done before my involvement."

17 So it would appear that if consent was obtained from
18 Collette Bell or Martyn Dick, this was before the
19 coordinator was actually involved?

20 A. That's entirely possible.

21 Q. What do you think about that then? Who was coordinating
22 and managing things if Stuart Houston wasn't in
23 Kirkcaldy at the time?

24 A. Well, the crime scene managers were obviously -- well,
25 the truth is I don't know. We've got Stuart's

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1 statement, but, you know, we would need some more detail
2 roundabout that, but the crime scene managers
3 themselves -- again, I don't know when they were
4 deployed, so these are questions that Pat Campbell and
5 his deputy could, or ought to be able to answer in terms
6 of the whole coordination of exactly what's gone on and
7 how the enquiry was progressing, when the crime scene
8 managers were available, when the crime scene
9 coordinator -- what was the expectation of the crime
10 scene coordinator when he arrived and before he left.

11 Q. So we heard earlier that Pat Campbell was delegating
12 things --

13 A. Yes.

14 Q. -- and leaving the detail of getting consent or
15 a warrant to the crime scene coordinator. If the crime
16 scene coordinator didn't arrive until after the
17 properties had been seized, what would you have -- what
18 would you consider that his ongoing responsibilities
19 were in relation to the coordination of the crime
20 scenes?

21 A. Yes, well, so just exactly that, it is coordinating the
22 five scenes. If the consent has already been -- or they
23 have already got consent in terms of the searches, the
24 seizure of the properties, then he would be there to
25 collate all the information, to understand what was

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1 being seized, to ensure that it was seized in a proper
2 fashion and then it was brought to wherever they were
3 going to bring all the property to, to record -- to
4 record when it was seized, what it was, and production
5 management. So that would be my expectation of a crime
6 scene coordinator.

7 Q. So when Pat Campbell takes the decision to appoint
8 a crime scene coordinator, what should he continue to
9 do; is there supposed to be a handover with the crime
10 scene coordinator, or some sort of briefing that --

11 A. Yes, so the crime scene coordinator ought to be briefed
12 so that he understands exactly what's going on, why the
13 houses are being searched and what the expectation is of
14 him and his role, so he would either get briefed by
15 Pat Campbell or Pat Campbell's -- more likely
16 Pat Campbell's deputy, so that he could undertake the
17 work that is expected of him.

18 Q. And is it at that briefing that he should be given
19 a full explanation of whether the house has been seized,
20 whether a search has commenced --

21 A. Yes.

22 Q. -- what the authority was for --

23 A. Yes.

24 Q. -- doing that?

25 A. Yes, so -- yes.

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1 Q. Is he given the explanation about the full
2 justification?

3 A. Well, he should be, he should be. If he is going to
4 undertake his role in a proper fashion then he's got to
5 know and understand all the detail, he's got to know and
6 understand exactly what's expected of him, he's got to
7 know and understand what's actually happening at each of
8 the loci, so -- but that would have to come from
9 a briefing. Now, that might be face-to-face or it might
10 be by phone or -- but he would have to be properly
11 briefed before he could undertake his role.

12 Q. Can I ask you what you make of the comment in
13 paragraph 251:

14 "... I think they were secured by uniformed
15 police ..."

16 We're still on Collette Bell and Martyn Dick's
17 house:

18 "... so you can seize anything that's relevant to an
19 investigation. To be blunt, because they're protected
20 by police, I maybe didn't give those loci the attention
21 they needed at that time."

22 What do you make of that comment?

23 A. I'm not sure. You would have to ask Stuart Houston, but
24 he obviously had questions in his mind but he is saying
25 that he didn't give it the attention that it needed, or

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1 he says he maybe didn't give it the attention that it
2 needed at that time, but I can't speculate on exactly
3 what he means by that.

4 Q. No. Can we look again at paragraph 252:

5 "I can't speak to what happened before I was there."

6 Is that the sort of comment you would expect
7 somebody who was properly briefed to be making?

8 A. Well, it depends what he means by that comment, so does
9 he mean that, you know, he can't give evidence about
10 what happened, or what people did, you know, there is
11 somebody else to give evidence in terms of what he did.
12 But, you know, was he given a briefing, did he
13 understand what had unfolded prior to him arriving
14 there? But so -- I don't know what that comment means.
15 It could mean a lot of things.

16 Q. He says:

17 "My interpretation is if you've got something that
18 might be subject to an investigation, you'd tell them
19 and ask them to leave and examine it as a consensual
20 crime scene~..."

21 What about that description of obtaining consent to
22 tell people, ask them to leave and examine a crime
23 scene?

24 A. Well, so it's pretty clumsy, but I assume what he is
25 suggesting and what he is saying is that a consensual

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1 crime scene, that it would be with consent that you
2 would carry out that examination.

3 Q. Right. I would like to ask you about crime scene
4 managers. Was this something that was discussed at the
5 Gold Group meeting at all?

6 A. I don't recollect that and I don't think it would be, in
7 any detail anyway.

8 Q. Right. I mean, Houston -- we saw yesterday Houston was
9 named as a coordinator?

10 A. Yes.

11 Q. Is that really the sort of level that you would get
12 information about in the Gold Group?

13 A. Yes, mostly.

14 Q. Again, from the statement from DCI Houston we know that
15 he didn't go to the loci himself.

16 A. Yes.

17 Q. He would expect feedback from the crime scene managers.

18 A. Yes.

19 Q. And I think that accords with what you have told us?

20 A. Yes.

21 Q. He said that the crime scene managers were all DCs,
22 detective constables, and we have been, in the Inquiry,
23 trying to see who exactly was the crime scene manager
24 for each location. So if we start with Collette Bell's
25 house we have looked at the scene entry log and it

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1 appears that it was a DC Stamford who is listed as
2 assisting the crime scene manager, but there's no crime
3 scene manager named in the paperwork in the crime scene
4 log.

5 A. Right.

6 Q. I should say DCI Houston doesn't name any of the crime
7 scene managers in his statement, so he doesn't name them
8 in his statement and we have looked at the scene entry
9 log for Collette Bell's house and although we can find
10 the name DC Stamford, there isn't a crime scene manager
11 named. Would you expect the crime scene manager to be
12 named in a scene entry log?

13 A. Well, it depends whether the crime scene manager went
14 into the scene or not and I don't know whether they did
15 or not, but it sounds like if they're not on the scene
16 entry log then they didn't, but -- so if they're
17 managing, you know, what's happening they could manage
18 that externally from the scene itself, depending on what
19 the scene is.

20 Q. So it can be managed remotely by the crime scene
21 manager --

22 A. Yes.

23 Q. -- not actually being present?

24 A. Not being in -- within the location.

25 Q. We have also looked at Houston's daybook and we can't

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- 1 see any names of a crime scene manager for
2 Collette Bell's house. Is there anywhere else that you
3 could suggest to us that we might be able to find
4 paperwork that lists the name of the crime scene
5 manager?
- 6 A. There should be statements from the crime scene
7 managers, I would have thought.
- 8 Q. And in relation to Martyn Dick's house, again we have
9 looked at the crime -- the scene entry log and DC Finch
10 who I mentioned his evidence previously, he was named as
11 locus protection but he did sign as crime scene manager
12 in that section, so do you think -- and Houston said
13 crime scene managers were DCs, so do you think it was
14 probably DC Finch that was the crime scene manager?
- 15 A. Well, it sounds like it might be, but I honestly don't
16 know. I just wouldn't know that level of detail.
- 17 Q. All right. And again, just for completion, in the
18 family home of Zahid Saeed DC Finch was also there for
19 locus protection but I think did sign as the crime scene
20 manager, so he may have been the crime scene manager for
21 both of those properties.
- 22 Is that sort of paper trail what you would expect --
23 given the significance of consent --
- 24 A. Yes.
- 25 Q. -- to the seizing, securing, searching of these three

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1 properties, is that the sort of paperwork that you would
2 expect to be available in relation to who the crime
3 scene managers were and whether consent was obtained
4 from the householders?

5 A. I would certainly expect there to be paperwork that
6 would demonstrate who the crime scene managers were and
7 it should be straightforward to find out who they are.
8 We should know who was on duty on that day and from that
9 understand who the crime scene managers were. I'm
10 afraid I'm retired seven years so I have no access to
11 any systems but there are probably police officers in
12 this room that could help that, but~... So there ought
13 to be paperwork that demonstrates quite clearly what
14 role each person had.

15 Q. We will keep looking.

16 A. Sorry about that.

17 Q. So the Gold Group were not aware of the details?

18 A. No, not at all.

19 Q. Pat Campbell, it would appear from his evidence,
20 delegated and didn't know about the details.

21 A. Yes.

22 Q. Stuart Houston, it would appear, didn't really know
23 about the details in relation to consent and what
24 happened before he arrived. There doesn't seem to be
25 this clear paper trail.

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1 Do you have concerns about the basis on which
2 the police secured and seized properties that day, and
3 I'm thinking primarily about Collette Bell, Martyn Dick
4 and the home of Zahid Saeed?

5 A. Well, retrospectively you would want to know that it had
6 been carried out in the appropriate fashion, so either
7 that consent was obtained or that there was a warrant
8 and we know that there weren't any warrants, so
9 presumably everybody that's involved in the searches
10 believed that they were carrying that out on
11 a consensual -- on a consensual basis. How they got
12 that consent, I don't know, and we heard yesterday
13 about -- whether it was best practice -- one of the
14 officers said that he noted it in his notebook, and of
15 course that would be best practice, but that wouldn't
16 happen on every occasion. But as long as there is
17 consent, that the person has been spoken to and both
18 parties understand that there has been consent, then
19 from my perspective that's absolutely fine, it will be
20 for the officer to support that in terms of any evidence
21 that's given.

22 Q. So in light of everything we have discussed today, where
23 does responsibility lie ultimately for ensuring that
24 consent was obtained for Collette Bell's house,
25 Martyn Dick's house and the family home of Zahid Saeed

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1 to be secured, seized, entered and searched?

2 A. So -- well, so initially the responsibility would be
3 with the people who went to search the property and for
4 them to get consent for what it is that they're actually
5 trying to achieve, you know, and as -- well, in the main
6 the understanding will be that that's exactly what's
7 been done. If that's not what's been done then fairly
8 obviously there would need to be an intervention into
9 that, but as I understand the evidence that's been given
10 everybody believes -- and obviously, you know,
11 Stuart Houston is still to give evidence, but it looks
12 like at paragraph 252 that he believes that it is on
13 a consensual basis that the scenes are being examined,
14 so ...

15 Q. We have -- I will come on to this, but where we have
16 heard evidence that consent was not given by certain
17 occupiers but all the police officers believe consent is
18 the basis on which they're proceeding, in a situation
19 where there can be miscommunication, the extent to which
20 that may or may not be the position here is a matter for
21 the Chair, but if there is a situation which arises
22 where there's misunderstanding or miscommunication
23 between the occupiers and the police can you help the
24 Chair identify how this could be avoided in the future?
25 What could be done to improve the situation and to avoid

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1 these misunderstandings or miscommunication?

2 A. Well, we could insist on officers recording in notebooks
3 that consent has been given and there could be feedback,
4 or, you know, we could insist that there's feedback from
5 the officers on the ground to the crime scene manager,
6 through to the crime scene coordinator, we could insist
7 that it's recorded that there is consent been given for
8 each property.

9 Q. So have that sort of direct feedback to the next in
10 line?

11 A. Yes, a formal system to record that consent has actually
12 been given.

13 Q. Thank you. In relation to -- let's start with the
14 evidence from Collette Bell that we heard in relation to
15 her house. I'm going to give you a summary of what she
16 said and ask you to comment on it. This was given on
17 9 February of this year, on Day 40 of the hearing, and
18 I asked her if she understood that the police were going
19 to seize her house and she said no, but she said:

20 "Answer: I think it was just said to us that it was
21 the beginning of a crime scene~..."

22 And I asked if she understood her house would be
23 searched and she said no, and I asked if she was given
24 an explanation that the house would be searched and she
25 said she didn't think so and she didn't -- I asked her

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1 if she was asked for permission or consent and she said
2 no, but she did say:

3 "Answer: ... 'This looks like the beginning of
4 a crime scene~...'"

5 That's what she was told:

6 "Answer: ... and we will need to take hold of the
7 house so you will need to pack a bag'."

8 That description as it has been given by
9 Collette Bell, does that match your expectations in
10 terms of how you obtain consent from someone?

11 A. No, it doesn't.

12 Q. Why not?

13 A. Well, it doesn't sound like it is consensual, you know,
14 so they would have to be pretty clear in terms of what's
15 understood by the consent being given, so the person
16 would have to be told that that's what the intention
17 was, why that was and then ask for consent to be given
18 for -- and explain why that's important, but -- and then
19 obtain that consent.

20 Q. And a suggestion we had heard previously and we
21 discussed yesterday, letting people know that they can
22 withdraw consent, would that be part of the process of
23 obtaining consent?

24 A. Well, that isn't something that I have considered, but
25 of course, you know, you could include that in future

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1 guidance to make sure that people knew and understood
2 that they could withdraw that consent.

3 Q. Thank you. And then in relation to evidence we have
4 heard regarding Martyn Dick's house, we heard this from
5 DC Finch, and I asked whether he understood that the
6 householders had consented not only to the seizure of
7 their house, or securing their house, but for it to be
8 searched for evidence relevant to the investigation into
9 Mr Bayoh's death and he said yes, that was his
10 understanding.

11 Now, we have heard evidence that as part of a search
12 that was carried out at Martyn Dick's house that herbal
13 material was discovered and that DC Finch gave evidence
14 that he phoned a DS Moore or a DI Wilson and he was
15 advised to phone the on call Fiscal to seek a drugs
16 search warrant and I asked him about this when he was
17 giving evidence and he said:

18 "Answer: I can't recall why we needed the search
19 warrant in addition to the consent."

20 So he thought he had consent to search the property
21 but when he phoned up, having found -- or someone else
22 had found the herbal material, he was advised to get
23 a warrant. Can you explain why that would be done if
24 there is consent?

25 A. Well, so the consent wouldn't be to search for drugs, so

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1 the consent was to search in terms of the incident
2 that's being dealt with at the time, so if they go in
3 and they find something that's unrelated to what they
4 have already got consent for, so the sensible approach
5 is that you approach the Fiscal, you explain the detail
6 and the Fiscal will either agree to present the detail
7 to a Sheriff and ask for a warrant for the property to
8 seize the herbal material.

9 Q. And in these particular circumstances he had sought
10 advice from a senior officer.

11 A. Yes.

12 Q. He wasn't sure exactly who it was but it was a more
13 senior in rank officer than him. Is that the type of
14 behaviour you would expect from a DC on the ground?

15 A. No, that's exactly what you would expect.

16 Q. And then looking at other evidence we have heard,
17 evidence from a PC Fraser, and this relates to the
18 family home of Zahid Saeed, he gave this on Day 62,
19 28 August, and he told us that he had attended with
20 a PC Aitken as locus protection on Zahid Saeed's family
21 home and he was the one that had maintained the scene
22 entry log. And I asked him to explain how he went about
23 obtaining consent and he said:

24 "Answer: Yes, I would knock on the door, and
25 introduce myself and if I was allowed entry, then

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1 I would go in."

2 And:

3 "Answer: ... I would just ask questions, speak to
4 them and ask them what -- who are you and can you give
5 me your name, address, date of birth, that sort of
6 thing."

7 And he would talk to them. I asked him about
8 obtaining consent and he said that he -- it would all be
9 verbal, as he called it, and he would not necessarily
10 have written anything down in his notebook and he didn't
11 on this occasion write anything down in his notebook, he
12 didn't get any signatures.

13 So I asked him about where there was no written
14 consent did he think there was some other consent. He
15 said:

16 "Answer: I believe I must have been afforded entry
17 into the house. I didn't note any of the details of the
18 people but in order to speak to the people within, I can
19 only assume -- I don't recall but I can only assume
20 I knocked on the door and the door was opened."

21 And I asked him if he considered the opening of
22 a door was sufficient to be a recognition of consent and
23 he said:

24 "Answer: No, the person must -- they can -- numerous
25 ways, they can verbally say it or they can just motion

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1 or walk away, leave the door open"

2 And I said:

3 "Question: An open invitation, if you like?"

4 And he said:

5 "Answer: Yes.

6 And I asked if on that day anyone had given him
7 consent to go into the house and he said?

8 "Answer: I don't remember."

9 And then he had asked for support and CID came and
10 that was the second occasion he went into the house and
11 I said: do you remember if anyone gave you consent at
12 that time, on the second occasion? And he said:

13 "Answer: No, I don't remember."

14 So from that description do you think that's
15 sufficient to assume that the householder is giving
16 consent to seize the property, secure the property and
17 search the property?

18 A. No. As I said already, you would need to explain
19 exactly what it was that you were wanting to do and ask
20 the occupier for consent.

21 Q. Right, thank you. I would like to move on to other
22 evidence we have. This is from a witness who has given
23 us a signed statement, Inquiry statement. His name is
24 Miller. We have not heard any oral evidence from him at
25 this stage, but this comes from his statement. He was

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1 one of the CID officers who came to assist PC Fraser:

2 "We chapped the door and I can't remember if it was
3 Mrs Rashid or there was an officer that initially let us
4 in from the inside but we were invited in and Mrs Rashid
5 spoke to us."

6 She is one of the occupiers:

7 "Immediately she started asking us questions, what
8 was going on, all the rest of it. We tried to explain
9 what was happening and the need to take it, take the
10 property. She was wondering why we were allowed in
11 without a warrant so we tried to explain that to her,
12 that yes sometimes you do need warrants but on this
13 occasion, because it was a serious incident that
14 happened at that time, the property had been seized as
15 we've got to protect the forensic integrity of it."

16 Now, this -- his recollection appears to be that
17 Mrs Rashid, the occupier, was asking for a warrant.

18 A. A warrant, yes.

19 Q. And he said that he explained to her that sometimes you
20 need warrants but on this occasion it was a serious
21 incident that happened and they had got to protect the
22 forensic integrity of the property. What's your view on
23 that description of obtaining consent from an occupier?

24 A. Well, obviously he hasn't obtained consent but,
25 you know, the situation there is that when he is

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1 confronted with that he ought to then think about
2 getting a warrant.

3 Q. And that would be following the procedure we
4 described --

5 A. Yes, yes, absolutely.

6 Q. -- earlier. Mrs Rashid gave evidence and in her Inquiry
7 statement at paragraph 3 said -- describes the officer
8 coming to the door:

9 "I opened the door and he told me we needed to
10 vacate the property. I told him we wouldn't unless they
11 had a warrant. He was very abrupt and quite rude and
12 said they didn't need a warrant to come into the house."

13 Presumably your comments on that would be exactly
14 the same?

15 A. They are.

16 Q. And then also in his Inquiry statement at paragraphs 99
17 and 100, Miller said:

18 "I'm asked what was my understanding when I went to
19 Zahid Saeed's home address of what our authority was for
20 seizing the property. My understanding was that the
21 decision had been made by the SIO that it has to be
22 seized."

23 Is that sufficient to obtain consent?

24 A. No.

25 Q. No. And he then went on to say:

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1 "A decision had been made at a senior level that
2 this was a place of interest and that that was the
3 reason we were seizing the property. If there was
4 a need for a warrant it would have been
5 retrospectively."

6 Given what you said earlier, what do you think the
7 prospects of obtaining a warrant retrospectively were?

8 A. None.

9 Q. Thank you. Now, to go back to something you said at the
10 close yesterday, close of business yesterday, I asked
11 you for an example when we were talking about warrants
12 and consents and that was in regard to conflicts
13 arising, issues arising, disputes arising with
14 householders and I asked could you think of any examples
15 where you as a Gold Group would expect to have conflicts
16 or issues brought to your attention and at close
17 yesterday, it was late in the day, and you couldn't
18 think of any examples --

19 A. Yes.

20 Q. -- at this moment. Can you think of any examples today
21 of where you as the Gold Group and you as Gold Commander
22 would have expected to have matters raised and brought
23 to your attention?

24 A. Well, anything -- I can't think of an example at this
25 moment, but anything that was significant in terms of

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1 conflict, then -- you know, or support, then that ought
2 to be brought up the chain of command. It can be
3 resolved lower, if it it can be resolved by the deputy
4 SIO or by the SIO, but if it can't then it ought to be
5 escalated up to Gold to have the situation resolved, so
6 I can't really provide a good example at this moment in
7 time, but I'm sure there will be.

8 Q. Is anything I have described in the circumstances we
9 have discussed today about warrants and consents the
10 type of information that you think would have benefited
11 the Gold Group to hear about?

12 A. Well, it sounds like at ground level they were getting
13 on with undertaking their duty in the way that they
14 thought was best, so it feels like a lot of that
15 wouldn't have been escalated up to Gold at that time.
16 Of course Gold may well become aware of some of the
17 issues at a later stage, but I can't recall becoming
18 aware of any of the issues that you have outlined in
19 terms of consent at any stage but ...

20 Q. I'm just wondering whether looking back now you think it
21 would have been helpful for Gold to have had these
22 matters brought to their attention?

