

# Transcript of the Sheku Bayoh Inquiry

Wednesday, 30 August 2023

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(10.00 am)

(Delay in proceedings)

(10.08 am)

CHIEF SUPERINTENDENT GARRY MCEWAN (RTD) (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning Mr McEwan.

Ms Grahame.

MS GRAHAME: Thank you. Yesterday I was asking you some questions about the Gold Group and discussions that were had and I wondered if we could begin today by going back and looking at some other aspects of that, if I may.

Could we look at the second Gold Group meeting minutes, which are PS07268. So this was the Gold Group meeting at 1440 hours. So the first one had been at 11.30 on 3 May and this one was at 2.40. I think when we looked at it yesterday we said this was the first one that PIRC attended?

A. That is correct.

Q. Could we turn to page 2, please. If we start with item 3, the investigative process. And so Detective Superintendent Campbell's name is there with Detective Chief Superintendent Boal?

A. Yes.

Q. And we heard that Campbell was the SIO?

## Transcript of the Sheku Bayoh Inquiry

1 A. That's correct.

2 Q. And in charge of the investigation. He has obviously  
3 addressed the Gold Group in relation to the  
4 investigative process, and he has outlined that, and  
5 raised various aspects and drawn them to the attention  
6 of the group. The first bullet point there relates to  
7 loci strategies. So it says there are five locations,  
8 so five locations that the police are interested in, in  
9 terms of the investigation, and they were Hayfield Road,  
10 where the events took place; Collette Bell's address;  
11 Victoria Hospital, where we understood Mr Bayoh had been  
12 taken after the events; Martyn Dick, his address, we  
13 have heard evidence from Martyn Dick and we have  
14 a statement from his partner, Kirsty MacLeod.

15 A. Okay.

16 Q. And then the home address of Mr Zahid Saeed and we've  
17 heard evidence about the occupants and his family being  
18 present in the house when the police arrived.

19 Can you help us understand at that stage, when  
20 Campbell was giving an outline about these five  
21 locations being secured, can you explain to us what your  
22 expectation was at that stage, that would be done with  
23 the properties. Can I ask you first about  
24 Collette Bell's address; do you remember anything about  
25 that?

## Transcript of the Sheku Bayoh Inquiry

1       A. I don't actually remember much of the conversation to be  
2       honest with you, eight years ago, I could give you  
3       a sort of resumé of what my expectation would be, if  
4       that is helpful but --

5       Q. Yes, absolutely.

6       A. -- you may have heard that from others. I mean,  
7       Collette Bell's address in Arran Crescent was one of  
8       the last places, as I understand it, that Sheku was at,  
9       so as part of a police investigation, at these early  
10      stages, I think I mentioned it yesterday, you need to  
11      widen the net as broad as possible, so that you don't  
12      miss any forensic and/or any other evidence that might  
13      be there and then once you have established a greater  
14      amount of facts you can then begin to downsize, and  
15      focus your resources and your investigative strategies  
16      into particular areas.

17     Q. In terms of the strategy in relation to the property, or  
18     all the properties, was that under the direction of  
19     Pat Campbell?

20     A. Yes, as part of the investigation, yes.

21     Q. In relation to the address of Martyn Dick, do you  
22     remember -- or do you have any view on what expectations  
23     you had in relation to that address?

24     A. No. I don't have enough detail or recollection.

25     Q. We've heard evidence that Mr Bayoh had attended at the

## Transcript of the Sheku Bayoh Inquiry

1 address of Martyn Dick. There had been no physical  
2 altercation or anything of that sort at that address.  
3 No suggestion that there was -- there had been some sort  
4 of disturbance. Martyn Dick wasn't present at  
5 Hayfield Road, and there was no suggestion that he was.  
6 Was anything said or discussed with Campbell about  
7 what -- why that had been selected or why that had been  
8 identified?

9 A. Not that I recall. I would assume that, you know,  
10 Martyn Dick had been in contact with Sheku before  
11 the events in Hayfield Road, so it's about again just  
12 that -- you know, until we know -- until the police know  
13 the facts it is better and more careful to broaden your  
14 investigative strategy as wide as it possibly can, the  
15 net as wide as it possibly can and then you can bring it  
16 in as you learn greater facts. The minute you lose  
17 control of a loci then any forensic capture or any other  
18 evidence could be lost forever, whereas if the police  
19 have control of it, then by default they understand the  
20 circumstances and you can then retrieve what might be in  
21 there of evidential value.

22 Q. Finally with regard to the home of the family of  
23 Zahid Saeed, again do you remember any part of that  
24 discussion or again, were your expectations different in  
25 relation to that property?

## Transcript of the Sheku Bayoh Inquiry

- 1 A. No. Very similar, I would think.
- 2 Q. Right. Where it says, "5 locations being secured", what  
3 was your understanding of what was going to be done in  
4 relation to those locations?
- 5 A. I don't think at that point it was probably clear as to  
6 exactly what was going to get done, it was about taking  
7 possession of them until the true circumstances were  
8 fully understood.
- 9 Q. For those people listening who maybe want  
10 an explanation, what does it mean to take possession of  
11 a property?
- 12 A. So there are a number of ways you can do it. You can  
13 have police officers or police staff present at certain  
14 addresses. You could, on other occasions, you know  
15 secure properties by means of metal shutters, to save  
16 police officers or police staff being deployed there.  
17 I suspect here -- I don't know for certain -- I suspect  
18 here because of, you know, we are in the first 12 hours  
19 of an enquiry, it will have been police officers or  
20 police staff that were present at these different  
21 locations.
- 22 Q. So was it your expectation that under the direction of  
23 superintendent Campbell, the SIO, that police officers  
24 would be deployed to these different addresses?
- 25 A. Or police staff, yes.

## Transcript of the Sheku Bayoh Inquiry

- 1 Q. Or police staff?
- 2 A. Yes.
- 3 Q. To take possession?
- 4 A. Yes.
- 5 Q. If we've heard evidence such as, "Locus protection  
6 measures were put in place", is that the type of thing  
7 you would have expected?
- 8 A. Yes. Yes, exactly that.
- 9 Q. Can you explain to us on -- what was your understanding  
10 about the basis upon which that possession or that --  
11 the properties would be secured?
- 12 A. So at that point they were potential scenes where there  
13 may be evidence, so you know police had made themselves  
14 present there, and I assume engaged with the  
15 householders and, you know, explained the importance and  
16 the need for that. This is where we go back -- or I go  
17 back to family and explanation and, you know, these  
18 things are important because there's a lot of questions  
19 that would come from why are police there and if we are  
20 in a position to explain that in an honest and open way  
21 with the family or whoever else is concerned, then it  
22 just makes life a little bit easier for everybody.
- 23 Q. So, when you are talking about what you would expect,  
24 what would you expect the officers who arrive at these  
25 properties to take possession of them, what information

## Transcript of the Sheku Bayoh Inquiry

- 1           would you expect them to be furnished with?
- 2           A. Every scenario is different but the sort of basics of  
3           the investigation, we -- you know, we believe that this  
4           address may have some relevance to the investigation  
5           that is ongoing, we may not know exactly the relevance  
6           at this point but it is important that we have a police  
7           presence to see if, you know, we can gain control of  
8           these properties until we know the importance or  
9           otherwise of them, at which point they could then be  
10          relinquished back to the occupants.
- 11          Q. Would part of that explanation involve explaining to the  
12          occupants that someone had died in circumstances that  
13          were, at that moment, unexplained?
- 14          A. Yes, timing is important because you know you would not  
15          want to be disclosing really sensitive information to  
16          householders without ensuring that the family and other  
17          next of kin were briefed and aware of -- I'd hate to  
18          think that certain people would be getting more  
19          information than family. So you would have to be really  
20          careful about that.
- 21          Q. So in the situation we have here, we know -- we've heard  
22          evidence that a death message was delivered to  
23          Collette Bell in the morning when she was in Kirkcaldy  
24          but it wasn't until after 3 o'clock in the afternoon  
25          that the first death message had been delivered to the

## Transcript of the Sheku Bayoh Inquiry

1 next of kin and the Johnsons. So in that situation,  
2 where someone has died at 9 -- shortly after 9 in the  
3 morning and the partner has been given a death message  
4 but the next of kin has not, can you help us understand  
5 what you would expect officers to be able to share with  
6 occupants, if those properties were being seized round  
7 about lunchtime, 1 o'clock, half past one, that type of  
8 thing?

9 A. It's difficult for me to give any firm answers because  
10 I wasn't involved in this part of the investigation so  
11 it's really difficult and I would just be, you know,  
12 providing hypotheticals, which I'm not convinced would  
13 add much value.

14 Q. Can you give us an example of what you mean when you say  
15 a hypothetical? It is just so that the Chair can  
16 understand what type of information people would be --  
17 what officers would be expected to share.

18 A. So for me it would -- you know, if we are attending at  
19 a home address of Martyn Dick, for example, we would  
20 explain -- I would expect that we would explain to  
21 Martyn why we're here, and talk about that maybe in  
22 a more general term because the chronology around  
23 whether family et cetera, what they had been told at  
24 that time. But you would certainly require to give  
25 Martyn an explanation as to why you're there and why



## Transcript of the Sheku Bayoh Inquiry

1           you're having a presence and wanting to take possession  
2           of his home address.

3           Q.   What would be the purpose of giving that explanation to  
4           one of the occupants?

5           A.   It's -- it's courtesy, decency, it's about, you know,  
6           about working with the householder in a reasonable,  
7           professional fashion to make sure that -- you know,  
8           because whoever is in that house needs to go somewhere  
9           else and we need to try and help them achieve that, so  
10          we need to work with them.  So it's better to do it in  
11          a sort of really consensual way, in a professional way,  
12          than any other way.

13          Q.   We've heard other officers talk about consent and  
14          obtaining consent.  Does that give police the legal  
15          authority effectively to secure and seize a property?

16          A.   Yes.  It's consent, so there's mutual agreement that the  
17          police are requiring to have a presence there because  
18          there's an ongoing incident and there may be something  
19          of evidential value in that house at that point.

20          Q.   Was it your expectation in relation to these properties  
21          that consent would be obtained from the occupants?

22          A.   Again, I don't know the detail with this but there has  
23          been occasions in my police career where consent has not  
24          been given.  That is not uncommon, to be honest with  
25          you.

## Transcript of the Sheku Bayoh Inquiry

- 1 Q. Was this discussed at the Gold Group meeting?
- 2 A. No, these -- I mean the Gold Group is a very high level  
3 strategic group but, you know, it lasts probably  
4 30 minutes. It's extremely high level. I don't  
5 remember but, you know, I would imagine Pat Campbell  
6 would come in and say, "Currently under the loci  
7 strategy we have taken possession of five addresses,  
8 here they are, and we have police officers there". Full  
9 stop, move on to the next bullet point. That is  
10 the level of the discussion at Gold. There are other  
11 meetings that there would be more detailed discussion,  
12 but not at Gold.
- 13 Q. You have talked about situations in your career where  
14 consent has not been forthcoming, so what do the police  
15 do in that situation if they wish to secure a property?
- 16 A. So if there's specific intelligence and/or witness  
17 statements or evidence to the effect that there might  
18 be, I don't know, hypothetically stolen property or  
19 drugs or whatever in that house then we would require to  
20 go and get a warrant from a court in effect, signed by  
21 a sheriff, to give us authority to go in and search that  
22 property.
- 23 Q. Is that something that police commonly do?
- 24 A. Yes.
- 25 Q. We've heard evidence from a Fiscal who was involved at

## Transcript of the Sheku Bayoh Inquiry

1           one stage who talked about a phone call is made to the  
2           on-duty or on-call Fiscal, they will then discuss the  
3           application for a warrant, and decide whether to put it  
4           before a sheriff who is also on duty --

5           A. Yes.

6           Q. -- and then obtain the paperwork and then -- and that  
7           warrant would give the authority for the police to seize  
8           the property. Or items within. Is that the type of  
9           situation that you are talking about?

10          A. Yes.

11          Q. Do police -- is there a policy or an approach where they  
12          try and get consent but if they can't get consent they  
13          then go for a warrant or do they go for the warrant  
14          first?

15          A. To go for a warrant you have to stipulate on the warrant  
16          predominantly what it is you are going there for, what  
17          purpose, so you know that, again -- you know, I'm really  
18          delving into parts of this enquiry that I have limited  
19          knowledge on, but at that early stage I'm not sure that  
20          level of information and detail would be known.

21          Q. So they may not have been in a position to secure  
22          a warrant because they couldn't have all the details?

23          A. Perhaps not, yes.

24          Q. So very much dependent on consent being given?

25          A. Yes.

## Transcript of the Sheku Bayoh Inquiry

- 1 Q. We've heard evidence that if consent is being obtained  
2 from an occupant, that an explanation -- a full  
3 explanation is given, it's explained that the -- why --  
4 the purpose of securing the property. It is explained  
5 that they can withdraw consent at any time. They are  
6 free to not consent. And one officer who has given  
7 evidence, a DC Finch, said he would often note that down  
8 in his notebook and then get it signed by the occupant.  
9 Is that the sort of approach that you would agree with  
10 in terms of --
- 11 A. Yes, I think that is good practice, to do that and it is  
12 not uncommon, certainly that is what I have personally  
13 done previously but many other officers will have done  
14 the same.
- 15 Q. Thank you. In terms of -- we're talking about securing  
16 a property but does what you've just explained apply  
17 equally if you are asking occupants to leave a property  
18 and remove themselves from a property?
- 19 A. I'd have to -- I would have to read up on guidance on  
20 that area to be honest with you. I'm not exactly sure.
- 21 Q. Is there anything you're aware of where -- which would  
22 mean you don't need consent or a warrant to require  
23 people to leave their homes?
- 24 A. I mean we do have common law powers but the -- I am  
25 so -- because I have been retired for a period of time

## Transcript of the Sheku Bayoh Inquiry

1 I'm not -- that is not at the forefront of my mind to be  
2 honest.

3 Q. That is absolutely fine. We've heard one or two pieces  
4 of evidence where people have said in an emergency  
5 situation, if someone who you think has drugs runs into  
6 a house and you need to go in, that type of thing?