23 A. Well, if it they had been brought to my attention then
24 I would have done something to resolve them.

25 Q. What would that have been?

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1 A. Well, if it's about obtaining a warrant then it would be
2 instructing someone to contact a Fiscal and there's
3 already a Fiscal involved in this who knows the detail,
4 so it would be a case of going to that individual,
5 explaining the circumstances, what was required, why it
6 was required and asking if a warrant could be craved and
7 hopefully at some stage granted by the court, but that
8 would be with justification.

9 Q. So you could have been involved directing or influencing
10 some of the decisions that were being taken?

11 A. But I mean from my perspective that should not have to
12 come to my level. It's -- all these issues ought to be
13 able to be resolved, everybody ought to know what the
14 procedures are and we've got one good example of
15 a police officer who obviously knows what his -- or
16 maybe he didn't but at least he had the sense to ask the
17 question, so -- in terms of the herbal substance, so
18 that's what you would expect of people, is if they're
19 not sure then escalate to get a resolution.

20 Q. And seek that advice from a more senior ranking officer?

21 A. Yes, exactly, exactly.

22 Q. Can I ask you then about an example that I have been
23 thinking of and you can tell me if this is not helpful.
24 You are faced -- you are Gold Commander, you're faced
25 with an unascertained death, there's an investigation

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1 ongoing. The day after the death there's a post mortem
2 and the initial post mortem report says cause of death
3 is unascertained pending investigations, namely
4 toxicology, and there's -- one of the hypotheses that's
5 being developed is the unascertained death is because --
6 is perhaps a drug induced death, it's possible and the
7 initial post mortem doesn't rule that out, and in fact
8 they're waiting for toxicology results to determine
9 that. And so one of the hypotheses could develop into
10 perhaps there's been a supply of illicit drugs to the
11 deceased by a third party and possibly a charge of
12 culpable homicide would be levelled against someone in
13 the future.

14 A. Yes.

15 Q. So a drug-induced death where that is a hypothesis
16 that's been potentially going to develop. There's
17 a number of properties to be secured, entered and
18 searched as part of that investigation because the
19 deceased had been in those properties earlier prior to
20 death.

21 In that situation would the Gold Group want to be
22 made aware if occupants in those properties declined to
23 give consent for the properties to be secured, entered
24 and searched?

25 A. Not necessarily.

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1 Q. Would that also be something that you would expect to be
2 dealt with at a lower level?

3 A. Most definitely. You know, people at that level ought
4 to know their powers and what's required of them. If
5 they're not sure, they escalate it, but normally they
6 would escalate it to a sergeant or inspector who, if the
7 constable wasn't sure, then either one of them ought to
8 be and then ultimately in terms of warrants it would be
9 contact with the Procurator Fiscal Service, discuss and
10 outline the evidence, the information, why it was
11 necessary and crave a warrant.

12 Q. So it should be capable of resolution long before it
13 gets up to the Gold Commander?

14 A. Yes.

15 Q. And that would be even in the case where you are
16 considering a potential homicide in relation to an
17 unascertained death?

18 A. So that would be part of the evidence gathering, so I --
19 you know, I wouldn't expect to be involved in making
20 decisions roundabout the evidence gathering. That's
21 a matter for the SIO and so unless something -- it came
22 to my attention that something was going completely
23 awry, then I wouldn't intervene into how they were going
24 about their business.

25 Q. I would like to ask you some further questions about the

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1 detail of what was going on in the houses just for your
2 impressions as Gold Commander that day. So if we go
3 back to Martyn Dick's property, we heard from
4 Martyn Dick in oral evidence -- and he has also given an
5 Inquiry statement -- he lived at the time with his then
6 partner Kirsty MacLeod, now his wife.

7 The officers arrived between about 12.00 and 12.30
8 he said originally, maybe slightly later, but certainly
9 after the first Gold Group meeting and before the second
10 Gold Group meeting, so that's what was happening with
11 you.

12 He said nine or ten officers were sent to his home
13 on the Sunday morning, or Sunday lunchtime, that it was
14 intimidating, there were cars, the police arrived, they
15 all came into the house and only one of them spoke,
16 there was nine in the house.

17 Can you help the Chair understand why nine officers
18 would arrive at the home of Martyn Dick? There's no
19 suggestion that a crime occurred in his property.

20 A. So I don't know is the answer to that. I mean that's
21 for whoever deployed nine officers to the house to give
22 evidence in terms of that, but at the end of the day it
23 depends what they were looking for, but if they were
24 looking for something in terms of forensics -- and
25 I don't recollect what was said in relation to that, but

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1 then having nine officers in the property is not going
2 to help from a forensics perspective. So it seems to me
3 like -- if they thought they required nine officers for
4 a search then, you know, the appropriate way to go about
5 that would be for one/two to first approach the
6 householder and then if it was required for a search to
7 have nine people then absolutely fine, but it seems
8 a lot of people in a house to carry out a search if
9 indeed it's in relation to forensics for instance.

10 Q. And who would have deployed those officers? Would that
11 be the crime scene manager or would it be a sergeant or
12 would it be someone else?

13 A. Well, I don't know the detail of that, but presumably
14 the SIO decided, or the deputy SIO decided that the
15 house had to be seized, searched, whatever, and then he
16 will have spoken to whoever was in charge of the
17 officers at that time and asked them to deploy to the
18 property, giving some instruction about what was
19 required. But why it was nine people, I have absolutely
20 no idea.

21 Q. We heard from Martyn Dick that as well as coming into
22 the property that an officer was sent upstairs with them
23 while they got changed, it had been a Sunday, they were
24 in their house:

25 "Answer: They gave us nothing really -- gave us

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1 nothing to go on whatsoever, just that we were going to
2 be helping them and we should be helping them, so that's
3 what we did, just cooperated. But the fact they seized
4 our house is still a mystery to us."

5 So when he came to give evidence he still wasn't
6 able to give an explanation as to why they needed his
7 house to be seized. What comments would you have about
8 that description?

9 A. Well, he should have been told why the house was being
10 seized from the beginning and if he hasn't then that's
11 just wrong.

12 Q. Right. We have a statement from Kirsty MacLeod, his
13 partner, and she says:

14 "One of the officers went upstairs with Martyn~..."

15 Martyn was getting changed:

16 "... and stood outside his door. I got changed in
17 the bathroom and I think there was another officer
18 standing out on the upstairs landing as well. Once
19 I got changed I was asked to leave my clothes on the
20 ironing board in the kitchen which I did. I'm not sure
21 what Martyn did with his clothes."

22 What comment do you have about that, about officers
23 going upstairs, standing outside the door while the
24 occupants get changed and requiring them to provide
25 their clothing to officers?

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1 A. Well, so it depends -- it absolutely depends on what
2 they have been briefed in relation to, so is it --
3 you know, it feels like what ought to have happened is
4 they were allowed to get changed and then if the Police
5 Service wanted their clothes then they could seize the
6 clothes but I don't know the detail of exactly what
7 instruction they were given, why they were given the
8 instruction and what it was they were trying to achieve
9 by not allowing people just to -- now, if you go to
10 search a house for drugs or whatever then fairly
11 obviously you don't want people to be able to go and
12 dispose of drugs, but, you know, I absolutely don't know
13 the basis of why this house was being seized and the
14 detail of that and why it would be necessary to be with
15 them when they were -- or at least be close by when
16 they're getting changed.

17 Q. From what you know of the circumstances as
18 Gold Commander, can you help the Chair understand
19 perhaps a reason why this would have been done?

20 A. No, I honestly don't know. You would need to ask the
21 officers who were there and why that is what they did.

22 Q. Well, thank you.

23 An explanation that was given to Kirsty MacLeod
24 comes from her Inquiry statement, SBPI00220. I don't
25 need this up on the screen, I will just tell you what it

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1 says. It is paragraph 45:

2 "I asked if I could go and get changed and before
3 I went upstairs they told me to leave out the clothes
4 I had been wearing. They explained this by saying they
5 might have to rule out my DNA from Shek as I had earlier
6 told them that I had cuddled Shek when he arrived at the
7 house that morning."

8 And then we have her original statement that she
9 gave to PIRC, 00054, where she said in there:

10 "They explained this by saying they might have to
11 rule out my DNA from Shek ..."

12 Because of this cuddle. Can I ask you what you make
13 of that explanation that was given apparently to
14 Kirsty MacLeod?

15 A. Well, I would need to understand why they needed to rule
16 out her DNA from Shek because of a cuddle. I mean,
17 I don't know.

18 Q. As Gold Commander in relation to this incident can you
19 think of a reason why officers would need
20 Kirsty MacLeod's DNA from giving Shek a cuddle?

21 A. No, but I mean if there was a reason for DNA to have to
22 be eliminated, so if his clothing or whatever had
23 a number of different DNA on it, there might be a reason
24 why you would want to eliminate and, you know, so that
25 part of it has got nothing to do with the enquiry, or

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1 whatever. But again that would be -- these would be
2 questions for the SIO and deputy SIO in terms of what it
3 was they were trying to achieve by understanding her DNA
4 being on other clothing.

5 Q. We would like to try and understand why, in relation to
6 this incident at Hayfield Road where Sheku Bayoh has
7 been restrained by officers, why there would be a need
8 to exclude Kirsty MacLeod's DNA. She wasn't present at
9 that time.

10 A. No.

11 Q. She wasn't at Hayfield Road. There was never any
12 suggestion that she had been involved in any way with
13 Mr Bayoh in an altercation or any other physical way
14 other than the cuddle. Can you think of a reason why
15 that would reasonably be required from Kirsty MacLeod?

16 A. No, at this moment in time I can't, but the truth is,
17 you know, I don't have that level of detail, I wouldn't
18 expect to have that level of detail, but whoever it is
19 that's directed that to happen is the individual who
20 ought to justify it and explain why it is that they felt
21 that was important.

22 Q. We would like to try and understand why that would be
23 important, if there is a reason you can think of then --

24 A. No, sorry, I can't.

25 Q. All right, thank you. We have -- I have asked witnesses

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1 about why DNA wasn't taken from the officers and
2 an answer that was given was, "That's already on file on
3 a database"; I think that's correct, is it?

4 A. That is correct, yes.

5 Q. There's also an SOP that permits officers' DNA to be
6 taken and it relates to the firearms SOP we were talking
7 about yesterday.

8 A. Yes.

9 Q. It doesn't happen in all circumstances and it depends on
10 the exact situation. At any time was there
11 consideration given by the Gold Group as to whether DNA
12 should be taken from the officers?

13 A. No, not at all, but as you already outlined it's already
14 on the database, so it would be --

15 Q. So not necessary?

16 A. So it wouldn't be necessary to take the DNA. Every
17 officers' fingerprints and DNA are taken when they join
18 the organisation and stored so they can be compared and
19 will be compared where again it is justified.

20 Q. Right. Given what I have told you about the description
21 of events from the occupiers in Martyn Dick's house, do
22 you have concerns about the way that was handled? You
23 have obviously given us your views on the number of
24 officers who attended, but do you have any views or any
25 concerns about the officers following them up the

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1 stairs, standing outside, recovering clothing and
2 requiring DNA?

3 A. Well, so again back to what I said, it's about the
4 officers that were there to justify why it is that they
5 felt -- whether they were instructed to do that and it's
6 someone else to justify it, but it would be posing the
7 question of them. I don't know. I don't have that
8 level of detail, I wouldn't expect to have that level of
9 detail, but I would expect, you know, every house that
10 consent is properly obtained and people are dealt with
11 with respect -- fairness and respect, and if that's not
12 what happened then that shouldn't be what's happening.

13 Q. We have heard from Martyn Dick and Kirsty MacLeod has
14 given a statement, that they were taken to Kirkcaldy
15 Police Office to give statements. They were taken
16 separately in separate cars. Can you explain to us why
17 that would be done in that situation?

18 A. Well, I don't know because I wasn't there, but I would
19 assume that they wanted to speak to them separately and
20 it would -- if there's a lengthy statement to be taken
21 it would probably be more conducive in an office where
22 they could have the space, perhaps show them a number of
23 items if that was required, productions if that was
24 required. I don't know the detail of that, but again it
25 would be for the officers who actually brought them to

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1 the office to give you an understanding of exactly why
2 that had happened, but of course there can be situations
3 where you want to keep people separate, you want to take
4 them into an office and then you want to interview them
5 and get a full statement from them.

6 Q. What would the reasons be for keeping people separate?

7 A. So that they don't talk to each other.

8 Q. To avoid collusion or conferral or ...?

9 A. Exactly.

10 Q. After giving a statement, Martyn Dick explained that
11 when he left Kirkcaldy Police Office he met up with
12 Kirsty and it actually was Kirsty that told him that his
13 friend Sheku Bayoh had died, so he had given a full
14 statement to the police officers over a number of hours
15 and not been told that Mr Bayoh had died. Does that
16 cause you concern?

17 A. It causes me a lot of concern.

18 Q. Why?

19 A. Well, he ought to have been told so that when he gives
20 his statement he knows and understands exactly why he is
21 giving a statement.

22 Q. Thank you. We have heard from Dev Kapadia in this
23 Inquiry about Martyn Dick's house. He was a senior
24 Fiscal on duty that day, on call. This was on Day 38,
25 7 February this year, and he spoke about receiving

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1 a call from police in connection with officers seeking
2 a drug search warrant for Martyn Dick's property. This
3 related to the herbal material. And he described in
4 evidence that it seemed to him at the time that the link
5 to the death, the death of Sheku Bayoh, was somewhat
6 tenuous. He said:

7 "Answer: It did not appear that the death resulted
8 from the drugs, or that there was any previous
9 intelligence of drug dealing at the property. It did
10 not appear to me that a search warrant was proportionate
11 in those circumstances."

12 And he said that:

13 "Answer: The amount -- the quantities were so small
14 they wouldn't be marked for court prosecution and they
15 would not reach the threshold for prosecution."

16 What would you expect police officers to do in that
17 situation, where they have contacted a Fiscal to seek
18 a drugs warrant and the Fiscal has expressed views that
19 it simply wouldn't be prosecuted because the amounts --
20 I think the word he used in evidence was "minute",
21 "minute amounts".

22 A. Yes, so I would expect them to seize them and take no
23 other action.

24 Q. Take no other action. Is that an action open to
25 officers, to take no other action?

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- 1 A. Well, they have already been clearly instructed by
2 a Fiscal that the Fiscal is not prepared to take it
3 forward in terms of prosecution, so it seems -- what
4 course of action can you take?
- 5 Q. And would you expect those officers to charge the
6 occupants of the property with offences under the Misuse
7 of Drugs Act?
- 8 A. Well, they may well have believed that that was the
9 right course of action because, as they believed, there
10 was a quantity of herbal material there, but it seems --
11 you know, if you interpret what the senior Fiscal has
12 said then it's never going to go beyond -- so they can
13 charge the individual but it's never going to go to
14 prosecution -- it's never going to go to court and it's
15 never going to go to prosecution, so it's in my view
16 a needless use of their time to proceed with that.
- 17 Q. Thank you. We have heard that Martyn Dick and
18 Kirsty MacLeod had a dog at the time and they had
19 wanted -- they had left the property without dog food
20 and Martyn Dick had a vehicle, his own vehicle, that he
21 needed to go -- use for work and that a request had been
22 made but they weren't provided with access to the
23 property to recover those items and no one was willing
24 to get those items for them, so Mr Dick wasn't able to
25 go to work that evening because the house was still

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1 secured by the officers. Do you have concerns about
2 that?

3 A. I do.

4 Q. What are those?

5 A. I mean, why would someone not just go and provide him
6 with the keys for his car, or whatever? I don't know.

7 Q. Can you think of any reason why that wouldn't be done?

8 A. No.

9 Q. I would like to move on to Zahid Saeed's property. We
10 have heard that the police arrived there between about
11 1.00 and 1.30 roughly that day, 3 May. I have asked you
12 about consent and the warrant and such-like.

13 We have heard evidence from Mrs Rashid and her
14 father. We have heard that one of the occupiers in the
15 property at that time was disabled, that he was in
16 a wheelchair and required specialist equipment which was
17 available in the home, he had aids and equipment,
18 adaptations. He had mental health issues and issues
19 with communication as a result of a brain injury which
20 he had sustained. Can you tell us what would you expect
21 officers on the ground to do when they are dealing with
22 an occupier who has these difficulties?

23 A. Well, take cognisance of what the difficulties are and
24 make sure that we can support that individual.

25 Q. And what steps would you expect officers to take to

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1 secure reasonable access for him to the equipment that
2 he needs?

3 A. Well, so I suppose it would depend on whether, you know,
4 it was deemed appropriate for him to access what he
5 needed within his own property, or whether actually what
6 we ought to do is take him outwith that property and
7 find him what he required elsewhere, which presumably we
8 would be able to access through our partners, NHS, some
9 of the groups that we're involved with within NHS.

10 Q. We have heard evidence that he had the need to lie down
11 on occasions and he had a special bed adapted for his
12 own use, so my understanding is it would not have been
13 easy for that to be moved out of the property.

14 A. Okay.

15 Q. I mentioned Stuart Houston's Inquiry statement and we
16 read out paragraphs to you earlier and we know that it
17 was his impression as crime scene coordinator that all
18 the police required was the clothing and the car, so in
19 terms of what was inside the house they were looking
20 for, it was simply clothing.

21 A. Yes.

22 Q. We have heard evidence, a suggestion that the family
23 asked if they could remain in one room in the house,
24 that the disabled son would be able to access the toilet
25 and use the equipment that he needed, and that was

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- 1 declined, that request. Does that cause you concern?
- 2 A. Yes, of course.
- 3 Q. And why would that cause you concern?
- 4 A. Well, I think it's fairly obvious that we should be
- 5 supporting the family in that situation and if we're
- 6 merely looking for clothing and, you know, at this stage
- 7 I don't know exactly what they were looking for, but
- 8 Stuart Houston says that, so I can't see any reason
- 9 whatsoever -- go in and seize the clothing, have the
- 10 family help you find the clothing and take it and then
- 11 leave them to get on with their day-to-day business. It
- 12 doesn't seem too difficult.
- 13 Q. And we have also heard evidence that Mrs Rashid had had
- 14 recent surgery, was on medication, as was -- she had
- 15 recently had a child, so she had a young baby and the
- 16 baby had also had recent surgery. What would you expect
- 17 the police officers to do to assist her with her
- 18 particular needs?
- 19 A. Well, find out what her particular needs were and deal
- 20 with it in an appropriate fashion, you know, be fair,
- 21 respect people. You can still achieve what it is that
- 22 you're trying to achieve, but do it in a proper fashion.
- 23 Q. We have heard that after the family were asked to leave
- 24 she had forgotten some medication, she had forgotten to
- 25 retrieve breast milk and breast pumps from the property.

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1 Can you think of any reason why someone would not go and
2 get her --

3 A. No, absolutely no reason.

4 Q. We have heard that her mother was an elderly woman who
5 had health problems herself, was on medication. She
6 spoke little or no English. Again, what would you
7 expect officers on the ground to do in terms of dealing
8 with the mother?

9 A. Well, treat her with fairness and respect. If we needed
10 to get an interpreter to make sure that they knew and
11 understood what was happening, then that's what we ought
12 to be doing.

13 Q. We have heard evidence from Mrs Rashid that she was
14 a Muslim woman, she was wearing traditional clothing,
15 but she was given no explanation why the police were
16 there asking them to leave the house. She had asked for
17 a warrant. She was followed up to her bedroom while
18 a male officer waited outside her room while she dressed
19 and that during the police visit she had made a call to
20 a relative and the phone was grabbed from her hand by
21 the officer as she was on the phone.

22 Can I ask you to comment about that?

23 A. Well, none of that should have been done.

24 Q. And why do you say that?

25 A. Well, back to what I said already: treating people with

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1 fairness, respect. You know, you should respect
2 individuals. I mean -- but at the end of the day all
3 this is about the individuals on the ground explaining
4 and justifying what it is that they have done, but it
5 feels like if everything that's said is true then
6 they're not going to be able to justify it.

7 Q. Could you help the Chair -- looking at what I have said
8 to you -- and obviously it is a matter for the Chair
9 what evidence he accepts in the future --

10 A. Yes.

11 Q. -- but if he accepts any of that evidence, could you see
12 a way forward that situations like this could be avoided
13 in the future, where these things are handled well,
14 handled properly?

15 A. Well, it sounds like there needs to be training, there
16 needs to be development of protocols and people's
17 understanding of exactly what's expected of them and
18 I'm -- you know, there will be protocols in place and
19 there will have been some training but it feels like if
20 all of this is what's happened then that training needs
21 to be reinforced.

22 Q. And with your experience can you envisage the sort of
23 best type of training that would help officers make good
24 decisions in these scenarios?

25 A. Well, you know, a lot of the training will come from

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1 classroom-based, you know, understanding in terms of it
2 sounds like diversity, actual protocols and how they go
3 about their business, what's expected of them and -- but
4 some will be on the job training, so people getting
5 experience from other experienced people who have
6 undertaken this work on a very regular basis.

7 MS GRAHAME: Thank you. As with yesterday we have now
8 reached half past eleven and I think what I would like
9 to do now is ask to speak to the Chair and invite him to
10 have a brief adjournment. So I will ask that the Chair
11 could perhaps be brought on the screen.

12 I wonder if now might be an appropriate time for our
13 morning break?

14 LORD BRACADALE: Yes, thank you. We will stop for
15 20 minutes at this point.

16 (11.30 am)

17 (Short Break)

18 (11.56 am)

19 LORD BRACADALE: Please continue, Ms Grahame.

20 MS GRAHAME: Thank you.

21 I would just like to conclude the questions I'm
22 asking in relation to the home of Zahid Saeed and we
23 also heard evidence from Mrs Rashid that -- she is the
24 sister of Zahid Saeed -- that outside the house
25 the police searched her car and that at some point that

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1 day, I don't have a precise time, Zahid Saeed was
2 sitting -- was brought to the house by police officers
3 sitting in a car and her other brother or her dad went
4 over to talk to Zahid Saeed but the police wouldn't let
5 him talk to him and Zahid was kept in the car.

6 I'm wondering if you can help us understand why that
7 wouldn't be permitted, that his family weren't allowed
8 to speak to him?

9 A. No, I don't know. I don't have that level of detail of
10 exactly what it is that they were dealing with at that
11 stage, or why he was brought back, or why it would be
12 that they didn't want him to speak to anybody, but there
13 might be a reason for that.

14 Q. Can you think of a reason, you know, from your knowledge
15 of this incident in terms of your position as
16 Gold Commander?

17 A. No, no, I can't, but neither can I say that that wasn't
18 justified. I just don't know because fairly obviously
19 the officers that were involved, if that's what's
20 happened, then they have believed that that's in the
21 best interests of the investigation that they were
22 carrying out. But again, that's for them to I think
23 explain and to justify, so sorry, I just don't have the
24 level of detail that would allow me to make an informed
25 judgment. You know, if I had the whole detail then

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- 1 I would be able to help, I think.
- 2 Q. Thank you. I would like to move on to deal with
3 something we have heard evidence about from a number of
4 witnesses called hypotheses. I think we have mentioned
5 that very briefly before. I would like to look at it in
6 some detail now. So we have heard that when you have an
7 unascertained death as a police officer and you are
8 investigating why someone has died, that hypotheses will
9 be considered and developed, perhaps excluded --
- 10 A. Yes.
- 11 Q. -- as you go along and essentially you're narrowing
12 down, trying to determine what happened?
- 13 A. Yes, so it wouldn't necessarily be unexplained. You
14 could have hypothesis in terms of a murder enquiry, so
15 where you know what the cause of death is, stab wound,
16 a shooting, etc, but you would have hypotheses in terms
17 of the individual responsible for it and ascertaining
18 exactly what's happened, so it's just slightly more
19 broad than just an unexplained death.
- 20 Q. Right, thank you. We have heard evidence from
21 Garry McEwan about this and we have heard evidence from
22 Lesley Boal about this and we also heard evidence from
23 Lesley Boal about the stages -- the three stages of an
24 investigation and how you start considering hypotheses
25 and they will develop as time moves on. We will come

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1 back to that. We also heard evidence from Pat Campbell
2 that he was considering hypotheses as he was travelling
3 to Kirkcaldy and as SIO we have heard that that was
4 a sort of normal part of the process.

5 A. Yes.

6 Q. Can I ask you to look at an Inquiry statement from
7 Lesley Boal, SBPI00233, and I'm going to look at
8 a number of paragraphs. It's a summary of possible
9 hypotheses that could be developed in relation to this
10 incident and if we start -- you will see on the screen
11 a witness statement from Detective Chief Superintendent
12 Lesley Boal, as she was then, which she gave the Inquiry
13 team last year and she gave evidence at Day 65 of the
14 Inquiry.

15 Can we start with paragraph 117. You will see this
16 is headed up, "Investigative hypotheses", and she said:

17 "As SIO you have to consider what these hypotheses
18 are and rule them in or out. Criminality of the
19 police officers is a hypotheses. It's for the SIO to
20 decide other hypotheses and what should be done to
21 investigate them. A number might be investigated
22 together."

23 Do you agree with that description?

24 A. Yes, that's correct.

25 Q. 118:

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1 "I think it's good to list what they are. I think
2 the hypotheses approach is mentioned in training. In
3 terms of the murder manual, which is a guide for how to
4 investigate homicides, there is a section on hypotheses
5 in that document. For me, and I can't say this for
6 everybody, it allows me to think about every possibility
7 to make sure you're either eliminating a possibility or
8 finding the evidence and following that evidence to see
9 how far it takes you."

10 Again, you agree with that?

11 A. I do.

12 Q. 119:

13 "In terms of Mr Bayoh we learned later on there was
14 a disturbance at an address he had been at. The
15 question was whether Mr Bayoh was involved, who else was
16 involved, what type of disturbance took place and was
17 anyone assaulted during the disturbance. One hypothesis
18 for me would have been, was Mr Bayoh assaulted prior to
19 coming into contact with police and if so was the
20 assault relevant to any injuries he received or relevant
21 to the cause of death?"

22 Is that a reasonable hypothesis?

23 A. Yes, it is, yes.

24 Q. And we have heard evidence in relation to a physical
25 altercation that Mr Zahid Saeed had had with Sheku Bayoh

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1 prior to his later death, so when she is talking about
2 that, that's the altercation I think that is provided
3 the basis for that hypothesis?

4 A. Yes.

5 Q. Then if we go on to the next paragraph, 120:

6 "Another hypothesis would be, was his death due to
7 an underlying medical condition, information would be
8 obtained from his GP and/or specialist and statement
9 from family members. If I was SIO I would normally list
10 my hypotheses or anything that may be relevant in terms
11 of a potential cause of death."

12 So again, an underlying health condition, medical
13 condition could be one of the reasons why Mr Bayoh died?

14 A. Yes, that's correct.

15 Q. And Lesley Boal gave evidence that that's quite a simple
16 thing to start investigating, you can recover GP
17 records, medical records, and she said that the
18 pathologist would like those for the post mortem as
19 well.

20 A. That's correct.

21 Q. And she said -- Lesley Boal had had experience, she told
22 us, as an SIO, and she said if she was SIO she would
23 normally list her hypotheses. Is that something that
24 you would say is good practice?

25 A. Yes, I would say it's good practice, yes.

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1 Q. Would that be listed in the policy file?

2 A. Yes.

3 Q. And then she says:

4 "I would note down the hypotheses and then allocate
5 out priority actions, the most likely hypotheses
6 initially. Where there is no evidence to support
7 a hypothesis, it can be eliminated. That's not to say
8 every SIO is the same, some will and some won't. Also
9 hypotheses ensure you don't exclude anything. Some
10 things could be overlooked otherwise."

11 Do you agree with what she said?

12 A. Yes, I agree with that.

13 Q. And I think yesterday you gave evidence -- and we don't
14 need to go into this any further -- that the hypothesis
15 about counter terrorism was very quickly checked out and
16 excluded at an early stage?

17 A. That's right, yes.

18 Q. And then 121 she said:

19 "Ch Supt McEwan and I didn't discuss the nature of
20 the investigation. Race as a possibility was not
21 discussed with Ch Supt McEwan. However, it is in the
22 back of your mind when you're thinking about all
23 possibilities. In terms of hypotheses, one would have
24 been that the male had been treated differently because
25 he was a black male. I can't remember having

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1 a conversation with anybody else about it, but the
2 feeling I got was that everybody was thinking along the
3 same lines as me that it was a possibility that the
4 actions of the police officers or a police officer was
5 because Mr Bayoh was black."

6 And again, do you agree that that was one of the
7 potential possible hypotheses?

8 A. Yes, it might be, yes.

9 Q. So in terms of you as Gold Commander you had all of
10 those possibilities and all of those hypotheses in your
11 mind?

12 A. Yes.

13 Q. Did you need Pat Campbell in the Gold Group to explain
14 his hypotheses to you; is that part of the briefing?

15 A. No, so he went through in detail, but at the end of the
16 day the strategic intention -- and, you know, we have
17 gone through it in a bit of detail -- is to carry out
18 a thorough investigation, but in this case, the case
19 that we're dealing with at this moment in time, then
20 fairly obviously, as I have said on a number of
21 occasions, our role was to stabilise everything, make
22 sure that it was all held for a PIRC investigation which
23 was going to be undertaken, so the organisation being
24 investigated. So yes, of course making sure that we
25 understood what the hypotheses were and make sure that

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1 we gathered and secured all the information that would
2 allow them to carry out an investigation that would
3 consider every one of these hypotheses.

4 Q. So these are alive at an early stage and then, as
5 I understand the evidence of Lesley Boal, the hypotheses
6 develop and evolve as the investigation continues?

7 A. That's it. They come directly -- hypotheses come
8 directly from the murder manual which -- it will have
9 been updated but I think it was written around about
10 2008 and it has been updated on a number of occasions.
11 I think north of the border it's called Serious Crime
12 Protocol but that protocol was taken directly from the
13 murder manual which is written by the Association of
14 Chief Police Officers Homicide Working Group and
15 I actually sat on that group when the murder manual was
16 written and I brought the murder manual north of the
17 border and I had it revamped in terms of legislation
18 from a Scottish perspective because obviously our
19 legislation and our detention powers -- that's all
20 changed now, but our detention powers were completely
21 different from south of the border. So the vast
22 majority of the theory of hypotheses developed by the
23 Homicide Working Group and then brought here in terms of
24 a Scottish understanding of -- so every SIO ought to
25 know and understand about hypotheses and where that

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1 comes from and then on the SIO course at Tulliallan they
2 would be taken through the various aspects of an
3 investigation and how to use hypotheses to support the
4 investigation that they're undertaking.

5 Q. So in terms of the role of an SIO who is heading up --
6 the senior investigative officer heading up an
7 investigation, if that relates to someone's death they
8 will have had training in hypotheses and the use of
9 hypotheses?

10 A. Yes.

11 Q. And they are designed to help the investigation and make
12 sure nothing is missed?

13 A. Yes, that's correct.

14 Q. And when we were talking about hypotheses, and
15 Lesley Boal has given us this description, does this
16 protocol specify that underlying health conditions could
17 be a hypothesis?

18 A. Does the manual specify that? No. I mean it's left
19 open in terms of the particular circumstances, so you
20 couldn't specify in a manual just every single enquiry
21 you would come across because we have many enquiries
22 and -- well, every one wouldn't be that different, but
23 they will have -- every one will have nuances and will
24 be a bit different, so just understanding the theory of
25 hypotheses and then applying that to what it is that you

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1 have in front of you, so a hypothesis for every element
2 of what it is that would be important, so that you don't
3 go down one route, you know, and leave everything else
4 behind. You take everything with you and as you
5 eliminate -- so if you have five hypotheses then one at
6 a time you will eliminate the hypotheses until you come
7 to have one that says whatever it's -- whatever the
8 conclusion happens to be at that point.

9 Q. Right. And what do you need to eliminate a hypothesis?

10 A. It will depend what the hypothesis is, so ...

11 Q. Let's look at, for example, underlying health condition.

12 A. Yes.

13 Q. And so that's a hypothesis, a possibility?

14 A. Yes.

15 Q. And you maybe recover GP records, hospital records,
16 information from the family?

17 A. Yes.

18 Q. And would you then send that to the pathologist --

19 A. Yes.

20 Q. -- who is carrying out the post mortem?

21 A. Yes, so somebody would go to the post mortem and would
22 take that so that the pathologist has that available to
23 them.

24 Q. And would you look at the records and say, "That's
25 enough, we're excluding that", or would you wait until

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- 1 the post mortem has been concluded and see what the
2 pathologist said?
- 3 A. Yes, exactly. So as a police officer you wouldn't have
4 the knowledge, the ability to make a determination
5 without having medical expertise applied to it, so take
6 it along, the pathologist will have a look at all of
7 that and decide whether in fact there was an
8 underlying -- of course the records -- the GP records,
9 the health records may well show that there was in any
10 event so -- and in which case it might not be
11 eliminated, but the pathologist would be able to say
12 whether it has an impact, you would hope, on the death
13 or not.
- 14 Q. So it remains alive until you have gathered in all the
15 information you can get --
- 16 A. Yes, that's correct.
- 17 Q. -- about the person's prior health history and then
18 a decision would be taken to exclude that hypothesis or
19 say this is actually the reason?
- 20 A. Yes, that's it.
- 21 Q. So in that situation, with that example, you're not
22 going to say, within the first 24 hours/48 hours, "We
23 don't have evidence from the pathologist but we're
24 satisfied that we can exclude this as a cause"?
- 25 A. No.

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1 Q. And if the pathologist produces an initial post mortem
2 saying, "Cause of death unascertained pending further
3 investigations", would you wait until those further
4 investigations have been carried out?

5 A. You should.

6 Q. You should. Thank you. In relation to the other
7 example that was given here, the possibility of an
8 assault, what would you do as an investigator in
9 relation to that hypothesis?

10 A. Well, you would gather information in relation to it, so
11 take statements, understand what happened, and again
12 take that detail to the pathologist to say there's
13 a suggestion that there was an altercation previously,
14 that there was an injury previously, you know, whatever
15 the detail is, and so that they can make the best
16 informed judgment on what they see.

17 Q. We have also heard evidence from the pathologist in this
18 case who talked about injuries underlying the external,
19 so internal injuries that maybe wouldn't be obvious from
20 the external presentation of the body. So again, if you
21 had an initial post mortem report saying unascertained
22 cause of death, again would you be waiting until you get
23 the final post mortem report to take a view on that
24 hypothesis?

25 A. Yes, so you would follow the evidence. So, you know, if

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1 you haven't got all the statements and the detail at the
2 time that you have the initial post mortem then you
3 subsequently bring that detail to the pathologist to say
4 you know, "We now understand that there's been an
5 altercation and there might have been injury", or
6 whatever, "Has that had any impact on the cause of
7 death?"

8 Q. We heard from Dr Shearer, the pathologist, that there
9 can be very obvious injuries such as blunt force
10 injuries, stab wounds to the heart, a shot to the head,
11 that make it very clear at a very early stage what the
12 cause of death was.

13 A. Yes, of course.

14 Q. And presumably that's something that -- circumstances
15 can be taken into account?

16 A. Yes, that's right.

17 Q. If it's an obvious cause?

18 A. Yes, that's right.

19 Q. And then in relation to this possibility that we see on
20 the screen at 121, this hypothesis that the male had
21 been treated differently because he was a black male,
22 can you explain to us how you would go about
23 investigating this hypothesis?

24 A. Well, you would have to, you know, understand exactly
25 what's happened and whether the police officers took

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1 a different course of action because of -- because the
2 person was black, so you would have to understand what
3 it was they did and why it was they did it and what was
4 their -- you know, what -- why they made the judgments
5 that they actually made, so -- but these would be taking
6 statements from a variety of people roundabout,
7 understanding CCTV and see what had happened and how the
8 person was arrested and then from the statements of the
9 officers themselves understanding exactly what it is
10 that they did.

11 Q. And you wouldn't rule out that possibility until you
12 have obtained all of that information?

13 A. No, no, not at all.

14 Q. Right, and so you have talked about statements from
15 people, would that be possible eye-witnesses?

16 A. Eye-witnesses, CCTV.

17 Q. CCTV. And statements from the police officers
18 themselves?

19 A. Yes.

20 Q. We also heard from Lesley Boal that looking at the
21 Airwaves transmissions at the time might be helpful
22 evidence?

23 A. Yes, of course.

24 Q. She talked about disciplinary records could perhaps be
25 part of the evidence gathering.

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- 1 A. Yes, I agree.
- 2 Q. We have also heard about call cards or STORM cards, that
3 might provide interesting information about the
4 circumstances.
- 5 A. Yes.
- 6 Q. Do you agree with all of that?
- 7 A. Yes, all of that, so you want to gather all of that
8 information.
- 9 Q. And again, the outcome of the post mortem --
- 10 A. Yes, absolutely.
- 11 Q. -- may be a factor?
- 12 A. Absolutely.
- 13 Q. And in a situation where the cause of death in the
14 initial post mortem is unascertained, would that -- that
15 wouldn't permit you to exclude any hypotheses
16 presumably?
- 17 A. No, not at all, not at all. You're waiting for further
18 information and further detail and potentially further
19 examination, so ...
- 20 Q. Right, thank you. We heard from Lesley Boal in relation
21 to this hypothesis, she explained that it can be
22 difficult to investigate the motivation behind actions.
- 23 A. Yes, of course.
- 24 Q. Would you agree with that?
- 25 A. No, I absolutely agree with that.

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1 Q. And she talked about looking at the possibility whether
2 Mr Bayoh's ethnicity had impacted or caused officers to
3 react differently at their initial attendance and so
4 when they first had contact with Mr Bayoh and thereafter
5 during the restraint of Mr Bayoh, whether that is
6 stereotyping, discrimination, whether they wanted to
7 undertake a sort of malicious act, intent or
8 recklessness in terms of his care, and that is the sort
9 of thing you're looking at when you're investigating
10 whether race was a factor?

11 A. Yes, absolutely.

12 Q. And she explained that it would help an investigating
13 officer if they knew what the attending officers had
14 done, whether they had been engaged in the restraint?

15 A. Yes.

16 Q. Whether they had not been engaged, if they were
17 witnesses to things, what had happened, who had done
18 what --

19 A. Yes.

20 Q. -- and I think she said in evidence -- and I'm
21 summarising here -- that on 3 May it was difficult to
22 have a clear view on what the officers had actually
23 done --

24 A. Yes.

25 Q. -- the officers who were gathered in the canteen, she

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1 didn't have a clear picture of who had done what.

2 A. No.

3 Q. Would that accord with your recollection of events on
4 3 May?

5 A. No, that's absolutely correct.

6 Q. And until -- we have heard officers gave statements to
7 PIRC on 4 June, just over a month after these events,
8 and you have told us yesterday you didn't actually have
9 copies of those statements and you told us yesterday you
10 didn't have copies of -- well, they weren't completed,
11 use of force or use of spray forms.

12 A. Yes.

13 Q. So at what point was it possible for Police Scotland to
14 exclude this hypothesis that race was a factor, in the
15 absence of statements or forms or any of that
16 information?

17 A. Well, so when the PIRC carried out their investigation
18 and concluded that investigation you would expect -- and
19 we're talking here about the Police Service and what
20 the Police Service would do, but you would expect that
21 when the enquiry is handed over to the PIRC, that that's
22 exactly what they would be investigating as well. So
23 from a Police Scotland perspective, you know, as I said
24 before, it's about stabilising, it's about holding
25 everything, making sure -- just everything that Lesley

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1 has spoken about there, making sure that we've got that,
2 that's available to the PIRC and that they then are
3 allowed -- you know, that we don't interfere in that in
4 any way whatsoever, they are allowed to go and carry out
5 an independent, objective enquiry and then to come
6 back -- and in this case they have come back to the
7 Fiscal with the facts. I don't know, I haven't seen
8 that report, I don't know what it says, but I would have
9 expected that all of these hypotheses would have been
10 considered.

11 Now, of course -- and some of them are
12 ex-police officers and some of them will have used this
13 in the past, but I don't know and I wouldn't speculate
14 on exactly what the expectation from a PIRC perspective
15 is.

16 Q. And just thinking about that at the moment, so these are
17 hypotheses that an SIO would be considering, developing
18 as part of a police investigation.

19 A. Yes.

20 Q. And you would anticipate that from the handover that
21 PIRC would continue with those hypotheses?

22 A. Yes.

23 Q. And bearing in mind what you have said about PIRC having
24 an independent investigation, presumably what you're
25 saying is that they wouldn't be limited to the police

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1 hypotheses if they felt there were other important
2 hypotheses to consider?

3 A. No, absolutely not.

4 Q. So they could continue with the police hypotheses, they
5 could perhaps add to them --

6 A. Yes.

7 Q. -- themselves, based on their own investigation?

8 A. Yes, yes.

9 Q. And in terms of sharing those hypotheses -- we have not
10 heard from PIRC yet about what they have done or
11 training they have had in hypotheses.

12 A. No, no.

13 Q. But in terms of that handover between say Pat Campbell,
14 the SIO, and the PIRC investigation, can you explain to
15 us what your expectations would be in terms of that
16 sharing of information about hypotheses and that --

17 A. I would expect us to share everything that we had in
18 terms of property, productions, CCTV witnesses, to have
19 a discussion roundabout who was going to be doing what
20 in the future. And yes, Pat Campbell explaining what it
21 was that he was investigating, so what were his
22 hypotheses and then handing that over to the PIRC, but
23 I wouldn't expect the PIRC to tell us what their
24 hypotheses were, so they come up with their own,
25 you know. So whether they would describe it as

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1 hypothesis or something else, I don't know, but -- so --
2 but I wouldn't expect them to share that with us.
3 I would expect them to get on with the enquiry and they
4 would have an expectation that we would give them
5 everything that we had, that we would hand -- everything
6 that Lesley has spoken about there, that we would hand
7 that over to them and that they would carry out the
8 investigation on behalf of the Crown Office and
9 Procurator Fiscal Service.

10 Q. So in a way even if Pat Campbell didn't give any of his
11 own hypotheses to PIRC, you would expect PIRC would
12 develop and evolve their own views about possibilities?