7 A. Yes, that is absolutely correct.

8 Q. I don't think that is the situation that we are talking  
9 about here.

10 A. No, no.

11 Q. So ultimately the strategy is determined by the SIO in  
12 relation to the properties, and the mechanism whereby  
13 people are asked to leave their property and to allow  
14 the police to secure it or perhaps carry out searches,  
15 that would be largely either through consent or by  
16 obtaining a warrant, and that -- decisions about that  
17 would be ultimately the responsibility of the SIO?

18 A. Or his deputy. I mean the SIO, as you can see just from  
19 even these bullets, has got a broad range of issues to  
20 concern himself with so he may have appointed a deputy  
21 to look at the loci strategy. I don't recall if he did  
22 or not but I'm sure he explained all that.

23 Q. Thank you. Can I ask you to look at another bullet  
24 point here. It says:

25 "Discussion re PM~..."

## Transcript of the Sheku Bayoh Inquiry

1           I think we have heard that is likely to be  
2           post mortem?

3       A.   Yes.

4       Q.   "... is likely to be carried out tomorrow afternoon ..."

5           That would be 4 May, so that would be the Monday:  
6           "... CSM to be deployed for each loci.  
7           Is that crime scene manager?

8       A.   Yes.

9       Q.   And then:

10           "Formal identification of deceased required."

11           Can I ask you about this bullet point. Do you  
12           remember that discussion about the post mortem?

13       A.   Not specifically, not -- not eight years on. I'm not  
14           surprised at what is written in that bullet point, you  
15           know, so ...

16       Q.   So this would be part of the investigative process?

17       A.   Yes.

18       Q.   One of the elements that would be considered by  
19           Campbell?

20       A.   Yes.

21       Q.   If crime scene managers were to be deployed for each  
22           loci, would that have an impact on the responsibility  
23           for obtaining consent or obtaining warrants or any of  
24           that?

25       A.   Not necessarily. You can deploy a crime scene manager

## Transcript of the Sheku Bayoh Inquiry

1 to a house if you have the full consent from the  
2 occupant. The -- yes.

3 Q. It would appear -- this is the minutes, as I say, of  
4 2.40 in the afternoon. It seems to be saying that the  
5 locations are being secured but a crime scene manager is  
6 "to be deployed for each loci". Do you have any  
7 recollection of whether that was something that was  
8 planned to appoint a CSM but not -- hadn't been done in  
9 advance of the loci being identified?

10 A. That would be the normal, and as part of  
11 an investigation of this importance you would be  
12 beginning to think: right, where would I -- or where  
13 would the crime scene managers require to be deployed  
14 because crime scene manager is a very specialist  
15 resource, and there are -- there will be a cadre  
16 somewhere in Police Scotland but there will not be  
17 a huge number of experienced crime scene managers. So  
18 for Pat Campbell or his deputy to be thinking around  
19 those lines, I think it's appropriate. But, yes,  
20 I don't think they have been deployed at that point, by  
21 the reading of that.

22 Q. Thank you. Can we move on to item 5, which is on  
23 page 3. This is, "Family concerns". It appears to have  
24 been spoken to by Detective Inspector Robson, and it  
25 says:

## Transcript of the Sheku Bayoh Inquiry

1           "Discussion re [next of kin] Strategy identified as  
2           sister of deceased, Collette Bell, Girlfriend of  
3           deceased is currently within Kirkcaldy Police Station  
4           and has been informed a deceased person is in hospital  
5           and that it may be her partner."

6           Was it still DI Robson that was in charge of the  
7           arrangements with Collette Bell at that time?

8           A. From the wording of that he is certainly the one that  
9           has given the update, so I don't recall but I would  
10          assume so.

11          Q. Can we assume that at the very least he had the most  
12          up-to-date information of anyone at that meeting?

13          A. Yes.

14          Q. Can I ask you to turn on to the final page, which is  
15          item 12. Any other business:

16                 "Independent Advisory Group to speak to CS McEwan re  
17                 cultural issues."

18                 Do you remember this aspect of the meeting?

19          A. Yes.

20          Q. Tell us about that.

21          A. So -- so, this was 2015, probably around 2008 I was the  
22          head of the CID for Fife Constabulary. So what we had  
23          in place at that point was an independent advisory group  
24          and that group was made up from minority community  
25          representatives they are probably described, as well as



## Transcript of the Sheku Bayoh Inquiry

1           other people from -- with protected characteristics.  
2           I would Chair that meeting and we would invite as broad  
3           a range of minority communities and those with protected  
4           characteristics in on a bimonthly basis and when I first  
5           chaired that meeting, it was a very positive meeting and  
6           it was -- but it didnae, for me, achieve all of what  
7           I was hoping for it to achieve so as the months went by  
8           I developed it a little bit further to not just be  
9           a general opportunity to chat, network, but actually to  
10          have more focused discussions about certain things that  
11          were going on in Fife that I could learn from the  
12          experiences that would be presented across that room by  
13          those with lived experience from minority communities as  
14          well as LGBT, disabled, et cetera, et cetera.

15         Q.   Were there black people on the independent advisory  
16             group?

17         A.   Yes.

18         Q.   What did you learn from your involvement with them?

19         A.   Loads, a huge amount.   So what we did was -- or what  
20             I did as the Chair was, as I say, develop it further in  
21             that -- so we would have hate crimes reported across  
22             Fife or hate incidents and how do we, as  
23             an organisation -- how did we as a police force learn  
24             from how we policed those certain incidents.   And, you  
25             know, we could speak in a sort of hypothetical basis

## Transcript of the Sheku Bayoh Inquiry

1           about it but what I asked the group's view on is whether  
2           we could actually bring real life hate crimes that had  
3           been reported in the previous two months, and bring the  
4           police officer that investigated that into the group and  
5           to give a formal presentation of -- you know, not  
6           dissimilar in that: at 5 o'clock on a Friday night I got  
7           a call to go to a take-away shop in Burntisland,  
8           I arrived there, this is what I was faced with, the  
9           occupants of the shop were from a minority background --  
10          they may have been Pakistani, Asian, it doesn't  
11          matter -- here is what I was faced with, here was the --  
12          how I investigated that, what is the learning from that?

13                 So then -- so the police officer, and I used to  
14          caveat it right at the beginning to say, "Be as open and  
15          honest as you possibly can. There is nothing in this  
16          room that you cannot disclose to these people", and the  
17          officers would do that and do it very well and then we  
18          would have a discussion around how could we as a police  
19          force have investigated that better, but there would  
20          also be things around, you know -- and it's a long, long  
21          time ago but things -- maybe some of the witnesses  
22          didn't interact well with the police. Why was that?  
23          And I would seek the views around the table, around why  
24          is it that you think they didn't interact well with us?  
25          Was it our approach? Was it to be approached in

## Transcript of the Sheku Bayoh Inquiry

1 a certain way that was against their beliefs? Where is  
2 the learning from that?

3 So that is what we built in, so that was probably  
4 about 2008 and it continued for quite a period of time,  
5 and we -- and it got to the stage that we would -- so we  
6 would adjust our equality and diversity policies to  
7 reflect some of the feedback that I got from this really  
8 important group.

9 Q. In terms of the learning that came out of that group, as  
10 well as adjusting policies, how did you disseminate that  
11 to officers who were attending the take-away or shop?

12 A. So we did -- yes, absolutely. So the officer that was  
13 there, he or she, or both at times, they would be  
14 present, present during the feedback session because  
15 they need to listen and learn as well. It was not just  
16 me and other -- and maybe another couple of police  
17 officers that were there. But we also had a -- I had  
18 charge of an equality and diversity unit which was  
19 a small unit, three or four members of staff, maybe  
20 three, and they would be present at this forum every  
21 second month and any of the feedback or the learning  
22 then they could or would cascade it across the force if  
23 it was something that was really quite -- or very  
24 pertinent and important, as well as adjust the policies,  
25 it was about, you know, trying to mainstream whatever

## Transcript of the Sheku Bayoh Inquiry

1           the feedback was.

2           Q. So, was this group meeting -- sorry, was it twice

3           a month or every second month?

4           A. Every second month.

5           Q. Every second month?

6           A. Yes.

7           Q. Thank you. This sounds very interesting. Is there any

8           one in particular -- we are investigating all matters

9           and sometimes witnesses mention things that might give

10          rise to some interesting lines of further enquiry. Is

11          there anyone in particular you can recall that we might

12          be able to speak to and take a witness statement from?

13          A. As in police officers, or ...?

14          Q. I am thinking about members of the group.

15          A. No, I can't -- I mean, Adnan was one of my main contacts

16          but he has sadly passed away now as I understand it.

17          But we could -- I am sure we could find that out. You

18          know, not me personally because I'm out of touch now I'm

19          retired, but I am sure through the equalities unit as it

20          was in Fife Constabulary there will be a list of --

21          there was a wide range of members who would come, so

22          there will be a list there somewhere.

23          Q. Thank you very much. Excellent. I'd like to move on

24          from these minutes, please, and then look at the minutes

25          of the third Gold Group meeting. PS03139. You will see

## Transcript of the Sheku Bayoh Inquiry

1           these on the screen. These are from minutes from  
2           a meeting at 2015 hours on 3 May 2015. I think -- you  
3           still have the blue folder in front of you, don't you?

4           A. Yes.

5           Q. I would like to ask you some questions about  
6           these minutes but I see from your operational statement  
7           that you have said on page 3 of that statement at  
8           paragraph 4 that you attended a Gold Group meeting at  
9           1950 hours. Am I right in assuming that that would be  
10          the same meeting that these minutes relate to?

11          A. Yes.

12          Q. It wasn't that there was two separate meetings --

13          A. No.

14          Q. -- at different times?

15          A. No, it's obviously a typo I think.

16          Q. We can assume that this was the next and the third  
17          Gold Group meeting that day. So this is after you've  
18          met with the family and we spoke about that yesterday  
19          afternoon?

20          A. Yes.

21          Q. Can we look at your -- first of all, look at your  
22          operational statement, PS03136. And that is page 3,  
23          please, paragraph 4. It says:

24                 "At 1950 hours, same date, I attended the Gold Group  
25          meeting at Kirkcaldy Police Station. Present at that

## Transcript of the Sheku Bayoh Inquiry

1           time was ACC Nicholson and members of staff from the  
2           PIRC. I updated the group and requested that PIRC  
3           attend that evening to help provide some answers to the  
4           family. I was informed by the lead investigator that he  
5           had no staff available to attend the house but that he  
6           would telephone the family. I thereafter finished  
7           duty."

8           So when you say you informed the lead investigator,  
9           do you remember who that was?

10          A. Yes, that was Keith Harrower.

11          Q. And he told you that he had no staff available to attend  
12          the house. Was that the house of the Johnsons?

13          A. Yes.

14          Q. What was your response to that?

15          A. I certainly was not impressed by that. The family  
16          deserved a meeting, a briefing that evening.

17          Q. Did you voice those concerns at that meeting?

18          A. It was either at the meeting or after the meeting.

19          Q. If it was after the meeting, who would that have been  
20          to? Or was this the same group?

21          A. Maybe -- I genuinely don't remember. I remember having  
22          the conversation with Keith directly, I couldnae tell  
23          you who was all there at that point.

24          Q. So you raised it with Keith Harrower?

25          A. Yes, I may have been more professional -- not more

## Transcript of the Sheku Bayoh Inquiry

1 professional, that sound unprofessional, but less direct  
2 at the Gold meeting because that is, you know, a very  
3 formal setting but then Keith and I did have  
4 a conversation off-table but I couldn't tell you exactly  
5 who was there.

6 Q. When you say "off-table", does that mean not being  
7 minuted as a formal part of the Gold Group?

8 A. Yes, the meeting was finished and yes, it was just  
9 a discussion that we needed to have.

10 Q. Did you raise any of those concerns with ACC Nicholson  
11 at any stage?

12 A. About PIRC saying that they never had the staff?

13 Q. That they didn't have any staff. You talked yesterday  
14 about having concerns and we see you've said there in  
15 your statement they had no staff available.

16 A. Yes. I'm not sure after the meeting, did I go back to  
17 ACC Nicholson or not, to be honest. I don't recall.

18 Q. Is there any mechanism where concerns about the lack of  
19 resources, for example, that are available can be raised  
20 with the Crown? Where your concerns could be raised?

21 A. No.

22 Q. How could that be done?

23 A. Not that -- I wasn't aware of any process in place for  
24 me to raise concerns around the PIRC resourcing levels,  
25 no.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Did anyone at the Gold Group meeting pick up on this,  
2 and raise the possibility of maybe another organisation  
3 coming in to support PIRC? You've mentioned yesterday  
4 that obviously the Crown wanted it to be independent,  
5 they've appointed PIRC to carry out an independent  
6 review and you accept -- acknowledged that you could  
7 understand why they didn't want the police investigating  
8 themselves.

9 A. Absolutely, yes.

10 Q. But did anybody in the Gold Group suggest any other  
11 organisations that may be able to assist?

12 A. Not that I recall, no.

13 Q. Or any organisation that might be able to provide  
14 additional resources?

15 A. No, I don't~...

16 Q. I will tell you what I'm interested in. We've not heard  
17 any evidence about this yet but it is something that we  
18 are investigating at the moment, about the possibility  
19 of the Health and Safety Executive becoming involved.  
20 And it would appear at this stage, and as I say we've  
21 not heard from any witnesses yet from the HSE, and we've  
22 not heard from the Crown or PIRC yet, but there might be  
23 protocols in place or there may have been in 2015  
24 between the Crown, the HSE, Police Scotland, maybe  
25 involving PIRC, relating to investigations into



## Transcript of the Sheku Bayoh Inquiry

1 work-related deaths, and there may be a specific  
2 protocol regarding investigations into deaths, serious  
3 injuries of police officers at work or members of the  
4 public following contact with the police.

5 I'm just interested in knowing whether at that time  
6 you had any awareness of that or the possibility of HSE  
7 coming in, helping support an investigation, or on  
8 occasions leading an investigation?

9 A. So for this specific scenario or incident, I don't  
10 recall. I had used the -- or been involved in  
11 an investigation with the Health and Safety Executive  
12 before, probably again when I was head of the CID in  
13 2009 maybe, I can't even genuinely tell you exactly what  
14 the circumstances were but they led on the death,  
15 supported by some of my staff. So it has -- that  
16 scenario did take place but it was -- I don't recall any  
17 specific conversations during this incident around  
18 bringing the Health and Safety Executive in.