13 A. Yes.

14 Q. Whether they call them hypotheses or not, but they would
15 develop their own theories that they would investigate?

16 A. Yes.

17 Q. And presumably from what you have said you would expect,
18 either because they have been told by Pat Campbell or
19 they have developed it themselves, that one of the
20 possibilities that they would look into would be that
21 Mr Bayoh was treated differently because he was black?

22 A. Yes.

23 Q. Thank you. Lesley Boal talked about it was clear at
24 that time in 2015 that this was a black male who had
25 been restrained, he had become unresponsive during

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1 restraint, it wasn't a unique case in the sense that
2 this had happened before elsewhere in the UK and we have
3 also heard other people talking about, you know,
4 worldwide there are examples.

5 A. Yes.

6 Q. At a very early stage there was mention of George Floyd
7 and we have heard of people down south who have been
8 restrained by police and who have subsequently lost
9 consciousness and died. Was that something that you
10 were aware of, the global picture or the national
11 picture across the UK?

12 A. Absolutely, definitely, yes.

13 Q. Right. So was this something in your mind at the time
14 that you were considering how the investigation would be
15 conducted?

16 A. Yes, well, so I think we had to be absolutely cognisant
17 of that but, as I said, the most important thing at that
18 moment in time is to allow the PIRC to carry out that
19 enquiry and potentially not for us to say, "Well, we
20 think it is this and we think it's that, we don't think
21 it's this", but to say "You've got everything now,
22 anything else that you want please ask and then please
23 get on with the enquiry", because as I said yesterday on
24 a few occasions, I suppose, you know, the sooner the
25 PIRC pick it up, are carrying out an independent

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1 objective enquiry, the better overall for the Police
2 Service. Of course we might have got things wrong and
3 if we did then we need to do something about it, so we
4 need to learn from it, so the quicker we find that out
5 and learn from it and change things, different
6 procedures, the better for everybody, the more
7 confidence the public will have in us and the more
8 confidence families and communities can have in us.

9 So the importance of their independence and us not
10 necessarily interfering into that, or not interfering
11 into that independence at all is really important.

12 Q. I was going to ask you later today but I might as well
13 ask you now about learning lessons. I mean, how
14 difficult was it for the police to learn lessons in the
15 absence of getting the PIRC report or any detail from
16 PIRC?

17 A. Well, I mean -- so it would be difficult because in many
18 ways we would have to go back and reinvestigate some of
19 the things that have already been investigated, but,
20 you know -- but, you know, as I said, we try to learn
21 from every incident, that's what we should be doing
22 but --

23 Q. Were you in -- sorry, I interrupted there.

24 A. No, no, go on. Sorry.

25 Q. Sorry about that. I was going to ask you were you

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1 involved in any learning lessons exercises after the
2 death of Mr Bayoh?

3 A. No, I wasn't, no.

4 Q. No? Were you asked to contribute to any learning
5 lessons courses?

6 A. No, I can't remember at this stage. So I would have
7 done, you know, the Gold Group and over to PIRC and then
8 I would have got on -- you know, at some stage once
9 I was content that it was stabilised, as I have said
10 many times, I would have then gone on to do the job that
11 I was expected to do in terms of Police Scotland. So
12 I would have walked away at that and allowed this
13 enquiry then to continue because at some stage I was
14 content that the PIRC were engaged, they were carrying
15 out the investigation and I suppose wrongly I assumed
16 that we would have got some sort of feedback from the
17 PIRC in terms of -- and then -- so that would have been
18 fed into the force centrally -- sorry, this is what
19 I assumed would happen and of course I may be completely
20 wrong in that, and that was never going to happen, but
21 that's what I assumed would happen and so it's maybe
22 a missed opportunity on my part that we should have done
23 something else.

24 Q. And in terms of that assumption, that they would come
25 back, had you been given information in relation to the

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1 PIRC investigation, either from PIRC themselves or from
2 the Crown, would that have assisted you in learning
3 lessons?

4 A. Yes, if there was feedback from the PIRC or feedback
5 from the Crown then -- but I assume the feedback from
6 the Crown would have gone directly back to either
7 Neil Richardson through PSD, or feedback from the PIRC
8 would have come back in it through that route, not
9 through myself.

10 Q. So you think it would actually have been Professional
11 Standards --

12 A. Yes.

13 Q. -- who would have maybe had that ongoing contact or
14 possible contact?

15 A. That's it, yes. That's correct.

16 Q. Did Professional Standards ever get in touch with you
17 about a learning lessons exercise?

18 A. No, not that I recall.

19 Q. Right. Going back to the hypotheses that we were
20 talking about, can I ask you as Gold Commander what
21 role, if any, would you have had in listening to the
22 hypotheses, discussing the hypotheses? We know
23 yesterday you asked about counter terrorism, but apart
24 from that was there any discussion at Gold Group
25 meetings about the hypotheses?

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1 A. There may have been some discussion, but -- in terms of
2 what the strategy was, but I would need to look at the
3 minutes of the meetings to see whether that was the case
4 or not, so -- but I wouldn't expect to be dictating, if
5 that's the right word, what the hypothesis would be.
6 I would expect the SIO to understand what the incident
7 was and then to come up with a hypothesis himself, as it
8 was in this case, but -- so -- and, you know, so someone
9 as experienced as him and someone as experienced as
10 Lesley Boal, as we have seen, should be allowed to come
11 up with hypotheses that they believe are correct for
12 that investigation, so I wouldn't interfere into that
13 unless there was something so obvious that I should
14 interfere into it.

15 Q. Do you think that what's described in paragraph 121 on
16 the screen about the race hypothesis, if I can call it
17 that, do you think that was obvious to everybody
18 involved that day?

19 A. I think it should have been.

20 Q. Do you think it was? You will see from this, I have
21 read it out to you, Lesley Boal didn't speak -- she
22 didn't remember having a conversation with anyone else
23 about it, but the feeling she got was that everybody was
24 thinking along the same lines. Would that accord with
25 your --

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- 1 A. I think that's probably right, yes.
- 2 Q. Okay. So if we have heard that people weren't thinking
3 along those lines, what would you make of that?
- 4 A. Well, I think that they should be thinking about that.
5 But, you know, again it's back to what I have said
6 already, you know, we aren't the investigating
7 institution, we are being investigated and so it's
8 allowing the investigators to come up with the
9 hypothesis and to carry out a thorough investigation to
10 understand exactly what it is that happened on that day.
- 11 Q. Thank you. We have heard evidence in this Inquiry that
12 some witnesses have said there was simply no evidence
13 that this was racially motivated and there was nothing
14 from the outset to suggest that the actions of the
15 officers were because Mr Bayoh was black. I'm
16 interested in any comment you have about that, the idea
17 that there was nothing at the outset and so --
- 18 A. Well, I think it depends on how you define evidence. So
19 was there -- there was no evidence at the very
20 beginning, so, you know, so some people will be saying
21 that because -- you know, you follow the evidence, so
22 you wait until -- without making a determination,
23 without deciding: oh, it's definitely this, or it's
24 definitely that, you keep a broad perspective in terms
25 of your hypotheses, so five or six hypotheses and you

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1 work your way through each one. You understand that
2 some are eliminated very quickly and very easily, some
3 will be really difficult to eliminate but at some stage
4 you will come to a point where there is only one
5 hypothesis left and as long as you have kept it broad
6 enough and you allow -- and you have thought of
7 everything, then -- because if you haven't thought of
8 everything then when you come to the last one then it
9 might just have been something else that you needed to
10 have thought about, so it's just making sure that you're
11 open -- completely open-minded, don't jump down a route
12 and say: oh, well, I think it was this, or I think it
13 was that, you know, don't do any of that, just follow
14 the evidence. That's the -- from my perspective that's
15 the important thing to do. And then -- because we end
16 up -- and it will have happened, you know, we say one
17 thing and then discover weeks down the road that it's
18 absolutely not that and it wasn't that and then you have
19 to start working your way back and then trying to move
20 forward and weeks later it's much, much more difficult
21 to move forward. So take everything with you and follow
22 all the evidence and if you do that then you will have
23 a thorough enquiry and you will have the proper outcome
24 for what it is that you have done.

25 Q. Does this go back to what you said earlier this morning

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1 that you are keeping an open mind, you're keeping these
2 hypotheses alive and you're not excluding things until
3 you've got all the evidence --

4 A. Absolutely correct.

5 Q. -- that allows you to do that?

6 A. Absolutely right.

7 Q. And in relation to this particular hypothesis, I think
8 you said not long ago that you would want statements
9 from the police officers --

10 A. Yes.

11 Q. -- which were obviously taken by PIRC by this stage in
12 this particular investigation but you would -- from
13 a police perspective you would want those before you
14 ruled anything out?

15 A. That's correct.

16 Q. Thank you.

17 Can I ask you to look at your Inquiry statement
18 please and at paragraph 121 I think. I just want to put
19 this into context of what we're discussing now, so that
20 there's no confusion. You say here, 121:

21 "Race wasn't a factor for Police Scotland to
22 investigate at that time. These are always things that
23 you have in your mind. From my perspective the
24 investigation into what's actually happened and the
25 causes are with the PIRC. If they come back and say

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1 there's an element of racism then you have to do
2 something about that. As far as I know in the time
3 I was there, there was no suggestion that race played
4 a part in what happened. I have been asked if there was
5 anything to suggest race wasn't a factor. I don't
6 suppose there was, but from what was reported at the
7 beginning we had an individual running about between
8 cars with a knife, that's the action of the individual
9 I think. As the investigation goes on there's a better
10 understanding of what goes on there. From that initial
11 part of the investigation it didn't feel to me like race
12 was the cause of this happening. Thorough investigation
13 ought to unearth all the various aspects of what
14 happened. You're open to all of it, so in these
15 investigations you're looking for all the issues and
16 understanding all the issues. This includes
17 understanding the motivations of Mr Bayoh and the
18 police officers."

19 So I'm taking that paragraph in its entirety.

20 A. Yes.

21 Q. And I wonder -- if we look at the first line, and
22 I don't want there to be any confusion, you say:

23 "Race wasn't a factor for Police Scotland to
24 investigate at that time."

25 Can you put this paragraph into context in the light

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1 of what you have already told us today?

2 A. Yes, just exactly what I said was the investigation into
3 the cause of death, what happened is for the PIRC to
4 investigate, so from our perspective it was about
5 stabilising everything, making sure that everything was
6 available to the PIRC and for them to continue with
7 their investigations. So I have gone through there to
8 say: well, at that point there was no evidence of what
9 had happened, so I was keeping a very open mind in terms
10 of what we were doing. So I wasn't going down the route
11 of saying, "Yes, it's racism", I was saying: well,
12 there's no evidence of that at this moment in time but
13 it's in the back of my mind that that might be the case,
14 but let's get an enquiry done before we start to make
15 allegations against anyone. Once we carry out a proper,
16 thorough investigation then we can make whatever
17 assertions or allegations that we want to make at that
18 point, but to make assertions and allegations at the
19 very beginning wouldn't be the right thing to do.

20 Q. And presumably it goes back to what you have just said
21 about the hypothesis remains a live one?

22 A. Yes.

23 Q. And equally you don't want to make unfounded
24 allegations, but you don't want to exclude
25 a hypothesis --

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1 A. No absolutely.

2 Q. -- that race is a factor until you have investigated all
3 the evidence you can gather?

4 A. That's correct.

5 Q. And part of that, which you say at the end of this
6 paragraph, is I think you mention the police officers --
7 understanding the motivations of Mr Bayoh and the
8 police officers.

9 A. Yes, absolutely.

10 Q. And is a part of that getting the statements of the
11 police officers?

12 A. It is, yes.

13 Q. Lovely, thank you.

14 Can I ask you if you were aware in your role that --
15 we have heard evidence from the family that they had
16 raised, on 3 May, the possibility that race was
17 a factor. Was that something that was drawn to your
18 attention in the Gold Group?

19 A. Well, I don't recollect that, but it may well have been.
20 But back to what I said, you know, please let us carry
21 out -- have an investigation and then we will make
22 judgments as we move forward, so without pre-judging --
23 so if the family come and make allegations that it is --
24 you know, it's motivated by race, then that ought to
25 feed through at least to the SIO in terms of what his

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1 consideration -- and then that needs to be fed to the
2 PIRC, you know, and that information needs to be fed to
3 the PIRC in terms of what investigation they carry out.

4 Q. Who would be responsible for sharing that information
5 with the PIRC?

6 A. Well, the SIO.

7 Q. The SIO. And in terms of if the family have had
8 a discussion with officers from Police Scotland who
9 have -- where they have raised the issue that race was
10 perhaps a factor in his death, would it be for those
11 individual officers to then share that with the SIO?

12 A. Yes, I would assume that at some stage a statement would
13 be taken outlining the detail of -- and why they believe
14 that that's the case, so that would be a starting point
15 in terms of having that understanding. But again,
16 you know, just joining all that together, with all the
17 rest of the information that comes in and then being
18 able to -- once you've got all the information in the
19 round, being able to make a judgment on what exactly it
20 is that you've got, but without pre-judging what you
21 have at that point.

22 Q. And in terms of taking statements, that would be
23 something that PIRC would be doing as part of the
24 investigation, is it?

25 A. Well, so, you know, we spoke yesterday about the

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1 officers providing operational statements, but they
2 wouldn't go into the level of detail that you would
3 require for that, so when it came to providing detailed
4 statements then these are the kind of questions that you
5 would expect would be asked at that time.

6 Q. And that would be by PIRC?

7 A. And that would be by PIRC. We would have no involvement
8 whatsoever.

9 Q. And that would relate to taking statements from the
10 family?

11 A. Yes.

12 Q. And the officers who had maybe been part of that
13 discussion with the family?

14 A. That's correct, yes.

15 Q. And then certainly from a police perspective the PIRC
16 could collate all of that information and develop their
17 own hypotheses or whatever it is they wish to call it?

18 A. No, exactly.

19 Q. Can I ask you to look at paragraphs 309 and 310 of your
20 Inquiry statement. So that's 309 and 310 and it says:

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

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

4 So this is moving on from just the family's view,
5 this relates more to the community. Can you tell us
6 a little bit more about what you were -- how you saw the
7 views of the community as impacting on the
8 investigation?

9 A. Well, so it's exactly the same as we spoke about in
10 terms of the family, so depending on, you know, what the
11 community perception was and how we understood that and
12 whether one of the community leaders or members of the
13 community was expressing a view that it was racism,
14 you know, so it would be then understanding why that
15 was, take a statement in relation to that and -- and at
16 the end of the day, even if they weren't prepared to
17 provide a statement you would be taking -- I spoke about
18 it already -- you'd be taking cognisance of that in
19 terms of the investigation anyway, so~... But you would
20 factor that in as the fact that that was a perception.

21 Q. Right. And can I ask you to look at paragraph 96 now
22 please. I'm interested from the second line there:

23 "... in terms of community tensions, community
24 engagement, we need to appoint someone outside. We
25 might appoint someone from Safer Communities and media.

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1 Depends on the incident. I can't remember who else."

2 I'm interested in the idea of someone being
3 appointed from the outside. Can you tell us who were
4 you thinking of at that time?

5 A. So it's just -- it was engagement with, you know,
6 liaison groups, so we would have advisors in terms of
7 the NISAG, which is National Independent Strategic
8 Advisory Group, which has a number of members of
9 different communities who sit on that and who were in
10 a position to provide us with whatever advice it is that
11 we would require in terms of the incident that was
12 unfolding or had unfolded.

13 Q. Thank you. So this would be a partnership -- people who
14 are outside of Police Scotland --

15 A. So people outside --

16 Q. -- but who support Police Scotland?

17 A. So I think I said yesterday we would look -- so
18 Nicola Shepherd was looking locally and then we would
19 have, from a Safer Communities, you know, central
20 position looking nationally at exactly what was taking
21 place so~... And then -- so that's from a policing
22 perspective and then that engagement with the various
23 advisors that we had roundabout the country that would
24 be able to help us provide advice in relation to the
25 kind of incident that we had ongoing.

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- 1 Q. So it would be Nicola Shepherd who would -- was she
2 Bronze Commander in relation to this?
- 3 A. Yes.
- 4 Q. And she would update the Gold Group in relation to
5 issues on these matters, would she?
- 6 A. That's right, yes.
- 7 Q. Thank you. Can I ask you, we have heard evidence and we
8 may hear further evidence in the Inquiry about searches
9 that were carried out by police officers in relation to
10 people connected to Mr Bayoh, including his legal
11 representative -- or the family's legal representative.
12 Pat Campbell gave evidence when I asked him about this
13 that he wouldn't have found any of that very helpful to
14 his investigation. Are you aware of any reason why that
15 may have been helpful to an investigation?
- 16 A. Sorry, can you please --
- 17 Q. Searches done on databases in connection with people
18 connected to Mr Bayoh, for example Collette Bell --
- 19 A. Right.
- 20 Q. -- who was his partner and also his family's solicitor.
- 21 A. Searches in relation to the family solicitor?
- 22 Q. Yes.
- 23 A. I can't think why anybody would think that was
24 beneficial.
- 25 Q. Right, thank you. We were looking through the

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1 Gold Group meeting minutes yesterday.

2 A. Yes.

3 Q. I think we had pretty much come to the end of the second
4 Gold Group meeting. Let's just go back to that briefly
5 to conclude it. It is PS07268 and we started talking
6 about this yesterday. This is the one at 14.40 where
7 PIRC had arrived and were present at the Gold Group
8 meeting.

9 A. Yes.

10 Q. I wonder if we could look at page 2, item 3 on the
11 agenda and we did go through some of this yesterday.

12 A. Yes.

13 Q. You will see that at bullet point 4 it says:
14 "Discussion re [post mortem] is likely to be carried
15 out tomorrow afternoon ..."

16 So this is the meeting at 14.40 on the 3rd and the
17 post mortem was --

18 A. The next day.

19 Q. -- due to take place the following day on the 4th:
20 "... [crime scene manager] to be deployed for each
21 loci. Formal identification of deceased required."

22 You have given us evidence about what your
23 expectations were in relation to that.

24 Then towards the bottom of that page there's comment
25 about a next of kin strategy:

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1 "... No formal ID ... but ID has been done by
2 a Facebook image initially."

3 Do you have any recollection of a discussion at this
4 Gold Group meeting about identification by a Facebook
5 image?

6 A. No.

7 Q. No? Do you see the final bullet point there:

8 "FLO to be briefed in relation to equality and
9 diversity, [next of kin] has been informed by DC Parker
10 and DC Mitchell."

11 We have heard evidence that those were the officers
12 who delivered the death message.

13 A. Yes.

14 Q. What were your expectations in relation to the FLO being
15 briefed regarding equality and diversity?

16 A. Well, so my expectation would be that they would be
17 asked if they were au fait with what the equality and
18 diversity issues were and if they weren't then being
19 briefed about that, but I don't know the detail of that
20 to be honest.

21 Q. All right. Can I ask you to look at another set of
22 minutes, PS03139. This I think is the third Gold Group
23 meeting. Now, we have heard that there was a meeting at
24 19.50 hours and these minutes say 20.15 hours. Do you
25 remember what the time was?

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1 A. No, I don't.

2 Q. So again you will see that you were chairing the third
3 Gold Group meeting.

4 A. Yes.

5 Q. This is in the evening. We have heard by this stage
6 Garry McEwan had gone to visit the next of kin.

7 Can we move down to item 2 please. You see that
8 there was an update given by Pat Campbell.

9 A. Yes.

10 Q. A witness had come forward saying she had videoed the
11 aftermath of the incident at the locus on her mobile
12 phone and there was a task to seize that.

13 Then if we look at item 3, "Investigative process",
14 again you appear to have been given -- if we move up the
15 screen -- an update in this regard. Now, you will see
16 the last bullet point there in item 3 says:

17 "CCTV for police vehicle that attended has not been
18 working since March 2015, seized regardless."

19 Do you remember that part of the discussion?

20 A. No.

21 Q. We have heard evidence that the Transit van which was
22 the first to arrive at the scene had a means of
23 recording but that hadn't been working.

24 A. Yes.

25 Q. Did you know -- did you have concerns, did you know

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1 anything about that?

2 A. Well, I didn't -- obviously before then I didn't know
3 anything about that. Obviously it is brought up there
4 so, you know, the difficulty is that CCTV
5 cameras/equipment, it will break down, but, you know, it
6 is getting up and running as quickly as possible, so --
7 and especially in vehicles such as this that are
8 attending calls, you would want -- from a public point
9 of view, but also from a police safety point of view,
10 you would want the cameras to be working, so it sounds
11 like it hasn't been working for two months, but I have
12 no idea whether that was reported, where it was reported
13 to, you know, and what was done in terms of actually
14 getting either that system repaired or a new system put
15 in, but, you know, somebody at the local office there
16 would know, or will know exactly what happened.

17 Q. Some witnesses have given evidence about CCTV and
18 indicated that it would be a prioritisation of
19 resources, but from what you're saying would you
20 consider CCTV recordings on a police vehicle such as
21 this to be a higher priority than perhaps in other
22 areas?