19 Q. So the experience you had did involve HSE but that was  
20 prior to PIRC coming into existence?

21 A. Yes, of course.

22 Q. And none of that was discussed or raised at the  
23 Gold Group meeting?

24 A. Not that I recall, no.

25 Q. Outwith the Gold Group meetings, did anyone from PIRC,

## Transcript of the Sheku Bayoh Inquiry

- 1 or the ACC, or anyone else raise with you that as  
2 a possibility, that HSE might get involved?
- 3 A. No, not that I recall.
- 4 Q. And you don't remember much about your experience in  
5 2009? You say there was a death?
- 6 A. There was a death, I genuinely -- it was not -- it was  
7 definitely not following police contact but it was  
8 a death, I want to say on a boat because we had  
9 responsibility for the Forth but I genuinely --  
10 I can't remember.
- 11 Q. Thank you. Can we go back to the minutes, please.  
12 PS03139. If we can look at item 2. This is a factual  
13 update. This has been given by the SIO, Campbell. And  
14 you will see a number of matters are raised here. I'm  
15 interested in the second paragraph:
- 16 "Information to suggest that the deceased had  
17 an argument with his partner Collette Bell."
- 18 We've heard from Collette Bell that she was asked  
19 about an argument but she denied there had been any  
20 argument. Do you remember this being raised at this  
21 meeting?
- 22 A. No. It clearly has been briefed out but I don't recall  
23 it being of particular significance.
- 24 Q. Can you help us understand why at the Gold Group meeting  
25 was it being minuted? Why would it be considered

## Transcript of the Sheku Bayoh Inquiry

- 1           significant?
- 2           A. It depends on the -- whoever minuted the minute. You  
3           know, to be honest you'd have to ask him or her around  
4           that. A lot of minutes are very much down to  
5           interpretation, so people -- and police officers,  
6           I don't know if it was a police officer that was taking  
7           the minute, traditionally are not minute takers and they  
8           are not professional in that -- not professional, they  
9           are not really experienced in taking minutes, so I don't  
10          know, you'd have to ask him or her.
- 11          Q. Presumably this is information that Campbell, who is  
12          an experienced SIO, has considered sufficiently  
13          important to raise at the meeting. Can you understand  
14          why an argument -- Mr Bayoh has passed away by this  
15          stage. Why would that be of significance to the  
16          investigation and the facts involved in that?
- 17          A. It's -- I don't know when that argument took place. Was  
18          it in the morning? The night before? I'm not sure.  
19          But it's a precursor to -- or it's a lead-up, or is it?  
20          I don't know. But is it a lead-up to the events and  
21          that took place on Hayfield Road.
- 22          Q. Just to be clear, the evidence that Collette Bell gave  
23          was that there had been no argument.
- 24          A. Right.
- 25          Q. But she was asked about an argument, and if I understand

## Transcript of the Sheku Bayoh Inquiry

1 her concerns correctly, from her evidence, she viewed it  
2 as an attempt to find reasons to blame Mr Bayoh in some  
3 way and to raise concerns about his relationship with  
4 his family.

5 A. I can't comment. I can't comment on that.

6 Q. Can we look, please, at item 3, "Investigative process".  
7 Again, this is spoken to by Campbell. We see again that  
8 the five locations are mentioned here as being secured.  
9 Presumably work was ongoing in relation to that.

10 A. Sorry, what minute is this? Is this the quarter past  
11 eight one?

12 Q. Yes, this is the 2015 hours on 3 May, so it's in the  
13 evening, it's after you have spoken to the family.

14 A. Okay.

15 Q. Was there any more discussion about the properties at  
16 that meeting?

17 A. I don't recall.

18 Q. Then if we can look at the bottom of the page at item 4.  
19 Sorry, 5, "Family concerns". This is after your meeting  
20 with the Johnsons and it says:

21 "Chief Superintendent McEwan discussed  
22 brother-in-law of deceased, he is part of an independent  
23 advisory group and had individuals the initial attending  
24 Officers that he knew Mr McEwan and requested that he  
25 attend and speak with him within 24 hours."

## Transcript of the Sheku Bayoh Inquiry

1           Is that the independent advisory group we were just  
2           talking about a moment ago?

3           A. Yes.

4           Q. Do you remember that Ade Johnson, Mr Bayoh's  
5           brother-in-law, had been a member of that group?

6           A. To be honest with you at the time I didn't remember that  
7           but I later -- I think probably when I spoke to the  
8           family, Ade probably reminded me of that, but I didn't  
9           know prior to that.

10          Q. So after, when you were attending this Gold Group  
11          meeting at quarter past eight in the evening, had you  
12          made the connection by then through Ade reminding you?

13          A. Yes, and to be honest vaguely -- I mean, I didn't want  
14          to insult the family when that was raised with me. The  
15          group -- the membership changed quite frequently, and it  
16          was a big group so I didn't specifically -- maybe  
17          because I was focused on other things but I didn't  
18          specifically recognise Ade from that group at the time.

19          Q. But once you met him and he reminded you, did it spark  
20          your memory?

21          A. Yes, to a degree. Yes.

22          Q. Then it says:

23                 "Ch Sup and Ch Insp Shepherd attended at home  
24                 address of [next of kin], highly charged environment,  
25                 deceased's partner Collette and extended family within,

## Transcript of the Sheku Bayoh Inquiry

1 family concerned that early contact they had was  
2 purposely vague. They were unhappy they had not been  
3 told anything about who contacted the Police and  
4 Ambulance. Ch Sup provided them with an understanding  
5 of events."

6 We discussed this yesterday --

7 A. Yes.

8 Q. -- in some detail:

9 "Ch Sup discussed the Role of the PIRC and reassured  
10 them it would not be P Division officers investigating  
11 the incident."

12 Can you explain to me, what is a P Division officer?

13 A. So that is the Fife division officers. So, yes,  
14 the police officers that sort of try and keep the  
15 communities of Fife safe on a daily basis.

16 Q. So is that the area of Fife?

17 A. Yes.

18 Q. We've heard evidence that a number of officers, for  
19 resourcing issues and business continuity, I think was  
20 the phrase you used, they are being brought into  
21 Kirkcaldy because a number of officers have been taken  
22 off duty --

23 A. Yes.

24 Q. -- were in the canteen because they had been involved in  
25 the incident. And part of your role is to try and plug

## Transcript of the Sheku Bayoh Inquiry

- 1           that gap, I think you said?
- 2           A. That is correct, yes.
- 3           Q. To make sure that all the other work that is continuing
- 4           to go on is not left without people in position to do
- 5           it. But I'm interested in some evidence that we've
- 6           heard that officers who were brought in to help with the
- 7           investigation were actually from other areas in Fife.
- 8           Were you aware of that?
- 9           A. I don't recall exactly just now. I'd be surprised if
- 10          any of the officers that were brought in were involved
- 11          in investigating the incident. So there's two different
- 12          strands, you have the community side of things, the
- 13          locus protection, and then you have a set of
- 14          investigators, and the investigators, unless you are
- 15          going to tell me differently, my understanding they were
- 16          from the Major Investigation Team which are not
- 17          P Division officers, they are a national resource that
- 18          came under the command of Pat Campbell, that came in to
- 19          investigate the incident.
- 20          Q. So your understanding is the investigators who were
- 21          looking into the events were separate from P Division
- 22          completely?
- 23          A. Yes, they were the Major Investigation Team and they are
- 24          not part of my P Division staffing numbers and my
- 25          resource.

## Transcript of the Sheku Bayoh Inquiry

- 1 Q. So people like Robson and Dursley, they weren't part of  
2 the investigation at that stage?
- 3 A. At 20 past 8, no, the PIRC were leading on investigation  
4 at that stage.
- 5 Q. Thank you. Can I see the "task", at the end:  
6 "Family crave reassurance and are asking about  
7 witnesses et cetera they do not wish anything publicised  
8 until they informed deceased Mother who is in London."  
9 Can you tell us a little about the task? Do you  
10 remember about that?
- 11 A. I do, actually, so the family -- the wider family, the  
12 mum and the wider family were elsewhere in the country  
13 and elsewhere in the world, and, you know, they were  
14 really keen for nothing to go out that would prevent the  
15 family, you know, passing on the tragic news to the mum.
- 16 Q. So you were aware that the mother was in London?
- 17 A. Yes, yes, certainly way down south, yes, London, yes.
- 18 Q. Were you given any additional information about her  
19 plans to travel to Kirkcaldy or anything along those  
20 lines?
- 21 A. Yes, there was -- I'm not sure if she was in transit by  
22 that point but if she wasn't in transit she was  
23 certainly -- it was imminent. But I can't recall  
24 exactly if she was en route or if she was leaving the  
25 following day. I'm unclear.



## Transcript of the Sheku Bayoh Inquiry

1 Q. Was the purpose of her coming to Kirkcaldy made clear to  
2 you?

3 A. I don't know if it was made clear but I naturally  
4 assumed it was for the family to be together during this  
5 terrible set of circumstances.

6 Q. Knowing that, you have obviously raised it at the  
7 Gold Group meeting?

8 A. Yes.

9 Q. And it says "task". What is the meaning of that, a task  
10 that mentions the mother being in London?

11 A. So my sort of -- I'm assuming media were present at  
12 that ... I don't see the names at the top. Was media on  
13 that list? I'm not sure.

14 Q. Let's go back to the top so you can see who is present.  
15 So "Kate (media)" was mentioned?

16 A. So media were there, so it was really about any media  
17 messaging going out beyond this time that would in any  
18 way alert Sheku's mum and other family members that he  
19 had passed away or died following police contact.

20 Q. So was that a task not for you but for Kate?

21 A. Yes, the task is probably not best articulated there but  
22 that was -- for me it was around the media messaging, we  
23 had to be extremely sensitive around that for the  
24 reasons I've described. We don't want to be putting his  
25 name in the media until the family are fully sighted on

## Transcript of the Sheku Bayoh Inquiry

1           what has happened.

2           Q. Can we turn to page 3 at the top. It says:

3                   "Discussed that Police did not know NOK whilst  
4           Collette (partner of deceased) was at Police Station."

5                   I am interested in that because that seems to  
6           contradict a previous entry. We've talked about  
7           Collette Bell had given details of the next of kin when  
8           she was in Kirkcaldy Police Office and this is obviously  
9           the minutes from quarter past eight at night. Can you  
10          remember where that arose from, who said that?

11          A. I genuinely can't. I assume I have probably been, you  
12          know, saying, we need -- the family, you know, Kadi and  
13          the wider family are really upset that they have not  
14          been properly notified and it may -- I am jumping  
15          because I don't know, I can't recall the conversation  
16          but it may be somebody came in and said we did not know  
17          who the next of kin were at that point, at the point  
18          earlier in the day. But that is my only sort of reading  
19          of that one sentence.

20          Q. By this time the police did know the next of kin and you  
21          had actually attended?

22          A. I'd attended, so this was like a sort of historical  
23          discussion around, you know, earlier -- that is my  
24          reading of it, earlier in the day the police did not  
25          know the next of kin.

## Transcript of the Sheku Bayoh Inquiry

- 1 Q. Right. Then it says:
- 2 "Ch Sup discusses initial decision to have
- 3 Police Scotland's FLOs but now hand over to PIRC FLOs
- 4 for arrangement to gain entry to house of deceased re
- 5 collecting belongings for child. Discussion re initial
- 6 contact on phone from PIRC."
- 7 Were you aware that requests had been made to allow
- 8 Collette Bell to get some possessions from the house at
- 9 Arran Crescent while -- obviously it had been secured by
- 10 the police?
- 11 A. Yes, I mean it was at the -- it was at the meeting I had
- 12 with the family, Collette or maybe Collette's mum, or
- 13 maybe both, were needing to get into the house to get
- 14 clothing as well as I think it was powdered milk and
- 15 important things like that for the child.
- 16 Q. Was that something that you expected someone to pick
- 17 up --
- 18 A. Absolutely.
- 19 Q. -- and follow through?
- 20 A. Yes.
- 21 Q. Who would that have been the responsibility of?
- 22 A. So for me it is the PIRC, they are leading on the
- 23 investigation so arrangements need to be made to get
- 24 whatever it is out of that house to the family.
- 25 Q. Thank you. The next paragraph is:

## Transcript of the Sheku Bayoh Inquiry

1 "Ch Sup discusses Family~..."

2 And the word there used is:

3 "... desperate to know about PM [post mortem], and  
4 also arrangements on having them conveyed to mortuary in  
5 Edinburgh."

6 So it appear that they understood there would be  
7 a post mortem and they wanted to know about arrangements  
8 for having them conveyed, taken to the mortuary in  
9 Edinburgh. Is that something you were aware of from  
10 your visit with the Johnsons?

11 A. So that was -- part of the discussion at the visit was  
12 around, you know, next steps and post mortems and such  
13 like, and the family were clearly, you know, desperate  
14 for information around the process that was going to  
15 follow. My commitment to them at the time was that, you  
16 know, I didn't know the answers to that, that wasn't my  
17 role but I would raise it, as I did then, at the Gold  
18 meeting with PIRC and others there to say this is what  
19 the family needs to know.

20 Q. And that was minuted --

21 A. Yes.

22 Q. -- at that meeting. Then it says:

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

24 Whose task was that?

25 A. It would be helpful if it was saying who the task was

## Transcript of the Sheku Bayoh Inquiry

1           given to but for me it is who is in charge of the  
2           investigation, needs to -- not maybe personally deal  
3           with these things but needs to initiate them and make  
4           sure that they're completed.

5           Q.   So it would have been PIRC that would've followed  
6           through with these items from the minutes?

7           A.   Yes.

8           Q.   Can I ask you briefly about item 10, "Media  
9           strategy/communications plan". I think Kate, the media  
10          person, has spoken to this. There has been media  
11          interest:

12                 "Media statement prepared was rejected by the Crown.  
13          A brief release re condolences to the family was put  
14          out. Refer any media interest to PIRC."

15                 Can you tell us a little bit more about this media  
16          statement that was prepared, who it was prepared by?

17          A.   No, I did have sight of or added some value to a media  
18          statement on the day but rightly -- I mean, that is  
19          absolutely correct, that PIRC are leading the  
20          investigation, they are reporting to Crown, so it  
21          is -- you know, they have responsibility and they can  
22          determine what goes out into the media.

23          Q.   From your perspective, you told us about your role that  
24          day, would you have preferred for Police Scotland to  
25          issue a media statement?

## Transcript of the Sheku Bayoh Inquiry

1       A. I think they do need to be co-ordinated. I think it  
2       would be wrong for one organisation to be putting  
3       certain messages out that contradict or have not -- the  
4       other organisations have not had sight of. So PIRC are  
5       in charge of this investigation, I do think it is right  
6       that they have control of what -- and oversight of what  
7       is getting released into the media, to ensure that it is  
8       accurate.

9       Q. Can I ask you to look at the final page. So this  
10      follows on from 12, "Any other business". I would like  
11      to look at some of the items there. It says:

12                "A definitive resolution is required re contact with  
13      family and reassurance to them.

14                "Ch Sup McEwan not adverse to going back to house if  
15      required to assist with retrieving items for the baby of  
16      Collette Bell but telephone contact to be made by  
17      PIRC re the family and arrangements et cetera for  
18      conveying to Mortuary."

19                So it appeared that PIRC were going to make  
20      telephone contact with the Johnsons about arrangements  
21      for conveying to the mortuary. That would be for the  
22      post mortem?

23      A. Yes.

24      Q. And that you had said you weren't averse to going back  
25      to assist with retrieving items for the baby. Can you

## Transcript of the Sheku Bayoh Inquiry

1 tell us a little bit more about that?

2 A. It probably comes across as probably part of my  
3 frustration. At that meeting I have said: look, I'll go  
4 and do, I will go and get -- if we need to get this  
5 stuff, I will personally go and get it. Let's just go  
6 and get it for the family.

7 Q. You were frustrated at that time?

8 A. We just needed to -- we needed to make these things  
9 happen.

10 Q. I think you told us yesterday about your priority in  
11 relation to the family?

12 A. Yes, absolutely.

13 Q. Can I ask you a question about something -- we've not  
14 heard from Keith Harrower yet, so we've not heard his  
15 evidence. We hope to be able to take that at another  
16 hearing, a future hearing. But we have a PIRC statement  
17 from him. For those in the room it's 00007. I won't  
18 ask for it to be put up on the screen at this stage.

19 He indicated that during a meeting with you, you  
20 indicated:

21 "... that Mr Bayoh's family had articulated  
22 significant concerns over information disclosed to them  
23 by representatives of Police Scotland and additionally  
24 it became apparent that Police Scotland FLOs had not  
25 been deployed as previously intended and that

## Transcript of the Sheku Bayoh Inquiry

1 Chief Superintendent McEwan and others considered it  
2 inappropriate to do so."

3 I appreciate I am just reading out that section but  
4 do you remember a conversation with Keith Harrower  
5 giving you -- well, giving him the impression that you  
6 considered it inappropriate for Police Scotland FLOs to  
7 be deployed?

8 A. Yes, I do actually. I think I -- I think -- I am trying  
9 to think of the timing of it. After the five -- the  
10 4.45 or the 5.45 meeting with Graeme Dursley it was  
11 clearly apparent that the trust and confidence in the  
12 police at that point with the family, because of the  
13 death messages, and the delays, et cetera, was not where  
14 it needed to be. My view was you know, whatever  
15 arrangements had been considered before that, we need to  
16 get PIRC FLOs into that family because, you know, we  
17 need that independence that I talked about yesterday, to  
18 even suggest putting Police Scotland FLOs in at that  
19 point I don't think personally will have added any  
20 value.

21 That then came to fruition and was clearly apparent  
22 when I met with the family because they had a real upset  
23 and distrust towards Police Scotland at that point, so  
24 for me that is an additional reason why we needed to get  
25 or why Keith needed to get PIRC FLOs into that family at



## Transcript of the Sheku Bayoh Inquiry

1           that point.

2           Q. Can I ask you one other thing which is -- we understand  
3           was happening around about this time, so prior to the  
4           Gold Group meeting at 20:15 but after your visit to the  
5           family.

6           A. Yes.

7           Q. So in that sort of period. We have an Inquiry statement  
8           from a Gary Wilson and he is community lay adviser with  
9           Police Scotland. He was contacted by Chief Inspector  
10          Gill Boulton, do you remember Gill Boulton?

11          A. Yes.

12          Q. Can you tell us a little bit about Gill Boulton?

13          A. I don't know what rank she was at that time, maybe  
14          a Chief Inspector, I don't exactly recall, but she was  
15          in a national division called Safer Communities, and  
16          part of the roles and responsibilities of  
17          Safer Communities was to work with minority communities  
18          across Scotland and to revise policies and procedures.

19                 So Gill attended at Kirkcaldy Police Station that  
20          afternoon at some point, I don't remember exactly when,  
21          but in advance of me going to see the family, the ACC,  
22          who I think I mentioned yesterday part of his remit was  
23          to be in charge, I think, of Safer Communities, he asked  
24          me to -- and Nicola Shepherd to get a briefing from Gill  
25          around diversity issues, just to make sure that we would

## Transcript of the Sheku Bayoh Inquiry

1 not be going into that family environment and by any way  
2 sort of insulting them by any actions or behaviours that  
3 we adopted. So we had -- that was part of the -- quite  
4 a significant part of the delay of me not going up to  
5 the house until whatever time it was --

6 Q. Ten past six?

7 A. Ten past six was because -- I'm not sure Gill was there  
8 at that point or if she travelled in but Nicola and  
9 I were waiting for her to arrive to get the briefing for  
10 us then to go up to the house.

11 Q. I think yesterday you talked about preparation with you  
12 and Nicola Shepherd; was this part of the preparation?

13 A. Yes.

14 Q. The statement we have from Gary Wilson suggests that  
15 Gill Boulton phoned him at 1855 hours, five to seven in  
16 the evening, and talked about the potential need for  
17 an independent lay adviser to be identified for  
18 deployment. I think this particular witness, Mr Wilson,  
19 he is -- has protected characteristics himself in  
20 relation to LGBT. He had indicated to her that he  
21 didn't think he was the most appropriate person to  
22 provide that input and advice as a lay adviser, and he  
23 understood that she agreed with that suggestion and he  
24 didn't get involved further. I'm interested, did anyone  
25 else get involved in the role of a community lay adviser

## Transcript of the Sheku Bayoh Inquiry

1 to assist you or to assist the investigation in any way?

2 A. So I did on that day -- I'm pretty sure it was that day  
3 or the Monday but I'm pretty sure it was that day, I did  
4 phone the chap I mentioned earlier, Adnan, who had done  
5 a lot of work with Free Fife and the Fife Arabic Society  
6 and I phoned him and had a discussion with him. Where  
7 it became sensitive was that Adnan knew the family  
8 really well, and he was not comfortable in becoming that  
9 sort of -- not spokesman but you know that -- my go-to  
10 person because he knew the family really well, which  
11 I absolutely respected and Adnan was a real gentleman.

12 But what we agreed was that should he -- so  
13 community trust, community reassurance is about -- you  
14 know, I spoke yesterday around disorder but it's also  
15 about vulnerability and how communities can feel  
16 vulnerable at times like this. Because of what has  
17 happened, you know minority communities can feel really  
18 vulnerable and threatened and insecure, absolutely  
19 understandably so, so Adnan and I agreed that should he  
20 get any sense of that across Fife, he would pick up the  
21 phone and we would have a discussion around it, and that  
22 conversation didn't need to happen thankfully because  
23 these issues did not really boil to the surface at that  
24 early time.

25 Q. Thank you. So apart from your discussions with Adnan,

## Transcript of the Sheku Bayoh Inquiry

1           was there anyone else appointed as a lay adviser at that  
2           time?

3           A. No, and then we convened -- we kicked off the community  
4           reassurance group which -- that was the purpose of that  
5           was then -- you know, that was a group -- I've used the  
6           sort of the lay advisers before, again when I was in  
7           charge of a murder and it was a transgender was the  
8           victim of that. For me to truly lead that investigation  
9           and understand the implications and the thoughts and the  
10          feelings of that community, I really needed to speak to  
11          an adviser that could help me with that so what is what  
12          I did. So the purpose then of the reassurance group had  
13          a similar premise to try and, you know, have a true  
14          understanding and appreciation but also it's not just  
15          about one set of -- you know, it's not just the black  
16          community here, it's other minority communities as well  
17          that may be affected or disaffected by the scenario that  
18          was playing out.

19          Q. Can I ask that we move on to minutes from -- or an  
20          agenda from 4 May. So this is the day after on the  
21          Monday. And they are from 12.30 that day and it's  
22          PS03161 and this was a further Gold Group meeting as  
23          I say at 12.30 the day after. You will see these on the  
24          screen. If we look at the bottom of that page just  
25          above the number 3, does it say there:

## Transcript of the Sheku Bayoh Inquiry

1                   "Family seem to have disengaged with Police."

2                   Sorry, I should have perhaps said at the top of that  
3                   page, sorry, there's no note of who was actually present  
4                   at that meeting. Do you remember if you were present at  
5                   that meeting?

6           A. I'm pretty sure I was there, yes.

7           Q. Do you remember who else was there?

8           A. No, but I would imagine there would be a lot of the  
9                   similar -- obviously Pat Campbell was there because he  
10                   has given the factual update, as is DI Stuart Wilson, he  
11                   was part of the Major Investigation Team, it may well be  
12                   if you go down you may see some of names as per the key  
13                   updates.

14          Q. We can do that as we go through it. So any names that  
15                   are mentioned will definitely have been there?

16          A. Yes, and I would imagine media would likely have been  
17                   there.

18          Q. Were PIRC there?

19          A. I don't recall. I don't think so, but I am not 100%  
20                   sure.

21          Q. When you say you don't think so, do you remember why  
22                   they wouldn't have been there?

23          A. No, I don't know why they wouldn't have been there but  
24                   I don't recall seeing any members of PIRC at Kirkcaldy  
25                   Police Station on that morning but that is not to say

## Transcript of the Sheku Bayoh Inquiry

1           they weren't there, but I don't recall seeing them.

2           Q. Thank you. Can we look -- sorry to go back to the  
3           bottom, just the line above number 3, the last line on  
4           the page. It says:

5                     "Family seem to have disengaged with Police."

6                     What was the position by this stage? This is 12.30  
7           on the day after, the Monday 4 May.

8           A. So we had had the meeting at quarter past eight or  
9           whenever the Gold Group was the previous night, Keith  
10          and I had had the discussion and I later learned --  
11          I didn't know at that point but I later learned that he  
12          had, as I understand it, phoned and perhaps went to the  
13          meet the family on the evening. I only know that  
14          through statements, to be honest with you. I didn't  
15          know that at the time. But then, when I was at the Gold  
16          meeting, you know, the family had disengaged. I'm not  
17          convinced that was specifically or only the police,  
18          I think it may have been PIRC as well, but I am not sure  
19          on that. And, well, the reasons behind that have  
20          no doubt been explained by other family members.

21          Q. Item 3 is the investigative process. This time it's  
22          spoken to by DI Stuart Wilson, who you have mentioned  
23          was MIT?

24          A. Yes.

25          Q. It says at the top of the next page:

## Transcript of the Sheku Bayoh Inquiry

1                   "Locus protection is still ongoing."

2                   So there is a general update on what the  
3                   investigation are doing at this stage. Would you say  
4                   then it was MIT that were involved in progressing the  
5                   investigation?

6           A. Yes, they would be progressing it on behalf of PIRC, who  
7                   had responsibility for the investigation.

8           Q. Right. Can I ask you to -- we will see it just at the  
9                   bottom of the page. There is a task:

10                   "Advice to be gained from PIRC regarding the  
11                   disclosure of the post mortem results to the officers  
12                   involved in the incident. Supervisor to be identified  
13                   to carry this disclosure out."

14                   Do you remember that discussion or a discussion  
15                   around that task?

16           A. So that would suggest to me that PIRC weren't at that  
17                   meeting, the fact that we are asking for advice to be  
18                   gained from PIRC, around that. So I suppose that  
19                   answers the earlier question. I think it is right that  
20                   we -- Police Scotland would need to ask for the PIRC's  
21                   view on that, because they are leading the  
22                   investigation.

23           Q. Who was it that raised this issue about disclosure of  
24                   the post mortem results?

25           A. I'm assuming it will be part of -- who was doing that

## Transcript of the Sheku Bayoh Inquiry

- 1           update, was that~...?
- 2           Q. It was Wilson, DI Stuart Wilson from MIT.
- 3           A. So I am assuming it was probably -- I don't know who  
4           initiated the task, to be honest with you, but I'm  
5           assuming it is on the back of the update given by Stuart  
6           Wilson. DI Wilson.
- 7           Q. Thinking back now to this meeting, do you remember why  
8           they wanted to disclose the PM results to the officers  
9           involved in the incident?
- 10          A. Well, from my perspective it would be why would we not?  
11          Back to that, why would we not tell the officers? They  
12          have been involved in a harrowing, tragic incident, and,  
13          you know, this is now 24/36 hours later. If we as  
14          an organisation knew what the likely cause of death was  
15          or the initial synopsis of that, why would we not tell  
16          the officers?
- 17          Q. Were you aware -- we will come on to statements later in  
18          more detail but were you aware at this time that none of  
19          the officers had provided operational statements?
- 20          A. Yes, I probably was. I'm getting mixed up with timings  
21          but yes, I am pretty sure I will have been. Yes.
- 22          Q. So, in the absence of their own statements, was it  
23          discussed that maybe advising them about the results  
24          of the post mortem was unwise, or shouldn't be done?
- 25          A. No. I mean, I don't know if you have the post mortem



## Transcript of the Sheku Bayoh Inquiry

1 summary but from memory it was literally a sentence  
2 long, so there wasnae a lot of information there that  
3 would in my view have impacted or affected any statement  
4 they would have provided. I was aware -- I don't know  
5 if it was at this point or if it was in the following  
6 days but I was aware of the advice that officers were  
7 getting from their Federation advisers not to give  
8 statements, so that could and I think did go on for  
9 a long period of time. So, you know, why would you not  
10 tell the officers and give them that form of words, that  
11 very short summary?

12 Q. You've said why would you not. Was it normal practice  
13 for officers involved in an incident to be advised about  
14 the post mortem results?

15 A. Yes. In my sort of final years in policing, you know  
16 part of my remit was in charge of custody and there are  
17 sadly a number of deaths in custody every year, and the  
18 cause of death, if it is known and there is nothing to  
19 suggest that there is any criminality, then why would  
20 you not tell the witnesses; why would you not tell the  
21 witnesses what the cause of death was?