23 A. Well, I mean you take whatever is available to you, so
24 if the police vehicle's CCTV was available then you
25 would take it, as you would take CCTV from elsewhere.

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1 I mean it's -- you know, it's independent in itself, it
2 records what it records, I mean it's -- and, you know,
3 that would be a good starting point in terms of the
4 investigation, but unfortunately it's not been
5 available.

6 Q. So had it been available that would have been of
7 assistance to the investigation?

8 A. Yes. If I can give you an example?

9 Q. Please do.

10 A. I spoke yesterday about two shootings, police shootings,
11 one in the Gorbals in Glasgow and one outside -- at
12 Carfin railway station and when the initial response
13 went to the individual who was allegedly carrying
14 a firearm, the helicopter was sent up to record the
15 situation. The person was shot and so the first thing
16 to seize was the helicopter footage which portrayed the
17 whole scene, everything that had happened, and so that
18 was a really good starting point in terms of
19 understanding how the shooting had taken place.

20 It would be the same with the CCTV in a vehicle,
21 you know, so if it records the whole incident and the
22 scene, then that's a really good starting point in
23 understanding exactly what happened.

24 Q. Would you also think that things like a body worn
25 camera --

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- 1 A. Yes.
- 2 Q. -- would assist in an investigation into what had
3 happened?
- 4 A. Yes, it would and, you know, for years we have -- well,
5 so I don't know the situation now, I have been out of
6 the organisation for seven years, but we looked on many
7 occasions at having body worn cameras. We had pilots
8 I think in Paisley and elsewhere but as -- like many
9 things, you need a lot of funding in terms of -- so it's
10 not just the camera itself, it's how you download it,
11 how you support it, how you present it as evidence and
12 so -- but, you know, I don't know where we are in terms
13 of that now, but, yes, of course it would be helpful.
- 14 Q. We certainly know that there were no body worn
15 cameras --
- 16 A. No.
- 17 Q. -- in 2015.
- 18 A. Yes.
- 19 Q. But had that existed at the time, that would have been
20 something you would have found helpful for the
21 investigation?
- 22 A. Yes, it would be part of -- that would be part of the
23 investigation.
- 24 Q. Right. Can we look at item 5, which is further down the
25 page of these minutes. Thank you. This relates to

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1 family concerns and I will read this out. I'm
2 interested in your recollection of this discussion, so
3 Garry McEwan:

4 "... discussed brother-in-law of deceased, he is
5 part of an independent advisory group and had advised
6 the initial attending officers that he knew Mr McEwan
7 and requested that he attend and speak with him within
8 24 hours.

9 "[Chief Superintendent] and [Chief Inspector]
10 Shepherd attended at the home address of [next of kin],
11 highly charged environment, deceased partner Colette and
12 extended family within, family concerned that early
13 contact they had was purposely vague. They were unhappy
14 they had not been told anything about who contacted
15 the police and ambulance. [Chief Superintendent]
16 provided them with an understanding of events. [Chief
17 Superintendent] discussed the role of the PIRC and
18 reassured them it would not be P Division officers
19 investigating the incident."

20 And the task there was identified as:

21 "Family crave reassurance and are asking about
22 witnesses etc they do not wish anything publicised until
23 they inform deceased mother who is in London."

24 Do you remember this part of the discussion at this
25 third Gold Group meeting?

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- 1 A. Yes, so in general terms I do, yes.
- 2 Q. Can you tell us what your recollection was about the
3 discussion that took place in relation to Garry McEwan's
4 visit to the family?
- 5 A. So I think that it is just -- it's an update to Gold
6 there to say that he had been asked to attend and that
7 they had, along with Nicola Shepherd, attended at
8 the home address, which he obviously described as
9 a "highly charged environment", and then he obviously
10 outlines there that he has discussed the role of the
11 PIRC and whatever else -- just whatever is contained in
12 that paragraph. I wouldn't expect that there was much
13 more discussion about it than giving us a brief on
14 exactly what happened.
- 15 Q. What's your recollection of the words that are used in
16 the second paragraph, that the family were concerned
17 that early contact they had was "purposely vague"?
- 18 A. Yes.
- 19 Q. Do you remember what that was about?
- 20 A. Well, I think they felt that they hadn't been given
21 enough information from the beginning.
- 22 Q. And what was your view about that? Did you have any
23 concerns about this?
- 24 A. Well, my view was, as I said before, that we ought to be
25 giving the information that we have and I can't remember

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1 exactly what the detail of -- you know, what they felt
2 that they weren't being told, but, you know, it's
3 incumbent on us, giving the family all the information
4 that they require.

5 Q. I think prior to this you gave evidence that in relation
6 to Collette Bell you thought she should have been told
7 about the death --

8 A. Yes I think -- sorry.

9 Q. -- after coming into contact with the police and there
10 was no reason why she shouldn't have been given that
11 information.

12 A. No, exactly.

13 Q. In principle is your view the same in relation to the
14 next of kin --

15 A. It is, absolutely.

16 Q. -- that they should have been given a full explanation
17 and an honest explanation about what had happened?

18 A. Not -- yes, absolutely.

19 Q. And then it says here there would be no P Division
20 officers investigating the incident. Was that your
21 understanding?

22 A. Well, as we discussed yesterday, it will obviously --
23 sorry, P Division officers were on the ground
24 investigating, I mean we wouldn't really have any choice
25 in the initial stages of the enquiry, but I assume that

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1 what he means from that is that at some stage it is
2 going to become a PIRC enquiry and P Division officers
3 wouldn't be involved in that aspect of it.

4 Q. So once PIRC take over the investigation --

5 A. Yes.

6 Q. -- the family were being told there would be no
7 P Division officers?

8 A. Well, so --

9 Q. Do you think that's accurate?

10 A. I wouldn't like to say that's 100% accurate because, as
11 I said before, you know, the PIRC don't have hundreds of
12 resources, they've got a number of people -- and I can't
13 tell you the number now, but I probably knew it when
14 I was in office, but -- so they have to work in a way
15 that they will have an SIO and then they will ask us to
16 support them in terms of some of the investigation, so
17 it may well be that when they have asked us to, I don't
18 know, seize CCTV or carry out house-to-house inquiries,
19 or whatever, that P Division officers may well have been
20 involved in that, so I don't know.

21 Q. I'm conscious of the time, so as with yesterday I think
22 if I could stop you there and I will ask the Chair if
23 now might be an appropriate time to adjourn. Thank you.

24 I'm conscious of the time.

25 LORD BRACADALE: Thank you. We will stop for lunch and sit

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1 again at 2 o'clock.

2 (1.00 pm)

3 (The luncheon adjournment)

4 (2.00 pm)

5 LORD BRACADALE: Good afternoon. I think we can revert to
6 the normal timetable this afternoon: have a break at
7 3 o'clock and then sit until quarter past 4.

8 Carry on now please, Ms Grahame.

9 MS GRAHAME: Thank you very much. Just before lunch we were
10 talking about the minutes for the third Gold Group
11 meeting. This was at 20.15 on 3 May and I wonder if we
12 could have those back on the screen, PS03139, and we
13 were talking about item 5 on the agenda, family
14 concerns, at the bottom of page 2.

15 A. Yes.

16 Q. And I was also going to ask you about the final task
17 that is listed there:

18 "Family crave reassurance and are asking about
19 witnesses etc they do not wish anything publicised until
20 they inform deceased Mother who is in London."

21 First of all, do you remember that part of the
22 discussion at the Gold Group?

23 A. I don't really, but obviously it's in the minutes so
24 that's what was stated.

25 Q. Do you have any recollection about who would be expected

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1 to complete that task? There's no name given next to
2 it.

3 A. Well, I think that Gold and everybody else needs to take
4 cognisance -- the second part of it at the very least --
5 take cognisance of the fact that the family don't want
6 anything publicised until they inform Mr Bayoh's mother,
7 so it's absolutely taking cognisance of that as the
8 family wish, that's what should happen.

9 Q. As Gold Commander would your expectation be that those
10 wishes would be complied with?

11 A. Yes, absolutely.

12 Q. Right. And do you remember anyone discussing Mr Bayoh's
13 mother being in London, or arrangements that were being
14 made by the family?

15 A. I do remember that she was elsewhere than in Kirkcaldy,
16 but -- obviously I can see from this that she was in
17 London, but I don't remember that discussion in that
18 great detail, no.

19 Q. And in terms of someone giving the family reassurance,
20 who would be responsible for that task, in your
21 understanding of how things work who would you think
22 would deal with that task?

23 A. So -- well, the FLOs should -- they are engaged with the
24 family so the FLO -- well, I'm not sure now obviously
25 whether the FLOs were actually engaged with the family

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1 at that stage, so Garry McEwan has been to see the
2 family and presumably he is updating us that they want
3 reassurance and are asking about witnesses, etc, and the
4 fact that they don't want anything publicised, so
5 I suppose my question now is: was sufficient reassurance
6 provided in terms of what they're asking for and then
7 did we comply with it? That's the -- I don't know the
8 answer to that at this moment in time.

9 Q. Do you have any recollection --

10 A. No, I don't really.

11 Q. -- about the actions that were taken by the Gold Group
12 after this was raised?

13 A. Well, I assume they're just about to come up, but not
14 really, no.

15 Q. Let's move on to the next section, so this is page 3,
16 and completing item 3, so you've got a complete picture
17 of what was under that heading -- 5, sorry:

18 "Discussed that Police did not know [next of kin]
19 whilst Colette (partner of deceased) was at Police
20 Station.

21 "[Chief Superintendent] discussing initial decision
22 to have Police Scotland FLOs but now hand over to PIRC
23 FLOs for arrangement to gain entry to house of deceased
24 re collecting belongings for child. Discussion re
25 initial contact on phone from PIRC.

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1 "[Chief Superintendent] discusses Family desperate
2 to know about [post mortem], and also arrangements on
3 having them conveyed to mortuary in Edinburgh."

4 And then:

5 "TASK -- To address all family issues raised."

6 So again that task, to address all family issues
7 raised, no one is allocated that task, or no named
8 person is?

9 A. No, but my expectation would be that it would be from
10 Garry McEwan to the appropriate individuals, which would
11 involve family liaison officers if the family were to be
12 conveyed to Edinburgh, to the mortuary.

13 Q. We have heard evidence that Garry McEwan was concerned
14 about the fact that FLOs hadn't been deployed to the
15 family that day and as a result of his concerns, and the
16 fact the family, Ade Johnson, brother-in-law of
17 Sheku Bayoh, had known him and asked for him to attend,
18 that he went to the family home after 6 o'clock in the
19 evening. He explained that wasn't a normal thing that
20 he would do.

21 A. Yes, that's correct, yes.

22 Q. But in the particular circumstances he felt it was
23 appropriate. I'm summarising.

24 A. Mm-hm.

25 Q. So he has -- by the time of this Gold Group meeting he

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- 1 has been to the family home, he is updating the
2 Gold Group in relation to that meeting.
- 3 A. That's right.
- 4 Q. So in terms of the tasks that are identified under this
5 item in the minutes, who would you expect to be dealing
6 with these -- addressing the family issues that were
7 raised?
- 8 A. Well, so Garry McEwan was the person that was with the
9 family, had most knowledge, so I wouldn't expect himself
10 to be undertaking that but I would expect him to
11 delegate it to other people and, as I said, you know,
12 well, there's a bit of confusion about whether the FLOs
13 were there or not, but ultimately that kind of
14 information, conveying the family to the mortuary, ought
15 to be the duties of the FLOs.
- 16 Q. And in terms of your own expectations as Gold Commander,
17 what would you have expected to be happening in relation
18 to the family issues that are raised, including the
19 arrangements to go to the mortuary?
- 20 A. Yes, well, they have asked to go to the mortuary,
21 I don't think there was any reason that they shouldn't
22 go to the mortuary, so they ought to be conveyed there.
23 That would be the appropriate thing to do.
- 24 Q. And from your perspective, what was the purpose of
25 taking the family to the mortuary?

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1 A. Well, I mean it's not outlined there, but I assume it's
2 about identification, so ...

3 Q. And can you -- you mentioned an issue with the FLOs.
4 Were you aware at this time that there was a lot of
5 discussion going on about the FLOs and Garry McEwan has
6 given evidence that he was concerned about the FLOs and
7 that no one had actually gone to see the next of kin?

8 A. Yes, I mean I think we discussed that yesterday at some
9 point in terms of the length of time it took to get FLOs
10 deployed and that's absolutely right. So at this point
11 then, you know, he has been to see the family, we're
12 trying to understand exactly what the issues are and
13 we're tasking him in the first instance to delegate
14 people to undertake the various roles that are
15 identified there, including taking the family to the
16 mortuary.

17 Q. To go back to the previous page, the information that
18 the mother was in London and the family didn't wish
19 anything to be publicised until they had had
20 an opportunity to inform her, do you have a recollection
21 of being told that the mother was going to travel up
22 from London up to Scotland?

23 A. I don't at this stage, but I probably was told. I was
24 probably told as part of this here, that the family
25 didn't want publicity until the mother was informed in

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- 1 London, and probably as part of that discussion I was
2 told that the mother was -- intended to attend in
3 Kirkcaldy, but I can't specifically remember.
- 4 Q. From your perspective would that be a reasonable request
5 for the family to make, not to publicise things until
6 they have informed his mother when she returned -- came
7 up?
- 8 A. Of course, yes, exactly.
- 9 Q. We have heard evidence from Kadi, she gave evidence to
10 the Inquiry -- this is Sheku Bayoh's sister,
11 Kadi Johnson -- on Day 34 of the Inquiry, 31 January,
12 that they very quickly made -- looked online for flights
13 for the mother to come and travel up from London and
14 that the intention was she would get to Edinburgh about
15 2.00 or 3.00 in the afternoon on the Monday, 4 May. She
16 gave evidence that Sheku Bayoh's mother would be
17 travelling up the next day, they made that clear and
18 they were willing to identify the body once she arrived
19 in Scotland. Again, is that a reasonable approach for
20 the family to take?
- 21 A. Yes, I would think so.
- 22 Q. And from a Police Scotland perspective can you envisage
23 any reasons why that request could not be complied with?
- 24 A. No, not at all.
- 25 Q. We have heard that the body is really in the charge of

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- 1 the -- in the custody of the Crown.
- 2 A. Yes.
- 3 Q. And it is for them to organise the post mortem.
- 4 A. Yes.
- 5 Q. Can you envisage any hindrances to this request being
6 complied with?
- 7 A. No, I can't and I think the post mortem was to be held
8 on Monday afternoon anyway, so ...
- 9 Q. So if it was to be delayed, it wouldn't be delayed by
10 much?
- 11 A. No, not at all.
- 12 Q. We have heard evidence that the mother actually did fly
13 up the following day to Edinburgh, so arrived in
14 Edinburgh initially. Can you see any reason why the
15 post mortem couldn't have been delayed even slightly to
16 allow identification?
- 17 A. Well, you know, I can't but I don't organise the
18 post mortems, so it might be -- well, I'm now going to
19 suppose and that's the wrong thing to do, so I don't --
20 I don't know.
- 21 Q. Is it a request that you would have felt in any way
22 uncomfortable about making of the Crown or the
23 pathologist?
- 24 A. No, not at all.
- 25 Q. Can I ask you in terms of the post mortem, by that stage

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1 on the Monday would that have been something that
2 the police were still involved in progressing, or was
3 that already at the stage of PIRC having taken over? Do
4 you have a view on that?

5 A. Well, I don't think that PIRC had fully taken over the
6 enquiry by the Monday. I think it was into the Tuesday
7 before they were fully engaged with the enquiry, so at
8 this stage -- and you know, other people will be able to
9 give you more detail about who was at the post mortem
10 and, you know, who was between the two, the SIO -- our
11 SIO, the Police Scotland SIO anyway and the PIRC,
12 you know, how much of a handover had taken place by the
13 time that the post mortem was taking place.

14 Q. Did you have a clear view at that time about whether it
15 was Police Scotland that were making progress in
16 relation to the post mortem and arrangements, or PIRC,
17 or did you not have a clear view about that?

18 A. No, I didn't have a clear view at that stage.

19 Q. So as Gold Commander would you have been in a position
20 to provide that strategic direction if you had been
21 invited to do so?

22 A. In terms of who was in charge of the ...?

23 Q. The post mortem, making arrangements with the family,
24 that type of thing.

25 A. Well, I think that -- yes, of course if there was an

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1 issue with that but, you know, as I said before, it's
2 about the Police Service continuing with the
3 investigation until the PIRC is in a position to take
4 over that investigation, so I'm not sure at that point
5 whether the PIRC had enough staff and resource to be
6 able to take over the investigation, so I assume on the
7 Monday -- so Sunday being day one, Monday would be that
8 point that we would be trying to reposition so that the
9 PIRC was the lead organisation, but I'm not sure
10 whether, you know, they were in a position to do that on
11 the Monday or not.

12 Q. I will come back to the question of resourcing actually,
13 but before we leave this item on the agenda, can I go
14 back to the comment about the family being concerned
15 that early contact they had was "purposely vague", we
16 mentioned that earlier just before lunch.

17 We have heard evidence from Kadi in relation to the
18 delivery of the death message, and I appreciate you
19 weren't present at that, but I wonder if I can read out
20 a passage of evidence that we have heard from Kadi and
21 ask you for some comments on that please. So if you can
22 just give me a moment. (Pause).

23 So Kadi Johnson gave evidence, as I have said, on
24 Day 34, 31 January and for those behind me this is
25 line 37 of the transcript. She says -- and this comes

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1 from her Inquiry statement which she spoke to:

2 "I feel it was appalling the way we were treated
3 because how can you come and deliver such information
4 when you know that the very first question is 'how did
5 my loved one die?' and yet you couldn't tell us. Why
6 did they feel that they can come to our house to deliver
7 such information without knowing the proper answer, or
8 why did they decide to just tell us whatever they want
9 to say to us and they thought that we will go with it,
10 or we will just believe it."

11 She -- I asked her to compare her experiences with
12 her role in healthcare. She explained she works as
13 a nurse, or did at the time and she said:

14 "Answer: Well, for me there was no compassion. They
15 just came, they told me the news. Yes, they were calm
16 but I didn't feel no compassion because if you're
17 delivering such information you should have the right
18 words to tell me, you should have the true words to tell
19 me, but that wasn't expressed to me. So for me there
20 was no compassion. They just came, they did their job
21 and just told me the news."

22 Now, listening to that passage of evidence I wonder
23 if you have any concerns about the way the family were
24 treated on 3 May, if you would like to --

25 A. Well, the family ought to be, as I have said many times,

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1 treated with fairness and respect. They ought to be
2 given whatever information it is that we have that we
3 can provide to them, but -- and the family ought to feel
4 that officers that attend are compassionate in terms of
5 what's happened. And if that's not what's happened
6 I can only apologise, but I don't represent the
7 organisation any more, so~... But these things should
8 never happen.

9 Q. Thank you.

10 Can we for the moment go right back to the top of
11 these minutes because these are the minutes from the
12 Gold Group meeting at the end of this day and we have
13 heard from Garry McEwan about the way things had
14 progressed by the evening on 3 May and we have heard
15 about his visit to the family and a moment ago you
16 talked about the word "resources" and I would quite like
17 to ask you about that.

18 We have heard some -- we have heard evidence from
19 Pat Campbell about issues that he had. Now, he gave
20 evidence on Day 47 and expressed reservations about
21 handing over the investigation to PIRC due to their
22 resourcing. He had concerns about their capacity to
23 respond to such a significant incident, he didn't know
24 when they would arrive and he didn't know what resources
25 they would have when they did arrive.

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1 Resources wise, he gave evidence that his
2 investigation had about 20 or 22 resources from
3 Police Scotland -- I think that's officers -- and PIRC
4 turn up with four or five. This was the first
5 deployment of PIRC and it was a challenge and he was
6 reluctant to relinquish control of the incident and had
7 a bit of trepidation and he questioned whether it would
8 have set the investigation back if they gave the
9 handover to PIRC.

10 I'm interested in your views on those comments from
11 Pat Campbell.

12 A. Well, he doesn't have any choice but to relinquish
13 control. It's a PIRC-led investigation and he has to
14 hand over to PIRC as quickly as possible. PIRC will
15 make the decisions about how many resources that they've
16 got there. We can't second judge the PIRC because four
17 or five officers turn up at Kirkcaldy office. You only
18 need one strong leader to actually direct what's going
19 on, asking -- they can direct Police Scotland and use
20 the 22 resources that we've got, or 17,000 that we've
21 got across the force area if that's what is asked of us.

22 So, you know, we ought to just get on with what our
23 job is and allow the PIRC to get on with what their job
24 is. What the resourcing is, how they set themselves up
25 is entirely for them. From a -- I have said this a few

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1 times: we need an independent enquiry and if that's
2 initially started by four or five officers, well, so be
3 it, but they can ask us to carry out -- "We want you to
4 carry out these house-to-house, we want you to seize
5 this CCTV", that can still be independent. We can just
6 go and take the CCTV and we hand it over to them or we
7 secure it so it is available to them. So I don't think
8 what their resources are, you know, that we should be
9 starting to worry too much about that. We ought to be
10 doing what we should be doing: carrying out the
11 investigation, stabilising everything, securing
12 everything and then being in a position to be able to
13 hand over to the PIRC. Every single investigation
14 wouldn't be carried out for them, it can't be. They're
15 never going to have the resources that Police Scotland
16 has got to undertake an investigation. That doesn't
17 mean to say they can't carry out that investigation.