22 Q. In the absence of statements from the officers who  
23 attended the incident, who were there the main  
24 eyewitnesses to the incident, how can a decision be  
25 taken or a view formed as to whether or not there is

## Transcript of the Sheku Bayoh Inquiry

1           criminality?

2           A. Well, from the post mortem would be one significant  
3           piece of evidence, from other eyewitnesses that had  
4           maybe given statements by then would be critical.  
5           Forensics. You know, it would be helpful to have the  
6           officers' statements but, you know, the officers not  
7           giving their statements, as I understood it, was on the  
8           advice of their Federation reps. I'm sure you have had  
9           the officers -- all the officers in here and they will  
10          give their own personal view on why they did or did not  
11          but certainly the feedback I was getting at the time,  
12          not from the officers but from others at the time, it  
13          was the advice and direction from the Federation reps,  
14          that they were not to give a statement, it wasn't  
15          because the officers were feeling as though they may  
16          incriminate themselves.

17          Q. We've heard a lot of evidence from different officers  
18          and I would probably be doing them a disservice to  
19          summarise but I think certainly at that time -- I have  
20          asked a lot of witnesses about whether they thought they  
21          were witnesses or suspects, and there may have been  
22          a view that if they were suspects of potential  
23          criminality, they would not be wanting to -- they would  
24          want to reserve the right of privilege to avoid  
25          incriminating themselves. They were not satisfied that

## Transcript of the Sheku Bayoh Inquiry

1           they were going to just be witnesses, so there was  
2           a concern and the advice they received at that time was  
3           not to give operational statements. And they didn't  
4           give those until 4 June.

5           A. Right.

6           Q. So there were obviously concerns, legitimate or  
7           otherwise, that they were perhaps going to become  
8           suspects. So there was a question about whether there  
9           would be criminality alleged. I'm just trying to  
10          understand, the officers themselves involved had that  
11          concern in their minds, or possibly had that concern in  
12          their minds, and didn't give statements but there seems  
13          to have been a view from what you've been saying today  
14          that you would happily -- you wouldn't have any concerns  
15          about disclosing the post mortem results because there  
16          was no suggestion of criminality. I'm just wondering  
17          about that ...

18          A. Yes, I mean, and I'm being absolutely honest, it was not  
19          my decision ultimately it's the -- the ask is of the  
20          PIRC there. But if there is no criminality then for  
21          me -- or if there is no criminality apparent at that  
22          point, for me the welfare of the police officers is very  
23          important and you know, they have been involved in this  
24          tragic death, the day before, and of course they will be  
25          worried. There is absolutely no doubt of that. So you

## Transcript of the Sheku Bayoh Inquiry

1 know, if -- if the initial cause of death is known, why  
2 would we not disclose it to the officers? And that  
3 would be for PIRC to make that decision but why would we  
4 not?

5 Q. Was there an assumption or a belief at this stage that  
6 there wasn't criminality on the part of the officers?

7 A. There is -- well, again I'm not part of the  
8 investigation but these officers at this point were  
9 witnesses to this tragic death. That's -- you know,  
10 there was no -- there was nothing else being suggested  
11 at that point that I was aware of.

12 Q. The investigation is at an early stage, it's ongoing,  
13 Campbell is the SIO.

14 A. Yes.

15 Q. You talked yesterday about hypotheses and one of those  
16 being that it could have been -- the underlying  
17 motivation could have been some sort of racial  
18 discrimination. You've not been able to rule out that  
19 hypothesis because you don't have any statements from  
20 the officers. I'm just wondering against that  
21 background, where it's at an early stage, there's  
22 various hypotheses which are considering, if nothing  
23 more, that there could be criminality, but there seems  
24 to be a view, in Police Scotland at least, that no issue  
25 with disclosing PM results. Was any of that raised or

## Transcript of the Sheku Bayoh Inquiry

1           discussed or considered at the Gold Group meeting?

2           A. I can't exactly recall. I'm sure -- I'm pretty certain  
3           it was and that is probably where it got to the bottom  
4           line there, which is advice to be gained from PIRC  
5           around the disclosure. You know, a direction -- you  
6           know, the decision has to be made, and hindsight is  
7           great, or if it's the right or wrong decision but  
8           a decision needed to be made.

9           For me, if the cause of death, which I have not seen  
10          in a long period of time, suggested criminality then  
11          that would put a different perspective on it but from  
12          memory it didn't, so on that basis we're back to the  
13          question that I asked yesterday around  
14          Collette Bell: why would you not give the officers --  
15          their welfare needs to be a key factor in this.

16          Q. What would you have expected from the post mortem if it  
17          had -- if it was going to raise issues of criminality?  
18          What would you have thought would be present?

19          A. Could be -- again, I'm speaking very generally, there  
20          could be 100 different things that could come forward on  
21          a post mortem that could infer criminality. Genuinely  
22          there's various different ways that could manifest  
23          itself.

24          Q. In relation to an incident where there has been police  
25          contact, what -- can you give us an example of what you

## Transcript of the Sheku Bayoh Inquiry

- 1           might have expected?
- 2       A. I actually cannae think of any specific incidences, but
- 3           I spoke about the incident down south yesterday briefly
- 4           around a police contact -- or a police shooting and the
- 5           individual died, so that could be a scenario. There
- 6           could be -- a vehicle could -- a police vehicle could
- 7           hit someone. That could be a scenario.
- 8       Q. So where there's a death and there is police contact, it
- 9           could be criminality or it could be a justified use of
- 10          force?
- 11       A. Yes, could be. Yes.
- 12       Q. So if there is a restraint and someone dies, that could
- 13          equally be a justified use of force or it could be
- 14          criminality?
- 15       A. Yes, it could. Yes.
- 16       Q. Looking at that task it says:
- 17                "Advice to be gained from PIRC about disclosure."
- 18                But then it says:
- 19                "Supervisor to be identified to carry this
- 20                disclosure out."
- 21                That sounds like a disclosure will be carried out
- 22                and we need to appoint a supervisor to do that. So it
- 23                sounds like on the one hand: let's get advice from PIRC,
- 24                but on the other there's going to be a disclosure?
- 25       A. No, I wouldn't read it like that actually, I would read

## Transcript of the Sheku Bayoh Inquiry

1           it as we need to get a decision from PIRC and you know  
2           we need to identify -- on the basis that PIRC may agree  
3           and may decide yes, we need to identify the right  
4           supervisor. Because again, you know, this has to be  
5           done very, very sensitively with these police officers.  
6           It is not a matter of, you know, just plucking somebody  
7           out the air who maybe has no rapport, no understanding  
8           of the incident, you need somebody who's got the skill  
9           set because despite the PM, the initial PM as I would  
10          say not inferring criminality, you know it is still  
11          a very big thing for these police officers to hear, so  
12          it's about identifying the right person I suppose  
13          I would put in there, to carry out the disclosure, if  
14          indeed it is approved.

15         Q. Do you remember who was appointed?

16         A. I don't actually and I probably should know that, but  
17            I don't.

18         MS GRAHAME: I'm conscious of the time.

19         LORD BRACADALE: We will take a 20-minute break.

20                 (11.32 am)

21   (A short break)

22                 (11.58 am)

23         LORD BRACADALE: Ms Grahame.

24         MS GRAHAME: Thank you. We were talking about the events  
25            surrounding the post mortem.

## Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. And we've heard evidence that took place on 4 May, the  
3 Monday after and we've looked at the minutes from the  
4 Gold Group meeting. They were PS03161, where we were  
5 talking about what the officers were being advised.  
6 Let's -- this was 12.30 on 4 May. Let's look at that  
7 section again. It's down towards the bottom of the  
8 page, I think. No, it's in the middle of page 2. Sorry  
9 about that. The task there, you were seeking advice  
10 from PIRC and a supervisor would be appointed or  
11 identified to carry out the disclosure.

12 We've heard evidence from Conrad Trickett to the  
13 Inquiry and I'm just going to ask you about what he said  
14 to see if you had any awareness of this. It was his --  
15 he gave evidence on Day 46, which was 8 March, and this  
16 year he said that he understood:

17 "... the legal advice was to not provide  
18 a statement~..."

19 This was the advice to the officers who had  
20 attended:

21 "... because they couldn't confirm what their status  
22 was: we won't be able to confirm your status until the  
23 cause of death is known~..."

24 That was his understanding of the advice that was  
25 being given:



## Transcript of the Sheku Bayoh Inquiry

1            "... hence the importance of the cause of death in  
2            relation to -- from a post-incident point of view that  
3            would be a trigger and for the legal advice and the  
4            officers there to provide a statement."

5            So he understood, as I understand his evidence, that  
6            once they had that information about cause of death,  
7            that would be, as he put, it a trigger for the officers  
8            then to clarify their status, and provide statements to  
9            the Inquiry.

10           I wonder if during that Gold Group meeting that we  
11           have been looking at the minutes of, so this is on  
12           4 May, 12.30, there was any discussion around that, that  
13           the officers were waiting to hear about cause of death  
14           before they would be prepared to give statements?

15           A. I certainly don't recall it, and I would hope if there  
16           was, that there would be something in the minute of that  
17           because that is a pretty important discussion to have.  
18           But I certainly -- I can't recall now.

19           Q. So in the absence of anything like that in the minute,  
20           do you remember, yourself, any -- being aware of a sort  
21           of quid pro quo, "Tell us the cause of death and we'll  
22           give you a statement", arrangement?

23           A. No, I don't remember that, no.

24           Q. Is that the sort of information you would have wanted to  
25           have been made aware of in your role as Silver

## Transcript of the Sheku Bayoh Inquiry

- 1 commander?
- 2 A. Not necessarily. And of course, you know, it's almost  
3 a sort of a -- it's a meaningless agreement and what  
4 I mean by that is that that position could change the  
5 next hour, you know, the -- there's no formal commitment  
6 there as I understand it, as you describe to me, so  
7 it's -- it's no really relevant. But I'd certainly  
8 never heard that that was in any way a sort of  
9 quid pro quo, no.
- 10 Q. Did you think it was of any interest that the officers  
11 were taking that position, that they didn't want to give  
12 statements?
- 13 A. My understanding, as I said earlier, was this was the  
14 advice coming from the Federation and the Federation  
15 lawyers. And I'm not surprised that the officers took  
16 that position bearing in mind they were getting legal  
17 advice from the Federation and their lawyers.
- 18 Q. We've heard evidence from the doctor, the pathologist  
19 who carried out the post mortem, and her name was  
20 Shearer, she explained to us that initially her report  
21 said the cause of death was, "Unascertained, pending  
22 toxicology".
- 23 A. Okay.
- 24 Q. Were you aware of that?
- 25 A. I wasn't actually, I thought -- the one I read was a bit

## Transcript of the Sheku Bayoh Inquiry

1 more detailed than that.

2 Q. I am not suggesting that it wasn't detailed, having  
3 carried out the post mortem, but the cause of death was  
4 listed as "unascertained" initially.

5 A. Right.

6 Q. Pending the toxicology investigations.

7 A. Yes.

8 Q. That was dated -- that report was dated 6 May, so  
9 a couple of days after the post mortem itself was done.  
10 It says, "Unascertained pending investigations", and she  
11 explained that those investigations were toxicology  
12 investigations and things along those lines.

13 It wasn't until 18 June 2015 that a final  
14 post mortem report was actually signed by her and her  
15 colleague. So initially at least, on 4 May, on 5 May,  
16 as far as the official report was concerned, cause of  
17 death was unascertained.

18 A. Yes, I'm -- that is the first I've heard that to be  
19 honest with you, and I am surprised at it because I'm  
20 pretty certain -- and I would have to revert to my  
21 statement, but I'm pretty certain we had -- there was  
22 a cause of death, an initial cause of death passed  
23 either the 5th or 6th May. And -- yes, so that was my  
24 understanding. Now, I don't know where that came from,  
25 whether it's from that lady's final -- or initial

## Transcript of the Sheku Bayoh Inquiry

1 finding report or the officers or the PIRC staff or  
2 whoever was at the post mortem. I couldn't even tell  
3 you who was there, I assume it was PIRC staff. So, I am  
4 surprised at that.

5 Q. "Unascertained" wouldn't rule out any criminality at  
6 that stage, would it? Would you agree with that?

7 A. No. I would agree, yes.

8 Q. I think we also heard from Trickett, Conrad Trickett,  
9 the post-incident manager, that he was then told on  
10 5 May, so that is the Tuesday, the day after the  
11 post mortem is carried out, he has a conversation on the  
12 phone that morning, and he said that:

13 "Officers had been advised last night~..."

14 So on Monday night, 4 May:

15 "... that pending toxicology, the cause of death did  
16 not result from blunt-force trauma."

17 So there seems to have been at least some  
18 understanding that at that stage -- that whatever the  
19 cause of death, it wasn't blunt-force trauma.

20 A. Yes, that was my understanding.

21 Q. Right.

22 A. Yes.

23 Q. Do you remember why there was so much interest in ruling  
24 out blunt-force trauma?

25 A. Not specifically. No, I mean that was the cause of

## Transcript of the Sheku Bayoh Inquiry

1 death that was passed, that I got sight of.

2 I assumed -- I assumed that came from the pathologist.

3 But I think you are suggesting it didn't come from the  
4 pathologist.

5 Q. I don't want to make any suggestions to you, but  
6 certainly the post mortem had been carried out on the  
7 4th, blunt-force trauma had been ruled out by the  
8 pathologist and that seems to have been shared with the  
9 officers on the Monday evening.

10 A. Yes, so that was my understanding, yes.

11 Q. We've heard evidence that one of the officers had struck  
12 Mr Bayoh. He gave evidence to this effect, that he  
13 struck Mr Bayoh on the head a number of times with his  
14 baton, and we've also heard evidence from other officers  
15 that the officer who did this was quite upset when he  
16 went back to Kirkcaldy Police Office. I wondered if  
17 that was a situation that you were aware of, that there  
18 had been concern that he had contributed in some way to  
19 the death, at least at that stage?

20 A. Yes, I'm trying to -- because I did watch at least one  
21 of those interviews on here, so I'm trying to deconflict  
22 what I knew a few months ago to what I knew eight years  
23 ago. So I'm not entirely clear to be honest with you.