18 Q. Thank you. Can I ask you at this meeting -- you will
19 see the list of names of who are present. We have other
20 information available to the Inquiry that a Gill Boulton
21 addressed or spoke at a Gold Group meeting, this
22 Gold Group meeting:

23 "... to confirm that FLOs would be key in obtaining
24 information, to allow reassurance messages or strategy
25 to be developed and would be recorded within the

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1 Community Impact Assessment."

2 Now, first of all, can I ask do you remember
3 a Gill Boulton addressing the Gold Group meeting?

4 A. So I can't specifically but Gill Boulton had a role in
5 terms of equality and diversity so I'm not surprised
6 that we would have asked for a briefing from her to make
7 sure that we understood all the issues in terms of that.
8 It should have been recorded on whichever Gold Group
9 meeting it is and that's an oversight and I should have
10 challenged that. But anyway, it doesn't surprise me in
11 the slightest.

12 Q. So there's nothing unusual about the Gold Group inviting
13 someone to come and address them or brief them on
14 a particular topic?

15 A. No. If it's a really important issue then, as I say,
16 she had a role at the training centre in terms of
17 diversity, equality and diversity, so it was important
18 to make sure we were up-to-date with all the various
19 facets of that and she would be -- you know, she could
20 ask and challenge any decisions or any actions that were
21 being taken and to rectify any situation that we were
22 involved in, so ...

23 Q. Right. And in light of the fact you don't actually
24 remember Gill Boulton being present, presumably you
25 don't have any recollection of what happened in response

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1 to any briefing she may have given?

2 A. No, I don't.

3 Q. Looking back now, at this -- where things were in the
4 evening on 3 May, do you think the Gold Group could have
5 done more, or developed further strategies in relation
6 to delivering messages to the community?

7 A. We can always do more, there's no question about that,
8 and we can't do enough in terms of communities, but
9 I would hope from what we did that there was sufficient
10 there to actually go and engage with the community, deal
11 with the issues that were highlighted from the
12 Gold Group meeting and take -- you know, take that
13 forward. Could the Gold Group do more? Could I have
14 done more? Well, no doubt I could and no doubt the
15 Gold Group could. As I say, we can always do more but
16 I hope that what we did was sufficient at that time.
17 But, you know, we will no doubt learn.

18 Q. Thank you. Can I ask you to look at item 2, which is on
19 page 2, top of page 2. This is factual update given by
20 Pat Campbell. It says:

21 "Information to suggest that the deceased had an
22 argument with his partner Collette Bell."

23 And we have heard evidence from Collette Bell that
24 when her statement was taken at Kirkcaldy Police Office
25 the police were I think quite insistent in relation to

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1 asking about whether there had been an argument. She
2 made it very clear to the Inquiry there was no argument,
3 but she I think felt -- if I can summarise by saying
4 felt under a little pressure in terms of that line of
5 questioning. Can you help us understand why this topic
6 would be raised in the evening of 3 May at the
7 Gold Group meeting?

8 A. Well, so obviously Pat Campbell felt that it was
9 pertinent in terms of what was happening, so, you know,
10 the fact that Collette Bell was the partner, it was
11 really important, so it was updating the Gold Group in
12 terms of potentially the sensitivities roundabout,
13 you know, what was being undertaken there.

14 Q. Can you help us understand which hypothesis would this
15 assist with or be relevant to?

16 A. Well, so obviously it's looking at the previous history
17 and, you know, what may have led to the cause of death,
18 but, you know, in terms of it being merely an argument
19 it is unlikely to have contributed so -- but, you know,
20 that was an update from Pat Campbell that that's what
21 was being undertaken, so I don't know the detail on
22 that. You would need to ask Pat where that -- you have
23 anyway, but where that fitted into his -- which
24 hypothesis that fitted into.

25 Q. Having heard from Collette Bell herself, she has

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1 expressed the view that she felt there was an attempt to
2 find reasons to blame Sheku Bayoh for his own death and
3 to raise concerns about relationships that he had with
4 his family, including Collette Bell. Was there any
5 attempt or mindset to blame Sheku Bayoh for his own
6 death?

7 A. Well, not from a Gold perspective there definitely
8 wasn't, but, as I said before, I mean it's not taking
9 any particular course of action or -- but to, you know,
10 follow the evidence, follow the evidence wherever it
11 takes you, gather all the evidence that you possibly can
12 and then you can make decisions. But, you know, what
13 you shouldn't do at any stage is try to blame someone.
14 You need to wait for the evidence, that's the bottom
15 line.

16 Q. Thank you. Can we move on to the next Gold Group
17 meeting, which was the next day, PS03161, and this is at
18 12.30 on 4 May 2015, so the day after Mr Bayoh died,
19 roundabout lunchtime.

20 A. Yes.

21 Q. We have looked at these before. This is an agenda.
22 There's no -- it is also minutes, but there's no list of
23 who was present at the meeting. Now, it has been
24 suggested that you were present at the meeting and your
25 name is next to the Terms of Reference. Were you

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1 present at this meeting?

2 A. I was, yes.

3 Q. You were. And this was at Kirkcaldy Police Station.

4 A. Yes, it was.

5 Q. And do you remember attending this Gold Group meeting?

6 A. Well, I remember attending the various Gold Group
7 meetings, yes.

8 Q. Can we look please at page 2, so this relates to item 3
9 on the agenda which is the investigative process. This
10 was spoken to by a DI Stuart Wilson. Page 2 and
11 around -- yes, it's actually at the bottom of the screen
12 as we look add it. You see the items listed "TASK" and
13 the first of those says:

14 "TASK -- Advice to be gained from PIRC regarding the
15 disclosure of the PM results to the Officers involved in
16 the incident. Supervisor to be identified to carry this
17 disclosure out."

18 And I'm interested in your recollection of this part
19 of the meeting. Tell us what you remember?

20 A. Well, I think that potentially Garry McEwan wanted the
21 officers informed of the PM results and -- however, it
22 was important that advice was gained from the PIRC at
23 that stage to make sure that that wasn't going to have
24 any detrimental effect on their investigation and if it
25 wasn't and it was appropriate to disclose the PM

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- 1 results, then that should be carried out by
2 a supervisor.
- 3 Q. Do you have any recollection of who the supervisor was
4 to be identified?
- 5 A. No, I -- no.
- 6 Q. So your recollection is it was Garry McEwan that wanted
7 the officers informed?
- 8 A. I'm pretty sure it was, yes.
- 9 Q. Do you remember his reasons for wanting the officers
10 informed?
- 11 A. Well, it was probably -- so I think it was in relation
12 to -- sorry, giving the officers an update on the
13 position and where the investigation was.
- 14 Q. We have heard some evidence that the officers were not
15 willing to give statements without information on the
16 post mortem results. Do you remember that being
17 discussed?
- 18 A. Well, the officers definitely weren't prepared to give
19 statements. I don't recollect any discussion about it
20 being until either they got legal advice or they knew of
21 the post mortem results.
- 22 Q. You don't remember any comment of that being made?
- 23 A. No, no.
- 24 Q. What would your view be about any suggestion that they
25 wanted these results before they would give statements?

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1 A. Well, that's -- well, they should give operational
2 statements without any of that. In terms of the
3 subsequent interviews and statements then it may well be
4 that you would want to disclose -- it would be -- that
5 would be part of the interview strategy, but it may well
6 be that you would want to disclose parts of the
7 post mortem result if that -- you know, if that was
8 important in terms of your interview strategy. But
9 I don't think that it is appropriate for officers in the
10 first instance to be saying that they're not going to
11 give any statements until they have the results of the
12 post mortem.

13 Q. And why do you say you don't think it's appropriate for
14 officers to be saying that?

15 A. Well, you know, they're obliged to give -- it is
16 incumbent on them to give operational statements and
17 these statements ought to be given long before
18 a post mortem is carried out.

19 Q. Before lunch you talked about -- we talked about the
20 hypotheses and the race hypothesis, as I was calling it,
21 and you explained that the investigation couldn't
22 exclude a race hypothesis without the statements of the
23 officers.

24 A. Mm-hm.

25 Q. That would be an important part of the evidence

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1 gathering.

2 A. It would, yes.

3 Q. And yesterday we talked about conferral and avoiding
4 that because it could have an impact on statements. Was
5 there any part of this discussion where that aspect was
6 addressed, that perhaps you would have wanted the
7 statements from the officers prior to giving them any
8 information?

9 A. No, I mean as far as I was concerned they were refusing
10 to give statements and so this was a request at the
11 Gold Group meeting to provide information regarding the
12 post mortem, and so it is pushed -- you know, is it
13 appropriate and can we have advice from the PIRC in
14 terms of their view of providing information in relation
15 to the post mortem.

16 Q. Did you or anyone else at the Gold Group express
17 concerns that giving officers information about the
18 post mortem results before their statements have been
19 obtained might not be the best idea?

20 A. Well, yes, but the outcome of the post mortem was
21 "unascertained" so it really doesn't provide much
22 information to, you know, the officers or anybody else.
23 It tells everybody that there's more information to be
24 gained, there's more investigation to be carried out, so
25 from that perspective it probably doesn't make much

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1 difference in terms of knowing that information.

2 Q. But when this meeting was going on at 12.30 on 4 May,

3 the post mortem hadn't been conducted at that stage.

4 A. Right.

5 Q. And the initial post mortem report was available

6 two days later.

7 A. Right.

8 Q. So I think at the top -- tell me if we're wrong --

9 A. No, sorry.

10 Q. -- but at the top of the minutes we see that it should

11 say 12.30 I think on 4 May.

12 A. Yes.

13 Q. So as I understand the evidence --

14 A. Sorry, yes.

15 Q. -- there wouldn't have been any information available to

16 you at that time?

17 A. So there's no information available. Yes, okay, so

18 there's no information available at that time, sorry.

19 Q. And so in a situation where there's no statements, no

20 use of force forms, no use of spray forms and the

21 post mortem will be conducted later the same day and

22 there's a discussion about giving officers information

23 about the post mortem, I'm just wondering now in

24 hindsight do you have concerns about that request to

25 give the officers information?

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1 A. Yes. So at that point there was no information to give
2 in any event, so I assume then it's a case of speaking
3 to the PIRC and understanding what information it is
4 that ought to be given to the officers. But fairly
5 obviously we wouldn't find that out until later on when
6 the post mortem was actually held, so ...

7 Q. And do you know who took that -- if we go back to that
8 task, "Advice to be gained from PIRC", who took that
9 task forward? Sorry, this is on page 2 at the task we
10 looked at before just -- there we are, it's on the
11 screen.

12 A. No, I'm not --

13 Q. Do you know who took that task forward?

14 A. I don't.

15 Q. So this item on the agenda, "Investigative process",
16 item 3, was spoken to by DI Stuart Wilson. Would it
17 have been DI Stuart Wilson that would have taken that
18 task forward, or would it have been PIRC? Well, someone
19 had to speak to PIRC.

20 A. Someone had to speak to PIRC, so I assume you would need
21 to speak to him to understand whether in fact he did
22 contact PIRC in relation to this.

23 Q. Were you given any updates after this Gold Group meeting
24 about what the advice from PIRC was, if any?

25 A. I don't recollect that.

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- 1 Q. Did anyone come back to you as Gold Commander to sign
2 off on releasing this information to officers?
- 3 A. I don't think so and I -- well, I don't remember but
4 I don't think so.
- 5 Q. Would you have expected to be addressed or briefed on
6 this matter?
- 7 A. No, I think that, back to what I said previously, I mean
8 it was a case of a discussion with the PIRC and
9 understanding exactly what was to be disclosed and then
10 making that disclosure, or whether it was appropriate to
11 make that disclosure.
- 12 Q. But ultimately when it says, "Advice to be gained from
13 PIRC", would it have been PIRC that took the ultimate
14 decision?
- 15 A. Well, at that point it's their investigation so,
16 you know, they know and understand what it is that they
17 want to glean from the officers and whether it's
18 appropriate to disclose the PM results or not.
- 19 Q. Thank you. We have heard evidence that the family -- we
20 have looked at the previous minutes about them being
21 desperate to know about the post mortem and we have
22 heard evidence that the family did not know that
23 a post mortem had been carried out until the Tuesday,
24 5 May, so the day after, after a meeting with their
25 solicitor. Does it concern you -- we have also heard

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1 evidence that the officers were given information about
2 post mortem results on the evening of 4 May. Does it
3 concern you that the family weren't told that
4 a post mortem had even taken place until after the
5 police officers?

6 A. It absolutely does.

7 Q. And why does that concern you?

8 A. Well, the family should have been informed first.

9 Q. We have heard other evidence that the family should have
10 been the priority --

11 A. Yes.

12 Q. -- in terms of sharing that information and they should
13 have been told first.

14 A. They should.

15 Q. Who would have been responsible for sharing that
16 information with the family about post mortem results?

17 A. Well, it should be the FLOs and that would be the normal
18 course of events, but ...

19 Q. Would that be the PIRC FLOs or the Police --

20 A. Well, it depends who was engaged -- sorry, it depends
21 who was engaged with the family at that time. I can't
22 recollect which FLOs were engaged with the family at
23 that time, but whoever was engaged with the family ought
24 to have been telling the family about the post mortem
25 and also telling them the results.

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- 1 Q. And who is responsible for the FLOs?
- 2 A. Well, ultimately the SIO.
- 3 Q. So if it's Police Scotland it would be someone like
- 4 Pat Campbell?
- 5 A. Yes.
- 6 Q. And if it is PIRC it would be whoever the equivalent of
- 7 Pat Campbell would be?
- 8 A. That's right, that's right, that's right.
- 9 Q. Depending on the point of handover?
- 10 A. That's right.
- 11 Q. We spoke previously about Mr William or Billy Little and
- 12 you mentioned him in your evidence. Could we perhaps
- 13 look at your Inquiry statement please.
- 14 A. Yes.
- 15 Q. I'm interested in paragraph 296. Thank you. The
- 16 Inquiry team asked you to -- you say you:
- 17 "... have been told William Little of PIRC
- 18 states ... the following ..."
- 19 So this is a PIRC statement from Billy Little and
- 20 you were allowed to look at -- asked to look at that and
- 21 were asked questions.
- 22 A. Correct.
- 23 Q. So let's just look at 296 and it says:
- 24 "About 12.35 hours same date whilst en route to
- 25 Edinburgh City Mortuary [this is Billy Little], I was

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1 contacted by [ACC Nicolson] ... During this telephone
2 call Mr Nicolson indicated that he had some concerns
3 regarding the handover of the investigation from
4 Police Scotland to the PIRC, in particular it could be
5 viewed that Police Scotland were still dealing with this
6 incident. I advised him that I had been in contact with
7 Detective Superintendent Campbell and arrangements were
8 being made for the handover in line with the terms of
9 reference. I also assured him that Mr Campbell was
10 fully aware that the PIRC were the sole investigators of
11 the interaction between the deceased and the police."

12 So this relates to a conversation that you had with
13 Mr Little. Can we look at the next paragraph please,
14 297. This is you now speaking in response:

15 "I'm not denying the conversation took place. The
16 Gold meeting was 12.30 pm. The call might have been
17 12.25 pm or whatever. I do remember that call. His
18 statement jogged my memory. It's straightforward, it's
19 obvious that I had concerns. I thought
20 [Police Scotland] were involved in too many aspects and
21 I wanted reassurance that PIRC were leading the enquiry
22 and that they were dictating what elements they were
23 going to undertake and what Police Scotland were going
24 to undertake. I think I was reassured that that's what
25 I wanted to hear."

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1 Can you tell us a little more about these concerns
2 that you had?

3 A. Well, I just felt from a Police Scotland perspective
4 that we were still -- you know, from the information
5 that I was gleaning, that we were still involved in many
6 aspects of the enquiry. Now, of course that might be
7 fine as long as the PIRC have an understanding of what
8 enquiries they want to be involved in and what enquiries
9 Police Scotland are involved in. So purely and simply
10 at that stage -- and I assume that I have made the call
11 before the Gold Group meeting to understand exactly what
12 was happening and to provide myself with reassurance
13 that, you know, the PIRC were leading on the enquiry and
14 that they were undertaking the elements that they wanted
15 to undertake, just like I have said in my statement
16 there, and so he told me that -- well, as it says in my
17 statement there, he had reassurance -- you know, it says
18 in his that he was able to reassure me that they were
19 involved with the investigation to the -- you know, to
20 the extent that they believed that they ought to have
21 been, so ...

22 Q. Let's just look at that previous paragraph. I'm sorry
23 we can't get everything on this screen, but we see there
24 that he says about 12.35 there is this call and you had
25 expressed concerns:

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1 "I advised him that I had been in contact with ...
2 Campbell and arrangements were being made for the
3 handover in line with the terms of reference. I also
4 assured him that Mr Campbell was fully aware that PIRC
5 were the sole investigators ..."

6 So reading that, had there been a handover -- had
7 there been a handover because what this says is:

8 "... arrangements were being made for the
9 handover~..."

10 Had there actually been a handover prior to this
11 fourth Gold Group --

12 A. From that it certainly doesn't feel like it and
13 I suppose that being on the ground it didn't feel like
14 there was a full handover. Now, of course the PIRC were
15 there to some extent and, as I have said already,
16 you know, it's not about the numbers that they have on
17 the ground, it's about leadership and just speaking to
18 the people who are leading at that time. So I assume
19 that Billy Little -- I don't know if it he was SIO at
20 that stage, but obviously I was given his details so
21 I contacted him to give myself reassurance that we were
22 on the right track in terms of who is carrying out this
23 investigation because, as I said before, the earlier --
24 the sooner the PIRC are involved carrying out the
25 investigation, the better.

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1 Q. Did it -- it clearly concerned you. Were you surprised
2 that there hadn't been a handover by 12.30, the fourth
3 Gold Group meeting, on 4 May?

4 A. Well, it depends when the handover -- so when -- if you
5 go back to 3 May when they arrived, and so I had
6 a meeting -- so I think I had scheduled -- from the
7 first Gold Group meeting I think I had scheduled
8 a meeting for later in the afternoon but I brought it
9 forward because they arrived, so I was -- I wanted them
10 to be there so that they knew and understood exactly
11 what was going on, so that they had all the information
12 at a strategic level that I had and then they could go
13 and speak to the SIO and sort out between the PIRC and
14 the SIO exactly how that was being taken forward.

15 That's what I believed was happening from the
16 afternoon of the Sunday, but then, you know, I've got to
17 be careful -- I've got to be careful because
18 Police Scotland has a lot of police officers and a lot
19 of investigators so we could and we would, if we had an
20 investigation, apply as many officers as we wanted.
21 I don't suppose that's entirely right, but -- so we
22 could apply a lot of resource, so it was I suppose a bit
23 more sluggish than what it would be if it was a purely
24 Police Scotland enquiry. But, you know, there's an
25 expectation that there would be a handover and that the

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1 PIRC would be involved at the earliest stage that they
2 could become involved and that they could -- they had
3 enough resource to be able to take it forward in the way
4 that they wanted to take it forward.

5 Q. Thank you. So let me just go through some of that
6 further. I think when we looked at the first Gold Group
7 minutes there was an entry at the end that said the next
8 meeting will be at 4 o'clock?

9 A. Yes.

10 Q. But then when we looked at the second Gold Group meeting
11 minutes they were at 14.40, is that -- you brought it
12 forward because I think you also said PIRC had arrived
13 by then.

14 A. Yes.

15 Q. They were in Kirkcaldy by the second Gold Group meeting
16 at 14.40 and they attended that meeting.

17 A. That's correct.

18 Q. So was your expectation that that would be the point at
19 which there was a handover to PIRC, once they were in
20 the building and present?

21 A. Well, it would be -- I mean, it's a transition rather
22 than, you know, as you would understand it that I would
23 come over and put a folder and hand it over to you,
24 I mean that isn't going to happen. So there's a whole
25 load of enquiries ongoing, so it's a transition from

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1 when they have it -- sorry, from when we have it
2 initially to when they take it over, so that could take
3 a couple of days, but you would expect on day two, the
4 Monday, to see considerable activity and then on day two
5 and then day three, even more activity and so as their
6 activity escalates, our activity ought to de-escalate,
7 so we're less involved. I would expect to see less of
8 our people being involved in it and more of their
9 people.

10 But of course, you know, if they're asking us to
11 carry out some of the investigation then, you know, that
12 might be a slower process because if they ask us to
13 seize CCTV, if they ask us to do house-to-house
14 enquiries, then on it goes. That actually might go on
15 for a couple of weeks before we actually carry out all
16 the house-to-house enquiries, before we seize the CCTV,
17 but I would expect -- I don't know, but I would expect
18 them to be carrying out the house-to-house enquiries in
19 close proximity to the actual incident and then it would
20 be a decision about us seizing the CCTV. So it might be
21 us that did that because we were -- could be worried
22 that it would get destroyed, be written over, depends
23 on, you know, house CCTV might not last that long.