24 Q. Can I ask you -- so you were not part of any discussion  
25 about all of the ramifications to do with --

## Transcript of the Sheku Bayoh Inquiry

- 1 A. No.
- 2 Q. -- the pathology results, the post mortem results?
- 3 A. No, that wasnae my role so I was not -- any discussions  
4 that were happening between PIRC and police, that most  
5 likely happened -- I'm totally assuming -- probably  
6 between PIRC and the Detective Super.
- 7 Q. In terms of welfare issues, if an officer was very  
8 concerned and worried about what the impact was of  
9 actions he had taken, was that something that you would  
10 have expected to know about?
- 11 A. Well, that was the purpose of -- that was one of  
12 the purposes for Conrad Trickett to be there. That was  
13 his main role, was around the welfare of the officers,  
14 so I would certainly expect him to be sighted on that.  
15 Any -- sort of, you know, anecdotal comments, you know,  
16 I wouldn't -- Conrad wouldn't come running to me and  
17 say: this is what officer A said ten minutes ago and ...  
18 that is not how we would be operating. We've all got  
19 our distinct roles, and, yes, so I would expect Conrad  
20 to know that.
- 21 Q. So if an officer has said he struck the subject over the  
22 head with a baton, he was concerned about that and upset  
23 about that, from a welfare perspective --
- 24 A. Yes.
- 25 Q. -- you wouldn't have expected that to be brought to your

## Transcript of the Sheku Bayoh Inquiry

1 attention?

2 A. There is a possibility that would come to my  
3 attention -- I don't remember it distinctly but yes  
4 there is the possibility. That is quite a serious or  
5 important point. I suppose the point is though that  
6 it's the provenance of that, you know, where is -- is  
7 that coming third hand? I don't know, where is that  
8 coming from? Is it coming from the officer directly,  
9 did he mention it directly to Conrad? Did it go up the  
10 tree in that way? I don't know.

11 Q. Can I ask you about the timing of the statements. Did  
12 you have any concerns from what you knew at the time  
13 that the officers had declined to provide statements on  
14 the basis of advice that they had received?

15 A. Did I have concerns about it?

16 Q. Did you have concerns about that, how that might impact  
17 on the investigation, for example?

18 A. I'm not -- I don't -- I genuinely, they weren't  
19 concerns, it was the reality of the fact, which was that  
20 they had been given legal and/or Federation --  
21 independent Federation advice not to give statements.  
22 There is nothing that me or anyone else could do in that  
23 circumstance to make them -- you know, that wasnae my  
24 role, so it was a matter of fact and it was something  
25 for which me we just have to move on from.

## Transcript of the Sheku Bayoh Inquiry

1 Q. We've heard a lot of evidence that this is a situation  
2 where people haven't come across it before, where  
3 officers have been involved in an incident and have  
4 declined to provide operational statements. Would that  
5 accord with your experience?

6 A. Because I was in charge of custody, and you know,  
7 I would imagine there's probably six or seven -- that's  
8 probably a slight exaggeration, maybe three or four  
9 deaths in custody in a year in Scotland and I would have  
10 oversight of them, then I am aware since 2015 of that  
11 having happened since, but not for such a prolonged  
12 period of time.

13 Again, my view on it is that it is the -- you know,  
14 it's about the best evidence not the quickest evidence  
15 is the phrase that I always use. If officers need  
16 a period of time to properly formulate in their head  
17 exactly what happened and to document that on paper,  
18 then give them the time and the space to do that, let's  
19 not -- let's not rush hem into that position because  
20 actually what we want to get is the facts and the most  
21 coherent and comprehensive response, so I have -- I am  
22 aware of occasions where there has been delays in police  
23 officers or police staff giving statements and I have  
24 accepted that as the commander of Criminal Justice  
25 Services division to say, well, let's just give them



## Transcript of the Sheku Bayoh Inquiry

1 a bit of space to do it.

2 Q. When you are talking about a bit of space, what sort of  
3 timescale?

4 A. Genuinely I wouldn't put a time on it. If it went on to  
5 weeks and weeks I would be asking serious questions, but  
6 you know these are traumatic incidents, people -- taking  
7 this incident to one side, but police officers who are  
8 present or find very vulnerable people dead in police  
9 cells in a condition that probably very few in this room  
10 have ever witnessed so you need to give police  
11 officers -- they are just human beings like the rest of  
12 us, you need to give them a bit of time to fully absorb  
13 and come to terms with what they faced and then you  
14 know -- and some deal with it different and quicker and  
15 slower than others, so it's about giving them the time  
16 and space because it is the best evidence, not the  
17 fastest evidence that is important.

18 Q. Yesterday you talked about -- we talked about conferral  
19 and you talked about the risks of people starting to  
20 discuss an incident, and that discussion, finding out  
21 what other people recollect, can have an impact on their  
22 recollection. Is that something that was concerning you  
23 in relation to the absence of statements here?

24 A. It wasn't -- it wasn't concerning me because the reality  
25 is we were where we were, and what I mean by that is

## Transcript of the Sheku Bayoh Inquiry

1           they had been given legal advice not to give  
2           a statement, so you know whether it's concerning to me  
3           or not didn't actually matter. The fact of the matter  
4           was that that has been -- that was the position they  
5           were taking. So we just need to move on from that.

6           Q. Did you take the view that you didn't have any leverage  
7           at all to try and persuade the officers or encourage  
8           them to give statements?

9           A. I certainly wasn't going to encourage them. The  
10          Federation and legal representation is there for  
11          a reason, and I think we have to respect that.  
12          A Public Inquiry is a perfect scenario of that, we need  
13          to follow proper and due legal process so I was allowing  
14          them to do that.

15          Q. Can I ask you something that has been suggested by  
16          someone from PIRC. Now, we've not heard evidence from  
17          this gentleman, his name is McSporran -- this is what he  
18          says, and I would just like to ask you what you think of  
19          this suggestion:

20                 "Police Scotland could have instructed or ordered  
21                 the nine officers ..."

22                 That's the nine attending officers:

23                 "... to provide a statement on the grounds that it  
24                 is within their standards of professional behaviour,  
25                 ie constables give and carry out only lawful orders and

## Transcript of the Sheku Bayoh Inquiry

1 instructions. Failure to obey a lawful order may  
2 constitute misconduct under the Police Service of  
3 Scotland Conduct Regulations 2014."

4 Can I ask you what you think of that suggestion,  
5 that there could have been an order or an instruction  
6 given?

7 A. So I have not looked at the regulations and I am pretty  
8 distant from those sort of regulations just now but  
9 I think that would have been wholly inappropriate to do  
10 that. What could you potentially have got from the  
11 officers there? Maybe a single sentence. You know,  
12 "I commenced duty at such and such, that is all  
13 I recall". If you begin to force officers to do it when  
14 they have legal advice to say not to do it, I think that  
15 is a -- that is not the best approach to take. That is  
16 not the approach I would take anyway.

17 Q. We've heard some evidence that operational statements  
18 can be very brief. They don't need to give a lot of  
19 detail about the events but they can certainly pin down  
20 when the duty commenced and -- an outline if no more.  
21 You didn't think it was appropriate to seek that from  
22 the officers?

23 A. It is back to -- you know, I feel as though I am  
24 repeating myself but you know, you ask the officers to  
25 give statements, they are refusing on the basis of their

## Transcript of the Sheku Bayoh Inquiry

1           legal advice not to give a statement at that point, then  
2           for me you have to respect that decision.

3           Q. All right. So in terms of you and the Gold Group, once  
4           the officers received the advice they received, and took  
5           the view they wouldn't provide statements, no further  
6           steps were taken or suggested by the Gold Group in  
7           relation to obtaining those statements?

8           A. Certainly not that I was involved in or can recall, no.

9           Q. I have slightly gone on to statements, I want to just  
10          come back and just complete something about  
11          the post mortem.

12          A. Okay.

13          Q. So officers were told on the evening of 4 May, as  
14          we understand the evidence from, for example,  
15          Conrad Trickett, which was the evening of the day that  
16          the post mortem took place. Were you advised that that  
17          was going to be done or were you advised retrospectively  
18          that it had been done?

19          A. I can't remember. I was certainly advised, I don't know  
20          if it was before or after. It may be in my statement.  
21          I just can't quite remember.

22          Q. We've also heard evidence from the family that they  
23          didn't hear that the post mortem had taken place. They  
24          weren't -- arrangements weren't made to take them to  
25          attend the -- prior to the post mortem. They didn't

## Transcript of the Sheku Bayoh Inquiry

- 1 find out the post mortem had taken place until the  
2 Tuesday, which was the 5th May.
- 3 A. Okay.
- 4 Q. And that was during or after a meeting with their  
5 lawyer. I wondered if you have concerns -- you've  
6 talked about how the family were a priority, and  
7 concerns about tensions, potential tensions in the  
8 community. Looking back at that timeframe, do you have  
9 concerns about the fact that the officers were told on  
10 the Monday night after the post mortem had been carried  
11 out but the family weren't told until the Tuesday?
- 12 A. Yes, absolutely. Yes.
- 13 Q. Can you explain to the Chair what your concerns are?
- 14 A. Well, you know, the family of someone who has died  
15 following police contact is -- there has been  
16 a post mortem carried out on their body, and they have  
17 been oblivious to, one, that fact and, two, the results  
18 of that post mortem. It's -- it's -- that's wrong.
- 19 Q. If you'd been in charge of that situation -- you have  
20 explained PIRC taking over the investigation but if  
21 you'd been in charge of that situation, how would you  
22 have handled it?
- 23 A. You know, I don't want to get into the -- it's  
24 difficult -- you know, because looking back, the  
25 hindsight brigade, it's easy to say, "I would've done it

## Transcript of the Sheku Bayoh Inquiry

1           differently, I would've done it better", but my  
2           experience of having been involved in deaths and having,  
3           you know, been a senior investigating officer is that  
4           the results of the post mortem, either the first or one  
5           of the first group of people that you tell is the  
6           family. And even more so nowadays where, you know,  
7           social media, things can leak very, very quickly so out  
8           of respect and dignity for the family, you need to --  
9           they need to be at the top of your list for informing of  
10          the result. In my view.

11         Q. Can I take it from that that you would have told the  
12          family first?

13         A. I certainly -- you know, yes. Yes.

14         Q. Can I ask you some questions about the impact of telling  
15          officers first where the cause of death is  
16          unascertained, drawing on what you said yesterday about  
17          when people start talking about things, it can influence  
18          or change their own recollection. We've heard some  
19          evidence that an officer prepared a statement initially  
20          very soon after the events, and said nothing in that  
21          about hearing about a rib fracture. We have heard from  
22          the pathologist about subsequent investigations that did  
23          discover a rib fracture. We've also heard evidence that  
24          at a later statement that was given after the  
25          pathologist had discovered the rib fracture, that there

## Transcript of the Sheku Bayoh Inquiry

1           was mention of the officer having heard the rib  
2           fracture. Are you following what I am saying? So  
3           an apparent difference between two statements.

4       A. Right, okay.

5       Q. In between those dates the pathologist has identified  
6           that there was a rib fracture. Is that the type of  
7           thing that can happen when -- I'm not asking you to  
8           explain that apparent difference but is that the type of  
9           thing that could happen if information is given to  
10          an officer in relation to pathology, that things -- that  
11          statements will change?

12       A. It could happen, yes. Yes, of course it could happen.  
13          I felt the cause of death that I seen was so brief and  
14          succinct that -- I have explained it, I think it was the  
15          right thing to do. But yes, that scenario as you play  
16          out could happen.

17       Q. So it's possible, if additional information comes to the  
18          attention of someone, that they can then absorb that and  
19          think that is something that they --

20       A. Yes, I would agree with that.

21       Q. All right. Can I ask you now to look, please, at your  
22          original operational statement. PS03136, please. This  
23          is -- if we can look at page 3 now, please. It's  
24          paragraph 5 that I'm interested in. You say that:  
25                 >About 7 am on Monday 4 May, I commenced duty at

## Transcript of the Sheku Bayoh Inquiry

1 Kirkcaldy Police Station~..."

2 So this is the day after:

3 "Later that day ..."

4 And you say 1545 hours:

5 "... accompanied with Supt Milton, I again attended  
6 at ... and spoke to Ade and Kadi."

7 So you went back to the Johnsons' the day after.

8 This is after the Gold Group meeting that we looked at  
9 a moment ago.

10 A. Yes.

11 Q. And you went back to where they lived to speak to them.

12 A. Yes.

13 Q. It says:

14 "A number of other family members and friends were  
15 present. My primary concerns at this time remained the  
16 immediate family of Sheku and local community tensions  
17 which were beginning to grow predominantly via social  
18 media. Family and local community reassurance was vital  
19 throughout this period and my focus remained on this  
20 aspect whilst the PIRC continued their investigations.  
21 On arrival the family were pleased to see me and  
22 articulated a dissatisfaction with PIRC involvement to  
23 date, stating that they had had little contact and not  
24 received any further information. They requested that  
25 they be afforded the opportunity to lay flowers on



## Transcript of the Sheku Bayoh Inquiry

1 Hayfield Road and that an explanation as to why they  
2 (PIRC) still had control of the house and why access to  
3 the deceased home address had been prevented by the PIRC  
4 the previous evening. I reiterated my role and advised  
5 that I would pass on their queries to the PIRC."

6 Can I ask you a little bit about this visit. Do you  
7 remember going back to speak to Ade and Kadi that  
8 afternoon?

9 A. I do, yes.

10 Q. So that was at quarter to four on the Monday?

11 A. Yes.

12 Q. Tell us about that visit. How were the family with you  
13 that day?

14 A. So I felt -- and as I outlined there, I do feel the  
15 family were pleased to see me. They were clearly --  
16 clearly still very, very distraught and emotional.  
17 I learned at that point that they had had a conversation  
18 with PIRC. It did not come across as being the most  
19 positive of conversations, and then we spoke around --  
20 I explained, or reiterated most likely, that PIRC had  
21 a role -- had a job to do and that was their  
22 responsibility but, you know: I am here as the  
23 commander, what support can I give you that is not  
24 crossing across their boundaries, if you like? And then  
25 that is when they came and mentioned the flowers, and

## Transcript of the Sheku Bayoh Inquiry

1 I can't remember the ins and outs of it but from  
2 recollection the family were simply wanting to attend at  
3 the place where Sheku had fallen unconscious at the  
4 point of police contact, or thereabouts, and you know,  
5 to -- which wasn't far from their house from memory, and  
6 to, in a sort of dignified way, leave some flowers and  
7 pray or whatever it is they wanted to do and mark the  
8 respect for that place where Sheku lay. So -- and  
9 they'd asked for that to be facilitated and it hadn't  
10 happened. So I said: well, leave that with me and we'll  
11 make that happen.