24 So it would be a transition in terms of from our
25 point of view to their point of view, and that's not any

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1 different to where we were in the past with an outside
2 force taking over. It would take a number of days for
3 that handover to take place. But -- yes, sorry.

4 Q. Is it fair to say you would have expected leadership to
5 have been demonstrated by PIRC from an early stage?

6 A. Yes.

7 Q. Even though Police Scotland would still be supporting
8 that investigation perhaps?

9 A. All you need is one strong leader and then they can
10 orchestrate, you know, what's going on. So they ask us,
11 they can sit with our SIO, they can tell the SIO what
12 they want, the SIO will delegate that down to whoever,
13 or they can instruct their people. There's no
14 difficulty with that whatsoever.

15 Q. So looking back now you have mentioned one strong
16 leader. Do you feel that that's what was provided by
17 PIRC at the time?

18 A. Well, I think the leadership changed unfortunately over
19 that period of time, so --

20 Q. Tell us about that.

21 A. Well, I think it was Keith Harrower at the beginning and
22 I think -- well, and it's Billy Little at that point.
23 Now, I don't know the reason for that and actually that
24 might not have detracted, I just don't know is the truth
25 of the matter, but I would have just liked to have seen

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1 continuity and feet on the ground.

2 Q. We have heard in relation to Police Scotland that it's
3 better not to change SIOs, it's better to have one SIO
4 dealing with an investigation --

5 A. Yes.

6 Q. -- and have that continuity there. Is that something
7 you would have liked to have seen with PIRC?

8 A. Yes. Well, it -- you know, the PIRC wouldn't be any
9 different to Police Scotland. There will be reasons,
10 so, you know, we had Pat Campbell, but we might have
11 found that Pat Campbell was going on holiday in
12 five days or whatever and we would have to change. The
13 PIRC might be exactly the same. But would I like
14 continuity? Absolutely. It's absolutely the best way
15 to carry out an investigation of this scale.

16 Q. And can you explain to the Chair how does that -- you
17 have said it's the best way to carry out an
18 investigation of this scale. How does that make it
19 better or -- why is that the case?

20 A. Well, because it's really difficult to articulate every
21 single aspect of the enquiry to another individual and
22 for that person -- especially if it's at scale. If it's
23 a very small enquiry then it's probably not
24 a difficulty, but with the various aspects that there
25 are to this enquiry, there will be nuances all over the

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1 place that the SIO will pick up from day one and all the
2 way through the enquiry. Trying to hand that over to
3 someone else just makes it really difficult, so
4 continuity is really important. I mean, you can manage
5 that with a deputy SIO, so SIO and deputy SIO and then
6 if the SIO has to change over, at least the deputy will
7 be able to have that continuity, or provide that
8 continuity, so ...

9 Q. So can things get lost --

10 A. Oh, yes.

11 Q. -- in the transition?

12 A. Yes. Well, that would be the worry. Whether it
13 actually does or not, but it would be a worry that
14 that's what happens.

15 Q. And in this particular scenario we had a handover from
16 Pat Campbell to Keith Harrower and then to Billy Little.

17 A. Well, it feels like we were in a transition where
18 Pat Campbell was the continuity from beginning through,
19 but then we had Keith Harrower at the initial briefing
20 and then transitioning through to Billy Little on
21 day three I think, day two or day three.

22 Q. This conversation that's described is on 4 May which is
23 the Monday.

24 A. Monday, yes.

25 Q. And it's around about 12.30, roundabout the time of the

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1 fourth Gold Group meeting.

2 A. Yes.

3 Q. Now, in relation to the minutes of this fourth
4 Gold Group meeting I wonder if we can go back to those.
5 This is the PS03161. I said to you at the outset
6 there's no list of who is present.

7 A. Yes.

8 Q. But we see some names mentioned after each item, so you
9 are named, Gold Strategy, DI Stuart Wilson is named, and
10 DI Stuart Wilson is named at 3. McEwan is named.

11 A. Yes.

12 Q. Shepherd is named.

13 A. Mm-hm.

14 Q. And Conrad Trickett and Alan Seath are named, and again
15 Shepherd. I think after that it just says "All" as part
16 of the discussion so perhaps no particular individual
17 was addressing it.

18 I asked previous witnesses were PIRC actually at
19 this meeting?

20 A. I don't think they were but I don't know and obviously
21 there should have been a list of attendees. My practice
22 always was to go round the table and each person to
23 identify themselves. It looks like whoever was taking
24 the minutes has decided they would write the officer's
25 name besides the heading and of course that's not the

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1 best because there may have been people there that
2 haven't spoken, so -- but I would expect that there was
3 a full list of attendees at some stage in terms of the
4 actual meeting itself.

5 Q. But your recollection now is that PIRC weren't --

6 A. I can't remember PIRC being there and I don't think
7 I would have been phoning Billy Little on his road
8 presumably to the post mortem then if they were in
9 attendance at the meeting.

10 Q. Right. Certainly that was what he said, he was I think
11 en route to the mortuary.

12 A. To the mortuary, yes.

13 Q. So if there had been anyone from PIRC there would you
14 probably have discussed matters with them at the meeting
15 instead of phoning Billy Little?

16 A. Yes, I would.

17 Q. Looking back now, was this something that added to your
18 concerns? There was mention of -- I think you said in
19 your Inquiry statement there were too many aspects that
20 were causing you concern and you said you had expected
21 to see more activity from PIRC. Was this something else
22 that added to your concerns, the fact that no one from
23 PIRC was actually at this Gold Group meeting?

24 A. Well, I mean that was part of, you know, I suppose that
25 I'm sitting at a strategic level, but you will get

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1 a feel -- in terms of the PIRC you want to feel that
2 that, you know, you're -- you have to answer questions
3 that you're -- there's a bit of pain in terms of having
4 to provide what it is that you're having to provide and
5 making sure that you support everything that they're
6 doing, so -- and I just didn't have that feeling that
7 there was -- the demands that I thought that we should
8 have -- not, not -- at the end of the day, the PIRC are
9 carrying out the investigation and so from my
10 perspective, sorry, it's a real fine balance of being
11 intrusive and feeling that we're -- I'm putting pressure
12 on anyone in the PIRC in any way whatsoever. So
13 I absolutely don't want anybody to feel that, you know,
14 during any discussion that that's what it's about. It's
15 about just reassurance from our perspective that -- from
16 the Police Scotland perspective anyway, that the
17 investigation is progressing and it's progressing in the
18 way that the PIRC wants it to progress and that we
19 aren't overstepping the mark in terms of what it is that
20 they would want to undertake, so it's about having that
21 control of everything that's going on.

22 Q. So I think the word you used earlier was "sluggish", you
23 felt the response from PIRC or their actions were more
24 sluggish and more so than a police enquiry would have
25 been at this stage?

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1 A. Yes.

2 Q. Is that your recollection?

3 A. Yes, but I did caveat that by saying that the number of
4 resources that we've got -- the PIRC could never have
5 the number of resources that we have. If they had the
6 resources that were able to carry out every single
7 enquiry in terms of this, most of the year they would be
8 sitting in an office somewhere in it East Kilbride with
9 nothing to do. That's just not value for money, so --
10 but they need to have enough resource that they can
11 undertake this enquiry but use resources from elsewhere.
12 It doesn't need to be necessarily Police Scotland, they
13 can draw on resources from elsewhere to carry out their
14 investigations.

15 So it's a small team, it's providing leadership and
16 it's carrying out an effective investigation. That's
17 what you want them to be doing, so -- so I was trying to
18 balance what I was saying by from Police Scotland if,
19 you know, on day one we would apply -- you know, 22
20 resources were mentioned, we could apply 100 resources
21 to it if that's what we wanted to do, so we would draw
22 them from elsewhere, but we could apply that. The PIRC
23 aren't in a position to do that and you wouldn't expect
24 them to be in a position to do that.

25 Q. We heard from Garry McEwan that when he declared

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1 a critical incident, that in theory he could have all
2 the resources available that he needs and in fact that
3 could be from anywhere in Scotland, in theory, and he
4 could even ask for officers through mutual aid from
5 elsewhere nationally?

6 A. In the country, yes.

7 Q. So that's the capacity that Police Scotland had --

8 A. Yes.

9 Q. -- which couldn't be replicated by PIRC?

10 A. No, absolutely not.

11 Q. But at the same time, as I understand your evidence
12 today, Police Scotland were to be supportive of PIRC and
13 the investigation and were prepared to provide resources
14 to PIRC should they require them, or request them.

15 A. Yes.

16 Q. Is that --

17 A. Yes.

18 MS GRAHAME: Now, I'm conscious of the time and the Chair
19 did say he would like to resort to our normal process,
20 so if I may I will ask to speak to the Chair now at the
21 moment on the screen.

22 Good afternoon, I hope that perhaps this is
23 an appropriate moment to adjourn for the afternoon
24 break.

25 LORD BRACADALE: Yes. We will take a 15-minute break now.

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1 Thank you.

2 (3.02 pm)

3 (Short Break)

4 (3.18 pm)

5 LORD BRACADALE: Yes, carry on please, Ms Grahame.

6 MS GRAHAME: Thank you. There's something that I'm going to
7 come back to but I'm waiting for a hard copy to arrive,
8 so I will move on for the moment if you don't mind.

9 I would like to ask you about the situation after
10 there was a handover from Police Scotland to PIRC and
11 you have explained that that would not be a fine
12 dividing line --

13 A. No.

14 Q. -- it would be a transitional period and it may take
15 some time depending on the tasks that were being done.
16 But once the handover had taken place to PIRC and they
17 were leading the investigation, and subject to support
18 that Police Scotland were providing, was it PIRC
19 investigators who were essentially running the
20 investigation, perhaps with support but largely taking
21 the lead --

22 A. Yes.

23 Q. -- taking charge of matters, directing, strategising;
24 that was up to PIRC?

25 A. Yes, that's right.

Transcript of the Sheku Bayoh Inquiry

1 Q. Now had -- at any point in your role as Gold Commander
2 was it brought to your attention that there was someone
3 called a Mr John Sallens, who we have heard may have
4 been a private detective or a precognition officer, and
5 who was going round speaking to possible witnesses? Did
6 you hear anything of that?

7 A. No.

8 Q. I'm interested in what your view would have been if --
9 from a Police Scotland perspective, if you had heard
10 that a person such as a private detective had been going
11 round speaking to witnesses about the Sheku Bayoh
12 incident in the early period, would that have caused you
13 any concerns?

14 A. Well, it depends on what the purpose of that was, so was
15 it on behalf of a lawyer representing any of the
16 individuals, or was it just a private detective going
17 round for I don't know what purpose? If it that's the
18 case then it's wholly inappropriate and Police Scotland
19 ought to have taken action -- or the PIRC taken action
20 to prevent that from happening.

21 Q. Now, we have not heard from Mr Sallens at this stage but
22 my understanding is that he was engaged by Peter Watson
23 who was a lawyer representing both individual officers
24 and the Scottish Police Federation.

25 A. Right.

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1 Q. And it may or may not be the case that this step was
2 taken and arrangements put in place in anticipation that
3 there would have been a fatal accident inquiry
4 instructed at some point by the Crown. Now, we know
5 that there was never an FAI, but in anticipation of that
6 happening, because there had been a death after police
7 contact, that that was at least a possibility and
8 perhaps may have been viewed as mandatory at that stage.

9 With that extra background information, would it
10 have caused you any concern that someone was going
11 round --

12 A. I think that we would have contacted a Fiscal to have
13 a bit of a discussion about what the view was, but at
14 that stage whether that would be a discussion between
15 ourselves and the Fiscal, or whether it would be
16 a discussion between the PIRC and the Fiscal, but
17 I would anticipate that there should be some discussion,
18 you know, at that stage, and I'm not sure which Fiscal
19 was involved at that stage, but I would have anticipated
20 that there would have been some discussion to
21 understand, you know, whether that was -- whether that
22 should be carried out and what steps could be taken to
23 either allow that to happen or to prevent it from
24 happening if it was believed that it was going to
25 undermine the investigation.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Right. And so would the concerns have been it
2 potentially could have undermined the investigation in
3 some way?
- 4 A. Yes, absolutely.
- 5 Q. And you have said to consider what steps could have been
6 taken to stop it. What, as far as you know, what steps
7 could have been taken to stop -- thank you, I think this
8 may be my hard copy arriving. Thank you.
- 9 A. Well, I assume that from a legal perspective that the
10 Fiscal would speak to Peter Watson in terms of what was
11 actually happening and have a better understanding
12 perhaps than we could have of, you know, what was going
13 on, why it was going on and then get a Fiscal's view in
14 terms of whether it should continue or not. But the
15 Fiscal presumably could speak to Peter Watson and
16 instruct him -- because, you know, it's their
17 investigation at that stage, but there may well be legal
18 support, legal, you know, whatever for him to carry that
19 out. I don't know. But the sensible course of action
20 would be to have a conversation with a Fiscal to better
21 understand the legal implications of what was going on.
- 22 Q. Would Police Scotland have considered speaking to
23 witnesses that had maybe been approached by Mr Sallens
24 to see what the nature of the discussion with them had
25 been?

Transcript of the Sheku Bayoh Inquiry

1 A. Well, I don't know, but -- well, so back to, you know,
2 what I said was we would -- I would hope we would have
3 a discussion with the Fiscal and then have an
4 understanding of what it was that we would -- we ought
5 to do and then if that in the round was what was
6 suggested, that we go back and find out what Mr Sallens
7 was about, then that's what we would do. But it was
8 pretty -- you know, so there's Police Scotland, there's
9 the PIRC, Police Scotland being careful about how --
10 you know, they don't undermine the PIRC investigation
11 and then obviously a third party -- because normally in
12 any other incidents what you would have is you would
13 have police carry out the investigation, they report to
14 the Crown and then defence become involved or lawyers
15 become involved and then it's open to them to go and
16 precognosce witnesses, take statements off witnesses.
17 That would be I think the normal course of what would
18 happen but the truth is I don't know on what basis that
19 this was being undertaken.

20 Q. And nothing like this was brought to your attention?

21 A. I absolutely don't remember it being.

22 Q. And if the police had spoken to a witness and that
23 witness explained that he had become concerned that the
24 gentleman was making comments about Sheku Bayoh which
25 were unflattering, if I can describe it in that way,

Transcript of the Sheku Bayoh Inquiry

- 1 would that have caused you concern?
- 2 A. Yes.
- 3 Q. Can you explain why?
- 4 A. Well, I mean why would anybody be making comments that
5 are unflattering, at that stage at this sensitive
6 period? It is beyond belief. It's appalling.
- 7 Q. And would you be concerned about the impact on the
8 investigation?
- 9 A. Yes, of course. You know, if these -- sorry, if these
10 are witnesses that the PIRC or the police expect to give
11 evidence and we've got someone going around and engaging
12 them in whatever fashion, which doesn't sound like
13 a very good fashion, then that ultimately may well
14 undermine the investigation.
- 15 Q. Right. If you had heard from another witness who became
16 concerned that people were knocking on her door and
17 actually took the step that she stopped answering the
18 door to people, would that have caused concern for you
19 in relation to the investigation?
- 20 A. Well, it gives me concern on a number of different
21 levels. No person in this country should be frightened
22 to answer their door, so -- and of course it gives me
23 concern as far as the investigation is concerned.
- 24 Q. And what would those concerns be in relation to any
25 impact on the investigation?

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1 A. Well, I mean it obviously impacts on the witness, so --
2 you know, so I don't know what the witness evidence is
3 or was and how that would impact directly, but,
4 you know, people otherwise than the police going round
5 chapping on people's doors and asking them questions
6 about an enquiry that's ongoing doesn't feel like a good
7 way to be going about their business.

8 Q. Would it cause you any concern if the possible witnesses
9 gained the impression that this gentleman was carrying
10 out an investigation for Police Scotland?

11 A. Yes, it would cause me serious concern.

12 Q. And why would that be?

13 A. Well, because he is creating an impression that he is
14 a police officer. I think from the name he was an
15 ex-police officer, but of course that would cause me
16 concern. They need -- anybody that takes or speaks to
17 a member of the public ought to identify who they
18 actually are and why they want to carry out these
19 investigations.

20 Q. Thank you. Could you give me one moment please.

21 A. I certainly will.

22 (Pause).

23 Q. I may come back to that in a moment. I have now got my
24 hard copy of a document and it was something we were
25 discussing earlier before the break and I just want to

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1 follow up with that, so this is -- what I have in front
2 of me is a daybook used by Nicola Shepherd and have you
3 also been given a hard copy of this?

4 A. I have, yes.

5 Q. Now, I don't think this will be on the playlist for
6 today which -- so I'm not in a position to display it on
7 the screen, but for those listening behind me who have
8 it, it is PS10011. And as you have told us,
9 Nicola Shepherd was involved in matters relating to
10 community impact and the daybook says at the top of it,
11 "Community Impact and Reassurance Group", and she
12 mentions Chief Superintendent McEwan, and there's
13 a number of topics and such-like that she is dealing
14 with in relation to community impact.

15 Can I ask you to look at -- sorry, my pages aren't
16 numbered, page 4, and this is headed up, "Staff
17 meeting":

18 "Chief Superintendent; Superintendent Milton;
19 Amanda Givan, Federation; me taking the minute."

20 And it is a meeting -- it appears to have been
21 chaired by Chief Superintendent McEwan.

22 A. Yes.

23 Q. And then on the next page, page 5, it says:

24 "PM cause of death unexplained pending toxicology."

25 And it then says:

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1 "No evidence of any significant blunt force trauma."

2 So this is just above halfway down --

3 A. I see it, yes.

4 Q. -- the page and this follows on from the conversation we
5 were having before the break about police officers being
6 advised about the post mortem and the outcome of that
7 post mortem and I think I explained to you that
8 initially the view was cause of death was "unascertained
9 pending investigations".

10 A. Yes.

11 Q. But you will see that here it does mention:

12 "PM cause of death unexplained pending toxicology."

13 But in addition to that information was obtained
14 after the post mortem that there was no evidence of any
15 significant blunt force trauma.

16 A. Mm-hm.

17 Q. And as I understand it the evidence that's been led
18 before the Inquiry, officers were advised on the evening
19 of 4 May, so the Monday, not just that the post mortem
20 was unascertained cause of death pending investigations,
21 but that there had been no evidence of any significant
22 blunt force trauma. And so they were given some
23 additional information about the outcome of the
24 post mortem.

25 A. Yes.

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1 Q. Essentially given information that ruled out the
2 possibility that blunt force trauma had caused the death
3 of Mr Bayoh. Now, we have heard evidence in the Inquiry
4 from a PC Tomlinson who told the Chair that he had
5 struck Mr Bayoh to the head two or three times with his
6 baton and that he had in addition struck his arms or
7 body two or three times with his baton. He gave
8 evidence to the Chair and explained that when he
9 returned to Kirkcaldy Police Office he was upset and he
10 was upset that striking him with the baton had perhaps
11 contributed to the ultimate outcome.

12 Now, I wonder in light of that -- we obviously
13 talked about the officers -- you have given evidence
14 about the officers being told about the post mortem on
15 the Monday evening before the family. We also talked
16 about the fact that the officers hadn't given
17 evidence -- hadn't given statements to PIRC until
18 4 June, a month later. Seeing now there that they were
19 also given evidence about -- given information that the
20 death was not caused by any significant blunt force
21 trauma, does that information cause you any concerns --

22 A. Yeah, I think it's --

23 Q. -- about them getting -- it wasn't just simply the death
24 is unascertained.

25 A. No, well, I think that's too much information at that

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1 stage without having provided statements because you
2 would want to marry up the statements with the
3 post mortem outcomes. So, you know, declaring that it
4 is unexplained or unascertained, as it actually was,
5 then I don't see any difficulty with that, that's fine,
6 that's keeping everybody up-to-date with what's going
7 on, but without disclosing any evidence.

8 I mean what it says is, "No evidence of any
9 significant blunt force trauma". You know, that doesn't
10 mean to say that there wasn't trauma and I think, as was
11 already said, the pathologist, you know, will say that
12 there could be, you know, no signs externally but there
13 may well be at some later stage signs internally,
14 you know. So, you know, after a few days it may well be
15 that bruising becomes relevant, or that it is easier to
16 see, so in my opinion it is a bit early to disclose that
17 information.

18 Q. So as Gold Commander obviously this topic was raised at
19 the 12.30 meeting on the 4th.

20 A. Yes.

21 Q. As you can see, things developed after the post mortem
22 took place?

23 A. Yes, that's right.

24 Q. Would you have wanted to have been briefed on this issue
25 before information was given to police officers?

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1 A. Well, so I think -- well, what I wanted to happen, and
2 we saw that, was that PIRC would be consulted on what
3 was -- what the officers were to be told in terms of the
4 post mortem, so I absolutely can't recall having any
5 discussion about that whatsoever, so I don't know
6 whether there was agreement between the PIRC and the
7 SIO, or whatever, but, you know, from my perspective, as
8 I already said, I think that full information is -- it's
9 too early to provide to the officers at the very least.