12 Q. Who had they asked to facilitate that?

13 A. You would have to ask Kadi or Ade and other family  
14 members. I genuinely don't remember. It will have been  
15 either PIRC or -- I don't know, maybe one of  
16 the detective constables but I can't remember.

17 Q. What did you do, knowing about this issue with the  
18 family; what steps did you take?

19 A. So I -- it's interesting just to go back a little bit,  
20 so the reason that I took Superintendent Milton with me  
21 was the same purpose that I took Nicola Shepherd the day  
22 before, so I would lead on the discussions, and Dougie  
23 would be there and maybe not take notes at the time but  
24 would have an independent view to ensure -- and Dougie  
25 I think from memory took a couple of notes around what

## Transcript of the Sheku Bayoh Inquiry

1           it was the family were wanting us to do, and then we  
2           left and we made those arrangements for that to happen.  
3           I genuinely can't remember if I phoned the PIRC or if  
4           Dougie, when I was driving, phoned the PIRC. It was the  
5           minute we pretty much left the house, I says, you know,  
6           this needs to get done, so we just arranged for that to  
7           happen.

8           Q. If you'd been leading the investigation at that time or  
9           involved in taking control of matters, what would you  
10          have done to assist the family in this regard?

11          A. You know, I would have -- I would've made that happen  
12          very quickly and I would've arranged for it to have been  
13          done at a time and in a way, in a fashion that would  
14          suit the family. Because it's a really important point  
15          for me. If it was my family, you really want that to  
16          be -- to happen in a very dignified and in a way that  
17          suited the family.

18          Q. Can you tell the Chair are there any reasons why that  
19          can't be done quickly?

20          A. So I don't know at what point the locus protection, the  
21          crime scene management work was ongoing and I did  
22          explain that to the family because I was unsighted. But  
23          I think from memory they were even happy to go to  
24          a point as close to the site where Sheku fell  
25          unconscious, so it didn't actually need to be right at

## Transcript of the Sheku Bayoh Inquiry

1           that -- they were -- not flexible but they were happy to  
2           work within -- they understood the importance of the  
3           crime scene and the examination of that, so they were  
4           happy to work around that.

5           Q.   If it had been you organising it, would you have  
6           arranged an escort of some kind to take them?

7           A.   If they wanted that because, you know, they may not have  
8           wanted that because from memory I think they were going  
9           to walk down because it wasn't particularly far.  But,  
10          yes, anything that they had asked for, then I would have  
11          tried to facilitate it.

12          Q.   You talk there about:

13                 "... local community tensions were beginning to grow  
14                 predominantly via social media."

15                 How were you aware of that?

16          A.   So I was on social media, I may have picked up pieces on  
17          that.  There was most likely the role of media in the  
18          Gold Groups, that would be -- one of the lady's roles  
19          would be to brief the Gold on any significant media  
20          and/or -- and that includes social media interest.  So  
21          if there was anything that was beginning to -- because  
22          it can go a number of different ways that, can't it?  It  
23          could be that there's a -- you know, a hatred towards  
24          the police could emerge, it could be a hatred towards  
25          the family, it could be -- who knows what could happen

## Transcript of the Sheku Bayoh Inquiry

- 1           on social media? So it's important again as police  
2           officers in the Gold Group we would be sighted on  
3           anything that was particularly nasty or inciteful or  
4           dangerous.
- 5           Q. So from your role at that time it was important that you  
6           were able to identify tensions as they were growing, if  
7           they did grow, and what area they might be in?
- 8           A. Yes.
- 9           Q. Was -- apart from yourself being on social media was  
10          there also monitoring of social media?
- 11          A. Sorry, the media, and the Gold Group -- I think was her  
12          name Kate? But the media lady, that would be one of  
13          their roles, would be to monitor social media and to  
14          bring any pertinent posts or whatever to the Gold Group  
15          if it was deemed appropriate.
- 16          Q. Can I presume that the monitoring of social media is in  
17          relation to publicly available information on the  
18          internet?
- 19          A. Yes, yes.
- 20          Q. Was there monitoring of the Justice for Sheku Bayoh page  
21          that was set up?
- 22          A. I don't know. There may have -- if it was a public  
23          site, you know, media would tell you that they may well  
24          have done that. I don't know when -- I don't know when  
25          that was actually established, if it was established by

## Transcript of the Sheku Bayoh Inquiry

1           that time or not.

2           Q. Can I ask you something about what is on the next  
3           paragraph. If we look to the bottom of this page, the  
4           statement:

5                     "The family raised the issue of an article published  
6           in the Dundee Courier that morning regarding Sheku's  
7           death. They were unhappy that I was quoted therein.  
8           I advised that I was simply expressing my sincere  
9           condolences to the family and that I had no control over  
10          what the media printed. I informed them that it was  
11          unlikely that I would release further statement to the  
12          press as the enquiry rested with the PIRC but if it was  
13          necessary, out of courtesy I would advise them prior to  
14          doing so."

15                    So it would appear this is another topic the family  
16          raised with you at that the meeting, at 15.45 that  
17          afternoon. If we can maybe see the whole paragraph on  
18          the screen if possible. You say they were unhappy that  
19          you were quoted. Do you remember --

20          A. I do.

21          Q. -- this conversation?

22          A. Yes.

23          Q. Can you tell us more about that?

24          A. So the night before at whatever -- it was back at  
25          6/7 o'clock, when I had been in the house, because

## Transcript of the Sheku Bayoh Inquiry

1 Sheku's mum was to travel up, they were wanting to be  
2 the ones that notified her directly, understandably so.  
3 The media release that was put out, from memory -- and  
4 I'm sure you have it, I've not seen it since then -- was  
5 a more general, you know: there has been a death has  
6 occurred, the police and/or PIRC are investigating it.  
7 And it was to provide reassurance to the wider community  
8 because you know, this is -- it's back to that community  
9 reassurance, community tension, community concern. The  
10 public, when they read that a male has died, they are  
11 concerned so we need to -- as I was then the police  
12 commander we need to put some reassurance out, because  
13 it's important for the wider community.

14 But I did apologise in that I didn't think that the  
15 article that went out would have in any way alerted  
16 Sheku's mum to the circumstances, but then I did, as it  
17 says at the end there, pledge that if there were any  
18 other media releases to go out, I would share it with  
19 them in advance and I've done that as -- that is not  
20 an unusual -- that is, within reason, quite normal  
21 because you want to -- that is what FLOs would probably  
22 do, in various enquiries, it would be dependent on the  
23 circumstances, where we are about to appeal for  
24 witnesses or we are about to do this or that and you  
25 would share that with family in advance so then they are

## Transcript of the Sheku Bayoh Inquiry

- 1 not taken by surprise.
- 2 Q. So looking back now, in an ideal situation there would  
3 have been a FLO liaising with the family or appointed to  
4 the family who could update them in relation to media  
5 statements that were being released?
- 6 A. Yes, sorry yes. That would be certainly one of their  
7 key roles, of course, yes.
- 8 Q. Is that really the ideal situation, rather than  
9 expecting someone in your role to advise the family?
- 10 A. Yes, exactly.
- 11 Q. You have said there out of a courtesy you would advise  
12 them prior to doing so in the future. Is that  
13 a practice you have adopted since?
- 14 A. Yes, for -- and to be honest with you and probably prior  
15 to this, depending upon the enquiry. Then yes, I would  
16 out of -- I think you know my beliefs around the family  
17 being a central tenet to any investigation, so, yes,  
18 I think that is a good practice to adopt.
- 19 Q. With hindsight, if they had known about that in advance,  
20 do you think that would have helped the relationship  
21 between the family and Police Scotland or even with the  
22 investigation generally being led by PIRC?
- 23 A. I don't know -- it certainly couldn't have done any  
24 harm. I did apologise to them at the time and I do  
25 genuinely feel they accepted that. That first media



## Transcript of the Sheku Bayoh Inquiry

1 article that went out was done very early on, it was  
2 probably written pre the meeting the day -- the meeting  
3 with the family the day before, and it was pretty  
4 general. But it could have been done better.

5 Q. You have said there that -- it was published in the  
6 Dundee Courier and you have said that you have no  
7 control over what the media printed. Can I ask you  
8 about that; how did it come about that the Dundee  
9 Courier had a quotation from you?

10 A. So basically -- again, media would be the ones that  
11 would tell you this but what happens when there is  
12 a flurry of police activity on Hayfield Road, as it was  
13 here, where you've got various police officers and  
14 police staff guarding various loci, five different  
15 addresses, the media hear about that sort of thing  
16 really quickly. Not from the police but from members of  
17 the public, or local media might drive past so they then  
18 phone -- they would then phone -- the likelihood is they  
19 would then phone the Police Scotland media department  
20 and say, "What's happening in Kirkcaldy? There seems to  
21 be a lot of police activity". The short quote that  
22 I gave was about -- it was a reassurance piece and that  
23 would have been what media gave to -- sorry, what  
24 Police Scotland will have probably circulated to media  
25 outlets.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Can I understand, any contact you have with the media is  
2 through the media department of Police Scotland?

3 A. Yes, by that time, yes.

4 Q. Was this statement or quote given to the media  
5 department prior to PIRC taking over the lead of the  
6 investigation?

7 A. I'm not sure about the timings, again media would be  
8 able to tell you that, unless you have the media  
9 statement to hand. But I can't recall the exact  
10 timings.

11 Q. If PIRC had taken over the investigation by this stage  
12 and had had a handover from the police, in that scenario  
13 would Police Scotland customarily be issuing media  
14 statements or would you be handing that responsibility  
15 over to PIRC?

16 A. So I suppose it's down to everybody's -- there's  
17 probably not any clear definitive answer to that. My  
18 view was or is that at least the initial messaging  
19 should go out from the commander of that area. In 2015  
20 very, very few people, I suspect, really knew and  
21 understood what PIRC were there to do and their roles  
22 and responsibilities, so bearing in mind, as I say,  
23 there's significant policing presences at various  
24 addresses including Hayfield Road, I think the commander  
25 of that area is probably best placed to provide a bit of

## Transcript of the Sheku Bayoh Inquiry

1           visible communication that hopefully provides a bit of  
2           reassurance to the local communities.

3           Q.   Just in light of what you've said, on the day that this  
4           happened, did you yourself have a clear idea of what the  
5           remit of PIRC was or what they were going to do?

6           A.   I knew that the PIRC were taking responsibility for the  
7           lead, they were the lead in this investigation.  
8           I personally had -- I don't know how -- how new the PIRC  
9           were by that time, maybe only a year old or 18 months or  
10          something, so I had had some involvement with the PIRC  
11          before but not a huge amount because they were a really  
12          young organisation.  But, yes, my understanding was they  
13          were going to take -- they are there to take oversight  
14          and lead on this investigation, this enquiry.

15          Q.   What was the extent of that investigation at the time,  
16          as far as you understood?

17          A.   So there was a -- there was agreed parameters that were  
18          set in place but I'd have to see them to refresh my  
19          memory, but you know it was about the investigation, and  
20          probably the precursor, the lead-up to that  
21          investigation.  It does stick in my mind that that was  
22          expanded a little in the days following the death of  
23          Sheku, following police contact.  It was expanded, but  
24          I couldn't tell you exactly to what degree.

25          Q.   Although you can't tell us today, at the time did you --

## Transcript of the Sheku Bayoh Inquiry

1           is your recollection that you had a clear impression of  
2           the scope of the -- or the limitations on the  
3           investigation by PIRC?

4       A.   Yes.

5       Q.   You did?

6       A.   Yes.

7       Q.   Where did that come from?

8       A.   Probably from -- probably from Pat Campbell and/or  
9           Keith Harrower and/or Gold.

10      Q.   Thank you.  If we can move away from this meeting that  
11         you had with the family, which was 4 May, 3.45.  I'd  
12         like to look at an agenda for a further Gold Group  
13         meeting on 6 May.  Actually, before I move on to that.  
14         Can I look at PS01336.  This is a critical incident  
15         communications strategy document.  If we can move away  
16         from this to PS01336.

17                 The author is Lucy Adamson, it's dated -- created on  
18                 4 May, 2015, and it is headed:

19                         "Critical incident communications strategy --  
20                         Operation Birnie."

21                 You talked about declaring a critical incident  
22                 yesterday in your evidence?

23      A.   Yes.

24      Q.   This is a document that has been prepared by

25           Lucy Adamson.  Do you know who Lucy Adamson is, was?

## Transcript of the Sheku Bayoh Inquiry

1 A. So I'm not sure of her formal title but she was director  
2 or head of Corporate Communications for Police Scotland.

3 Q. And the purpose is given at number 1:

4 "To outline a communications strategy that supports  
5 the objectives of the Gold strategy following the death  
6 of Sheku Bayoh in Kirkcaldy on Sunday 3 May. This  
7 document will be regularly assessed and refreshed to  
8 ensure it continues to meet the needs of the Gold  
9 strategy."

10 Did you have any involvement in the preparation of  
11 this?

12 A. No.

13 Q. No, it wasn't you. You may not be able to assist me  
14 with this but can I ask you to look at number 8 which is  
15 on page 3. This relates to the family. It is titled  
16 "Risks", and it says:

17 "There are a number of risks identified that will be  
18 regularly reviewed to assess their impact on our  
19 communications approach."

20 Bullet point 1:

21 "The role of extended family and any subsequent  
22 representatives will have a key impact on external  
23 comment and as our media comment is currently limited,  
24 effective engagement with the family and their  
25 interested representatives will be key."

## Transcript of the Sheku Bayoh Inquiry

1           I know you have spoken a lot about the family being  
2           a priority and I am wondering if you can help me  
3           understand why are the family and the role of the  
4           extended family being listed under "Risks"?