10 Q. So if they had come back to you and asked, "Should we
11 disclose this?" What would your response have been?

12 A. I would say, well, give me the rationale for doing that
13 and if there was a really good rationale that might be
14 absolutely fine, but in the main I would be saying well,
15 we have not got statements, we haven't got an
16 understanding of exactly what each officer is going to
17 say, you know, and does that give them information that
18 would allow them to -- and obviously it hasn't because
19 the officer has honestly told exactly what's happened,
20 but it would be my concern that someone had struck
21 Mr Bayoh with a baton and then wouldn't disclose it at
22 a later stage, so -- but, you know, it feels like that's
23 probably not what's happened in any event, so it might
24 not be as damaging as it looks like it could be.

25 Q. But it could have been?

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1 A. It could have been damaging.

2 Q. Would your concern at that stage be not to cause any
3 possible damage, or to avoid causing any possible damage
4 to the investigation?

5 A. Yes, absolutely, it's back to what I said. From
6 a policing perspective we need to make sure that we have
7 secured everything, don't lose everything, don't lose
8 any evidence and hand that over so that a proper,
9 effective, independent investigation can be carried out,
10 so -- and then everything that we do ought to be in
11 discussion with the PIRC about what it is that we're
12 going to disclose to the officers, how we're going to go
13 about the interviews based on the fact that we hadn't
14 got the initial statements and just get that agreement
15 and understanding.

16 Q. Thank you. Now, we were talking, before I got my hard
17 copy, of the situation regarding Mr Sallens and I was
18 putting some evidence to you about -- and I think I used
19 the word "unflattering". I was having some checks made
20 on the actual evidence that we heard and I just want to
21 tell you what that was in case it changes anything that
22 you said.

23 So the evidence was from a Kevin Nelson and for
24 those behind me his Inquiry statement is SBPI00014, and
25 the Inquiry has evidence from Mr Sallens through his

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1 Inquiry statement as well as orally that -- sorry,
2 through Kevin Nelson, I should say, that Mr Sallens told
3 him negative things about Sheku Bayoh and in oral
4 evidence he said he described Mr Sallens as:

5 "Answer: ... sprinkling seeds to try and influence
6 [him] negatively about Sheku Bayoh."

7 So I think I used the words "unflattering comments"
8 but that is the description given by a witness,
9 Mr Nelson, who has also given oral evidence to the
10 Inquiry. Is there anything in there that changes any of
11 the evidence that you have --

12 A. No, not at all. It reinforces exactly what I said.

13 Q. Thank you very much. Can we go back to your Inquiry
14 statement please and I would like to move on to
15 paragraph 244. This relates to -- I have a number of
16 questions about equality and diversity:

17 "This means taking account of the ethnicity of the
18 deceased and his family. Ensure there is an
19 understanding of that. Ensuring a knowledge of what
20 cultural issues there might be. It's having an
21 understanding of their background, how they're dealt
22 with, how they expect to be dealt with, and the kind of
23 things they would want to update the [Fiscal] on in
24 relation to the death and future funeral arrangements.
25 In the round it's having that understanding of what

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- 1 cultural issue there might be, how to deal with the
2 family and various aspects. Most FLOs will have an
3 awareness of equality and diversity issues, but if
4 that's reinforced then I think that's good practice."
- 5 You clearly have an understanding of the importance
6 of ethnicity, diversity, equality issues. In your role
7 in Police Scotland at that time did you have obligations
8 in relation to equality and diversity?
- 9 A. So I had Safer Communities, so that was more in relation
10 to engaging with communities and the public, but
11 engaging with the various communities in terms of
12 ethnicity, so that all came under my remit.
- 13 Q. Right. And did you have particular responsibilities,
14 for example under the Equalities Act, in terms of
15 assessing the statistics for Police Scotland, or
16 anything of that sort?
- 17 A. Sorry, so in -- statistics in relation to~...?
- 18 Q. To equality and diversity, in relation to ethnicity, in
19 relation to bias, anything along those lines?
- 20 A. So we had -- as part of what we did, we reviewed crime
21 reports to make sure that there was, you know,
22 an appropriate response. So I had a small department of
23 very few people, but nonetheless focused on racially
24 motivated criminality and offences, so that group had
25 a look through crime reports on a day-to-day basis to

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1 make sure they were being appropriately managed, that we
2 knew and understood what the issues were and whether
3 from a central perspective that we could support the
4 local division and local people in terms of giving the
5 appropriate response to the individuals, the families,
6 the community that was concerned.

7 Q. What was the name of this small department?

8 A. Well, it was within Safer Communities.

9 Q. Right, I see. And was that -- those working in the
10 department, were they available as a resource to other
11 areas to maybe come and seek advice and guidance?

12 A. Yes, absolutely.

13 Q. And did they have any role in analysing differentials
14 between treatment of people, such as black men?

15 A. Well, I'm not -- you would need to ask them about that,
16 but do you mean in terms of the police response to that?

17 Q. Yes.

18 A. Well, whether they went into it in that amount of detail
19 or not, I can't tell you now, but they explored crime
20 reports, they fed back in terms of the investigation
21 that was carried out and, you know, support whichever
22 division it was in terms of what the cultural issues
23 might be and, you know, an overview of if there were
24 instances of that crime, either across the country or
25 locally. So it would be a view in that way but with

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1 their background and knowledge then being able to
2 support the local community to provide an effective
3 response to crime reports, you know, reports of racially
4 motivated crime, you know, whether we had spikes or
5 whatever.

6 Q. Can I ask you to look at paragraph 49 of your Inquiry
7 statement. You say:

8 "I have been asked if race and discrimination were
9 factors in oversight of reports. I think it probably
10 was. We're recording and monitoring all the statistics.
11 I'd need to go back to that time to look at the package
12 of what was being monitored."

13 You've got a hard copy if you want to look around
14 that paragraph, but can you tell us a little bit more
15 about the statistics that were being recorded and
16 monitored?

17 A. I can't remember now to be honest. I mean I said --
18 you know, so I'm pretty sure that we were recording and
19 monitoring statistics, but I can't tell you at this
20 stage exactly what was being recorded. We would need to
21 go back and, you know, from -- you would get from
22 Police Scotland what was being recorded at that stage,
23 but I can't remember now.

24 Q. But this would have been something that the safer -- the
25 people, your department in Safer Communities would

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- 1 perhaps be able to assist us with?
- 2 A. I think so, yes.
- 3 Q. Can I ask you what your recollection is of the procedure
4 in May 2015 for any officers who would wish to report
5 concerns regarding potential racism by another officer?
- 6 A. Well, they initially could report it to a supervisor and
7 then from there an investigation could be instigated and
8 depending on what the outcome of that was, whether it
9 was criminal or non-criminal, then it would proceed
10 either to Procurator Fiscal or it would be dealt with
11 internally.
- 12 Q. And was that process or procedure well-known amongst
13 officers?
- 14 A. Well, I hope so but we would need to ask the officers
15 themselves I suppose whether it was or not, but
16 (inaudible).
- 17 Q. We have heard it suggested that perhaps there was
18 under-reporting in Police Scotland in 2015. Would you
19 agree with that?
- 20 A. That's entirely possible.
- 21 Q. Did you have experience of dealing with any complaints
22 or allegations of racist behaviour by police officers?
- 23 A. I did, yes.
- 24 Q. Can you tell us a little bit more about your experience
25 of --

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1 A. Well, my experience -- I suppose my experience is that,
2 you know, your previous question was about
3 under-reporting. I have no doubt there will be
4 under-reporting. You know, officers will not want to
5 report on their colleagues, that will be the starting
6 point of that. But we have had people come forward and
7 report racially motivated incidents and they have been
8 enquired into, so I have had officers under my --
9 an officer anyway, at least one officer under my command
10 who was racially discriminated against and, you know, so
11 that was dealt with and -- yes, so that was dealt with.

12 Q. Was that by another officer?

13 A. Yes.

14 Q. And when was that?

15 A. 20 ... I think it was probably in times of -- where was
16 it? Strathclyde Police, so it would be prior to 2013.

17 Q. Prior to the death of Sheku Bayoh?

18 A. Yes.

19 Q. And you have said it was Strathclyde Police, was this
20 when you were in your role in Strathclyde rather than in
21 Fife?

22 A. Yes.

23 Q. And was there disciplinary action taken against this
24 officer alleged to have been acting discriminatorily?

25 A. Well -- so I don't remember the outcome of that to be

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1 honest, but action would have been taken against
2 officers in terms of racially motivated incidents or
3 discrimination, but I don't have the record of that and
4 you would need to research that in terms of
5 Police Scotland. But in terms of what I recollect,
6 you know, someone reporting a racially motivated
7 incident and then -- or discrimination and then that had
8 been taken forward, you know, so -- yes.

9 Q. And how -- can you help the Chair understand how often
10 that was something that landed on your desk or --

11 A. No, not very often at all, it was at that stage because
12 that officer worked for me, was under my command, but
13 it's not something that -- you know, that happened that
14 often and certainly not from my perspective, but it may
15 well be that there were reports through the Deputy Chief
16 Constable Designate, both to Police Scotland and to
17 Strathclyde Police, but you need to go back to the
18 records of both Strathclyde, if they're still available
19 or not, and to Police Scotland now from 2013 until this
20 date.

21 Q. Right. As part of your role as ACC did you have any
22 role in equality impact assessments, or the preparation
23 of equality impact assessments?

24 A. Well, so -- well, depending on what was being
25 undertaken, you know, events or whatever, then the

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1 equality impact assessments would have been completed
2 for each -- or ought to have been completed for each
3 one.

4 Q. Is that something that you had any responsibility for
5 when you were --

6 A. Well, if you were involved in chairing Gold for an
7 incident, you would have an expectation that an impact
8 assessment would be carried out.

9 Q. And who would have carried out the impact assessment in
10 relation to Sheku Bayoh's investigation?

11 A. I don't know.

12 Q. Is that something that would have been addressed at the
13 Gold Group meetings?

14 A. It probably should have been.

15 Q. And you have told us that Nicola Shepherd had a role in
16 relation to the community.

17 A. Yes.

18 Q. Would it have been someone else, one of the other Bronze
19 Commanders that would have dealt with equality impact
20 assessments?

21 A. Well, you know, if Nicola Shepherd was in a position to
22 carry out an equality impact assessment then I would
23 expect that that's when it would be undertaken but --

24 Q. Do you remember --

25 A. No, I don't remember that. I don't remember it being

Transcript of the Sheku Bayoh Inquiry

1 carried out.

2 Q. But was it commonly done by someone in the Gold Group --

3 A. Well, it would be done --

4 Q. -- at that time?

5 A. Sorry. It would be done on behalf of the Gold Group by
6 someone.

7 Q. Right. Can I ask you a couple of questions about
8 paragraph 341 of your Inquiry statement. I think you
9 say -- I think you were asked about training on
10 unconscious bias and you say here:

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

16 And I have asked a number of witnesses if they had
17 any training in unconscious bias, so did you ever have
18 any training throughout your career in that concept?

19 A. Well, I can't specifically say that it was focused on
20 unconscious bias, but I have had training in equality
21 and diversity and I have had -- you know, I have been on
22 many, many training courses in which equality and
23 diversity would have been discussed but whether we had
24 formal training in terms of unconscious bias,
25 I absolutely don't remember that and I don't remember

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1 having training, but because of my role I was conscious
2 and understood what unconscious bias was and is.

3 Q. And from your recollection of the training that was
4 given at that time in Police Scotland in 2015, was
5 training given to officers about how to guard against
6 unconscious bias?

7 A. I don't know. So fairly obviously officers would go
8 to -- you know, you need to check with the training
9 centre, but officers would go to the various courses
10 they were on, right from probational training all the
11 way up to superintendent, chief superintendent level in
12 the organisation, so that training would be ongoing, so
13 I don't -- you know, I wouldn't have known then exactly
14 what the training was and I don't recollect it now,
15 so ...

16 Q. Right, I won't ask you any more questions about that
17 then.

18 Can I ask you to look at paragraph 345 please and it
19 may be that you have already answered this question:

20 "I have been asked if I know of any examples of
21 discriminatory behaviour in Kirkcaldy. I can't give
22 a specific instance. When I was the Deputy at
23 Strathclyde, many incidents would have passed my desk.
24 I can't remember any more specifics such as who was
25 being discriminated against. I am not aware of any

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1 racist views held by police officers. I've not heard
2 any racist views or comments by police officers."

3 I think -- is this part of what you have already
4 mentioned to us today, that you did have a complaint
5 about racist behaviour on your desk at one time when you
6 were in Strathclyde?

7 A. Yes, that's right.

8 Q. And that was a complaint against a fellow
9 police officer?

10 A. Yes, that's right.

11 Q. You say, "many incidents would have passed my desk", you
12 have said that the one you remember was in relation to
13 a police officer. We have heard evidence that there can
14 sometimes be complaints about racism alleged against
15 police officers by members of the public, people who are
16 accused of offending, as well as by police officers
17 themselves. Do you remember any other examples, perhaps
18 from -- in relation to police officers themselves other
19 than the one you have given us?

20 A. No, I don't remember. I don't.

21 Q. So in terms of the "many incidents" that would have
22 passed your desk, who would predominantly have been
23 making those complaints?

24 A. So I think when I'm talking about "many incidents passed
25 my desk", I'm talking more broadly in terms of my role

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1 in discipline.

2 Q. Oh, I see. So many incidents would have passed your
3 desk, it wasn't relating to discriminatory behaviour?

4 A. No, so I think what I was trying to explain was,
5 you know, there would be a lot of incidents would have
6 passed over my desk but -- and, you know, I couldn't be
7 more specific about which ones were in terms of
8 discrimination.

9 Q. Am I right in saying you were in the Professional
10 Standards Department at one time?

11 A. I was in charge of the Professional Standards Department
12 for Strathclyde Police. That's going back a while.

13 Q. Sorry. Were you aware of complaints from that time in
14 your career about -- complaints of racism by
15 police officers?

16 A. I can't be specific about -- you know, so that goes back
17 to 2012 or wherever. I can't be specific about what
18 came across my desk. I would be briefed on the many
19 incidents and decisions would have been taken about how
20 that was taken forward, but I can't give specific
21 instances at this moment in time. But I'm sure by going
22 back to the records you would be able to see how many
23 instances there were and how many reports there were.

24 Q. Right, thank you.

25 Can I ask you to look at paragraph 98 please and it

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1 says:

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

9 I'm interested in this idea about the communities
10 and Mr Bayoh's community. Can you explain a little bit
11 more about this paragraph and what you meant?

12 A. Yes, so it's -- you know, so we wouldn't focus on just
13 one community, understanding what communities there are
14 in the Kirkcaldy area and those that might be impacted,
15 so Sheku Bayoh's community, the black community,
16 you know, focusing on his ethnic background, but that
17 wouldn't be just about Kirkcaldy, and you know what
18 I spoke about there, there would be a national picture
19 in Scotland but there would also be a national picture
20 across the UK and actually this might impact much wider
21 than that.

22 So it's really understanding where the impact is,
23 and of course the family themselves, you know, might --
24 are a community that you would be interested in and we
25 spoke about that. So every one of them would

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1 potentially have a view on what's happened, so we would
2 want to know and understand that from a policing point
3 of view. So it's really -- you know, it's really
4 diverse, I suppose.

5 Q. Thank you. Can I ask you some questions about training.
6 We will be hearing further evidence in this Inquiry
7 about training at a later hearing. In your role as
8 Gold Commander did anyone ever express concern to you in
9 relation to -- in the context of the death of Mr Bayoh
10 and the investigation -- about the adequacy of officer
11 safety training or even first aid training that was
12 provided to officers at that time?

13 A. No, not at all.

14 Q. No? Do you remember any questions or concerns or views
15 being expressed about whether the officers had received
16 adequate training?

17 A. No, not at all.

18 Q. Or whether they had received adequate training in issues
19 of equality and diversity?

20 A. No, I don't recall that at all.

21 Q. I think you deal with training from your own perspective
22 in paragraphs -- from paragraph 18 in if your Inquiry
23 statement. I don't need you to look at that. You have
24 told us -- I have asked you specifically about
25 unconscious bias training.

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- 1 A. Yes.
- 2 Q. Had you received specific training prior to May 2015
3 about racial discrimination?
- 4 A. Well, not as a one-off course, but I assume that on the
5 many courses that I have been on, that there's been
6 discussion but not as a specific bespoke training
7 course.
- 8 Q. Right. And when you say you assume, is that because
9 your recollection isn't clear, or~...?
- 10 A. I have been on so many training courses that, you know,
11 over a 33-year period that I can't recollect what was at
12 each training course, but, you know, there would have
13 been training in relation to each aspect of that.
- 14 My job, my interaction with people, my interaction
15 with communities would allow me to garner information,
16 so, you know, so you start with a training course at
17 a training school or wherever we go and then by the work
18 that you do you enhance your understanding of whatever
19 aspect of community it is that we're dealing with.
- 20 Q. Thank you. Had you had any training in relation to
21 institutional racism?
- 22 A. It's exactly the same answer again.
- 23 Q. Same answer.
- 24 A. So specific bespoke training course, probably not, not,
25 but all of these things would be discussed at various

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1 different -- so various different courses, various
2 different forums that I attended and for many of the
3 groups that I attended, as I already spoke about, the
4 advisory group, the strategic advisory group, these are
5 things that would have been brought up and brought to
6 our attention quite forcibly, so ...

7 Q. Thank you. I'm not sure if I asked you about this
8 yesterday, I think I did, I see it is here in my
9 questions again. Can I ask you, at any time did the
10 Gold Group meeting consider the possibility of the
11 Health and Safety Executive being brought in --

12 A. No.

13 Q. -- to assist or support PIRC?

14 A. No.

15 Q. No. There was never any discussion about that
16 possibility?

17 A. We never -- no. As I said, it's stabilise, hold
18 everything and ask the PIRC to come in and carry out the
19 investigation. No.

20 Q. Thank you. Can I ask you to consider the media
21 engagement at the time of Mr Bayoh's death. Looking
22 back now, do you have any concerns about the way
23 the Police Service handled the media at that time?

24 A. Yes, we need to go back and have a look at exactly
25 what's happening, but from my perspective the less said

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1 to the media at that point the better, so it's a holding
2 statement -- at the beginning anyway, it's a holding
3 statement and it's to acknowledge that the enquiry has
4 been handed over to the PIRC, you know, and it may well
5 be that for specific reasons we want to enlarge on that,
6 or engage the media for specific reasons about,
7 you know, witnesses or whatever that is, but, you know,
8 we need to think about that really carefully.

9 Q. Did you have any concerns about information that was
10 being put out into the media, or on social media about
11 Mr Bayoh?

12 A. Well, no information should have been put out, or very
13 little information should have been put out, apart from
14 the fact that we had the incident and that the PIRC was
15 carrying out an investigation. That would be the
16 preferred route.

17 Q. And if it had been up to you, is that something you
18 would have not put out much information about Mr Bayoh?

19 A. That would be my preference. But, as I said, there
20 might be a debate on whether -- that we ought to put out
21 some statements in terms of witnesses so that we get
22 a better understanding of what's happening, but this is
23 not -- you know, so it's not different to many other
24 enquiries where at the very beginning until you get
25 a proper understanding of what's going on, you know, and

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1 this is a holding statement that you require at the very
2 beginning, so very little information at that stage.
3 And of course that might expand, but from our police
4 perspective, hand over to the PIRC and then it's for the
5 PIRC then to engage with the media, if that's indeed
6 what's required.

7 Q. Right. And looking back now -- and obviously we have
8 spent quite a bit of time going over some of the
9 circumstances, perhaps I have explained to you some of
10 the detailed evidence we have heard, I have asked you to
11 comment on that and looking back now at the way the
12 investigation was conducted and matters progressed, do
13 you overall have concerns about the way this was handled
14 by the police?

15 A. So I think we could have managed it better. It may well
16 be that I should have been more intrusive in terms of
17 some aspects of what was going on but, as I say,
18 you know, we were -- what I was trying to do, what I was
19 trying to achieve was -- I keep repeating myself, I'm
20 sorry, but it is that holding -- is holding -- the
21 holding pattern and being able to hand over to the PIRC,
22 so, you know, we're trying to do what we can but as
23 little as we can before we've got that independent,
24 objective oversight into what's happening.

25 MS GRAHAME: Could you give me a moment please because

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1 I would like to address the Chair on a matter. I'm
2 aware now that it is after 4 o'clock and if you don't
3 mind.

4 I wonder if it would be possible for us to rise now.
5 I would like to an opportunity overnight to reflect on
6 some further questions. I don't anticipate I will take
7 very long tomorrow but I'm also conscious that there may
8 be Rule 9 applications tomorrow morning and I would like
9 an opportunity to speak to the core participants about
10 that before I conclude my examination and I wondered if
11 it would be possible to rise slightly early today.

12 Sorry, I --

13 LORD BRACADALE: I think I muted my microphone.

14 Sorry, I think that's an entirely sensible approach,
15 so, Mr Nicolson, would you return tomorrow because there
16 may be some further questions for you.

17 We will then adjourn now until tomorrow at
18 10 o'clock.

19 (4.09 pm)

20 (The Inquiry adjourned until 10.00 am on Friday,

21 15 September 2023)

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