5           A. I'm not sure actually. No, I don't know.

6           Q. No?

7           A. No.

8           Q. If we go on to the next page, page 4. The third bullet  
9           point says:

10           "Early comment on social media channels has already  
11           referred to 'police brutality' and there are many  
12           worldwide examples of the impact this has had on  
13           community/police relations. There will be a role for  
14           PIRC in providing reassurance around the investigation  
15           and through continued measured visibility of local  
16           engagement and reassurance."

17           Is that a recognition really of what you were  
18           talking about yesterday, when you gave evidence?

19           A. Yes.

20           Q. So that was something known to you. Were you aware that  
21           on social media channels there were references to police  
22           brutality?

23           A. I can't recall exactly but that was the sort of thing  
24           that I was touching on earlier in my statement, where  
25           you know I was aware that there was certainly stuff

## Transcript of the Sheku Bayoh Inquiry

- 1 ongoing on social media.
- 2 Q. Right. Then the next bullet point talks about:
- 3 "There may also be impacts on hate crime and regular  
4 monitoring of communications channels through ██████ for  
5 measuring public sentiment and gathering intelligence on  
6 future activity which may impact on community relations  
7 will be key."
- 8 I am interested in the phrase, "regular monitoring  
9 of communications channels". What was that about; do  
10 you know?
- 11 A. No I'm guessing -- no, I don't know exactly. Probably  
12 it is another way to describe social media, national  
13 media, written press, radio, and just all the different  
14 forums of communication.
- 15 Q. You have said that monitoring of that type of thing  
16 would be through the media department?
- 17 A. Yes, so that is exactly -- so Lucy is in charge of that  
18 and that would be my expectation, that they would be  
19 doing that monitoring and ██████, I think, is a piece of  
20 IT equipment or a company that can measure some of that  
21 for Police Scotland if they --
- 22 Q. Is that outsourced from Police Scotland?
- 23 A. Yes.
- 24 Q. And then it says:
- 25 "... gathering intelligence on future activity which

## Transcript of the Sheku Bayoh Inquiry

1           may impact on community relations~..."

2           Do you know what that was in reference to,

3           "gathering intelligence on future activity"?

4       A.   No.   No.

5       Q.   No?

6       A.   No.

7       Q.   Right.  Then the next bullet point:

8           "While there is no evidence to suggest the incident  
9           was terrorism related, it may cause concern either  
10          amongst other police officers and staff or amongst  
11          communities."

12          Were you aware if that was a concern being caused  
13          amongst other officers?

14       A.   No, I wasn't actually.  I said it yesterday, there was  
15          no suggestion that this was a terrorist-related  
16          incident.

17       Q.   Then Ms Adamson has said:

18           "You are invited to comment on the draft strategy."

19          Was this something you were ever invited to comment  
20          on?

21       A.   I don't recall seeing it certainly.

22       Q.   Can I ask you to look at your Inquiry statement, please.  
23          It's paragraphs 134 and 135.  I think you may have  
24          mentioned something about this yesterday and I just want  
25          to clear that up.  It's 134 and 135, please.  Thank you.



## Transcript of the Sheku Bayoh Inquiry

1           You talk about the conversations you had with Ade,  
2 Ade Johnson, practical things that you did and, you talk  
3 about:

4           "There were family members from all across the world  
5 who didn't have accommodation. I made sure we would pay  
6 for them to stay in hotels locally when family came  
7 across from overseas. It was that kind of help which  
8 I was keen to provide."

9           Then you've read one of the Inquiry statements that  
10 expressed the view that perhaps it was more of a cynical  
11 exercise on your part:

12           "Again I can only say that I am saddened by that.  
13 I tried to do all that I could to involve the family and  
14 build a relationship which might be of use to them at  
15 a difficult time. I did it in good faith and in  
16 recognition of a devastatingly painful loss for the  
17 family and an incident which impacted on the local  
18 community."

19           Can I ask you to expand on that a little?

20       A. I think that does -- that genuinely articulates how  
21 I felt. That was -- if Ade felt that I was in some way  
22 trying to provide that support as a cynical exercise I'm  
23 really disappointed in that because that was absolutely  
24 not the case. There was never an ulterior motive. It  
25 was -- you know, a large number of family members were

## Transcript of the Sheku Bayoh Inquiry

1           coming from, you know, other parts of the world and, you  
2           know, what I said to one of my inspectors was, if  
3           they're looking for accommodation, if they're needing  
4           transportation, let's do all we can do to help them  
5           because the immediate family have enough on their plate  
6           to be getting on with, so let's just do what we can to  
7           help them. And that's genuinely what we -- or what, you  
8           know, Fife division at the time tried to do.

9           Q. Can I move on and ask you some questions about what  
10          would have been the Wednesday, 6 May. If we could look  
11          at the Gold Group minutes from that date at 1100 hours,  
12          which is PS09779. Again you will see this is headed up  
13          "agenda". There's no details of who was present during  
14          this. Some names are given after each item.

15          A. Okay.

16          Q. I'm interested in -- if we can go to the bottom of that  
17          page, just above item 3. You will see in the blue pen  
18          it says:

19                 "Question raised regarding contact with  
20          Connie Barcik. Confirmed PIRC have been made aware  
21          regarding the need for contact, however no update to  
22          confirm this has taken place."

23                 Can I ask you what you were aware of? We've heard  
24          that Connie was -- and I think we spoke about this  
25          yesterday when you gave your evidence, that she had had

## Transcript of the Sheku Bayoh Inquiry

1 an arrangement, according to Collette Bell, on the  
2 Sunday to meet with Mr Bayoh. She was the mother of his  
3 oldest child. Can you tell me what you knew at this  
4 stage about Connie's involvement?

5 A. From memory, not a great deal other than what you  
6 reminded me of yesterday. But it does -- what day is  
7 this? The Wednesday?

8 Q. This is the Wednesday after he died.

9 A. Yes, it does sort of reinforce to me that, you know, the  
10 priority of family, immediate family, next of kin, you  
11 know, if we're now talking four/five -- four days later  
12 was still not where it needed to be and was still not  
13 the priority that myself and others felt it should be.

14 Q. We've heard evidence from Collette Bell. She understood  
15 that Connie found out through Facebook. Does that cause  
16 you concerns that someone would find out in that way?

17 A. Yes, most definitely.

18 Q. In looking at this agenda or minutes, do you -- looking  
19 back at what happened, would you have handled that  
20 differently?

21 A. Yes. The priority should be the family in these  
22 circumstances. Connie is clearly -- was, you know,  
23 a previous partner of Sheku and they had a child  
24 together, so, for me, she, as with others, needs to be  
25 a priority, and that is what never -- never happened as

## Transcript of the Sheku Bayoh Inquiry

1           quickly as it should have with the investigation that  
2           was being led at that time by the PIRC.

3       Q.   Certainly we have heard evidence from Collette Bell  
4           which indicates that Connie was never approached by the  
5           authorities, if I can put that way, and does that cause  
6           you concern?

7       A.   Absolutely.  Yes.

8       Q.   If we stay with this page, just above item -- it is part  
9           of item 5.  Actually, if you can go up the page, sorry,  
10          there is a passage that says ... sorry, if we can go to  
11          the bottom of that page.  Sorry, I was confused there  
12          for a moment.  At the bottom of that page, item 4:

13                 "Family concerns."

14                 Is spoken to by yourself.  Then if we can go on to  
15          page 2, at the top it says:

16                 "Extended family is starting to arrive in the  
17          Kirkcaldy area and Police Scotland have accepted the  
18          responsibility to locate accommodation and  
19          transportation for them.  Police Scotland has also  
20          confirmed they will cover the costing for these  
21          actions."

22                 Were these things that you were continuing to be  
23          involved in on the Wednesday, even though by that stage  
24          PIRC were present and leading the investigation?

25       A.   Yes.  So this was, for me, nothing to do with the

## Transcript of the Sheku Bayoh Inquiry

1 investigation now, this was just about common decency  
2 and working with the family to make arrangements as easy  
3 for them as they possibly could. And, you know, there  
4 was a lot of costs that were coming and, you know, that  
5 was the last thing the family needed to be worrying  
6 about. So I decided that I was -- we were going to pay  
7 for certain pieces of accommodation, transportation,  
8 et cetera and make the arrangements. I think, from  
9 memory, we -- it wasn't me but one of my sergeants or  
10 inspectors, we got a minibus or a bus of some sort and  
11 picked up family members and done, you know, for me  
12 really important things to help -- to help them through  
13 the early stages.

14 Q. Thank you. If we continue going down the page, please,  
15 within item 5, "Community issues", there is a reference  
16 there, the third paragraph says:

17 "Potential procession/march being organised of  
18 Facebook - intelligence suggests this is being linked to  
19 Connie ... action taken for Barcik to be spoken to."

20 Can I ask you if you remember that aspect of the  
21 meeting?

22 A. No, I don't. I remember the march that took place.  
23 I don't remember the exact date, but I'm actually --  
24 I didn't realise, if that is one and the same, that that  
25 was organised by Connie or if that is something

## Transcript of the Sheku Bayoh Inquiry

1 different. I'm not sure.

2 Q. We see beneath that it says:

3 "Discussion to be had regarding the requirement of  
4 a protest liaison officer."

5 Can you help us understand what a protest liaison  
6 officer is?

7 A. I don't know the ins and outs of it. It's, again,  
8 another skill set that a member of staff can volunteer  
9 for which I suppose probably allows them to understand  
10 the implications of a march, or a protest by default,  
11 that the liaison is there to do. I don't know the ins  
12 and outs of their roles and responsibilities.

13 Q. All right. Thank you. I'd like to move on to 14 May.  
14 So this is over a week, less than two weeks after the  
15 events, and I would like you to look at paragraph --  
16 let's look first of all at PS04984. This is an email  
17 and, as with these threads, it is probably easier to go  
18 to the bottom and work our way up. I am going to ask  
19 you a few questions about this.

20 I am conscious of the time?

21 LORD BRACADALE: If you are moving on to a new chapter, we  
22 will stop for lunch and sit at 2 o'clock.

23 MS GRAHAME: Thank you.

24 (12.57 pm)

25 (The short adjournment)

## Transcript of the Sheku Bayoh Inquiry

1 (2.04 pm)

2 LORD BRACADALE: Ms Grahame.

3 MS GRAHAME: Thank you. Before lunch I asked you a number  
4 of questions about the media, a media release.

5 A. That is correct.

6 Q. I would like to ask you to look at another document,  
7 which I didn't put to you before lunch. It is PS02751.  
8 You will see -- again, we will start at the bottom  
9 really, it is one page. You will see it is an email  
10 sent from Nicola Shepherd on 3 May 2015 at 1515 hours.  
11 It is to "Edinburgh, Media", is that the media  
12 department?

13 A. Yes.

14 Q. And to yourself, Garry McEwan. It says:

15 "Death in police custody, Kirkcaldy."

16 And begins by talking about:

17 "At around 7 am this morning (Sunday 3 May) police  
18 in Kirkcaldy responded to a number of calls from members  
19 of the public reporting a man brandishing a knife in the  
20 Hayfield Road area."

21 It goes on to detail some -- give some brief  
22 information. Can we move down the page, please. It  
23 says:

24 "Divisional Commander Chief Superintendent  
25 Garry McEwan said~..."

## Transcript of the Sheku Bayoh Inquiry

1           And this is in quotation marks:

2           "... 'This is a tragic set of circumstances and my  
3           condolences go to the man's family. We currently have  
4           officers with them to provide information and support  
5           where appropriate.

6           '"We recognise that this is an extremely difficult  
7           and distressing time for both the family and the  
8           officers involved and I have instigated the necessary  
9           post-incident procedures.

10          "'The investigation of deaths in Scotland is the  
11          responsibility of Crown Office and Procurator Fiscal  
12          Service, who have instructed the Police investigations  
13          and Review Commissioner to lead on this enquiry. The  
14          circumstances into the death will be fully explored and  
15          reported to the Crown Office in early course'."

16          Then you ask for information to be shared. Is that  
17          the media -- the comment that you were talking about  
18          earlier before lunch?

19          A. Yes, I think so.

20          Q. Then can we look at the top of that, because I think  
21          there is a response to this media release from you, from  
22          Garry McEwan, and that is circulated to a number of  
23          areas within Police Scotland, including Nicola Shepherd  
24          and Media in Edinburgh. It says:

25                 "DCC/ACC ..."



## Transcript of the Sheku Bayoh Inquiry

- 1                   So is that Deputy Chief Constable and Assistant  
2                   Chief Constable?
- 3           A.   Correct.
- 4           Q.   ACC, was that Nicholson or was this someone else you  
5                   were referring to?
- 6           A.   No, if you look at the -- yes, it's Nicholson just with  
7                   the two -- Crime OCCT, that was his title at the time.
- 8           Q.   "... this is the proposed media release that will go to  
9                   PIRC and Crown for approval prior to us releasing it.  
10                   "Kate~..."
- 11                   I understand that is a reference to Kate, the woman  
12                   who had -- was related to media and we have heard  
13                   reference to in the Gold Groups:
- 14                   "... this SHOULD NOT be released until approval and  
15                   confirmation that the FLO is with next of kin.  Could  
16                   you confirm this is understood?
- 17                   "Garry."
- 18                   Seeing that now, do you remember this email?
- 19           A.   Yes.  Yes.  It's certainly me, it has come from my  
20                   email, so yes, I wrote it.
- 21           Q.   Does it make it clear you did not want the media release  
22                   to be released to the media until you could be satisfied  
23                   FLOs were with the family?
- 24           A.   Yes.
- 25           Q.   Do you know what happened with this media release, was

## Transcript of the Sheku Bayoh Inquiry

1           this the one you refer to in your Inquiry statement that  
2           was later not approved by the Crown or not released by  
3           the Crown or was it a different release?

4           A. I think that was the one that then -- and rightly -- so  
5           there are two elements to that for me. One is at 3.15  
6           on the 3rd, you know, PIRC are in command of that hence  
7           why this needs to go to PIRC and by default to Crown for  
8           approval, so PIRC are leading on the investigation.  
9           Secondly, I don't want this released until the FLO -- we  
10          have confirmation that there is FLOs deployed with the  
11          next of kin to enable the FLOs to undertake part of  
12          their role which would have been to talk through this  
13          media release with them to ensure the family had sight  
14          of the detail before it went in a national newspaper  
15          and/or read out on radio or whatever.

16          Q. This is a media release that would have gone out from  
17          Police Scotland, if it had gone out?

18          A. Yes, if it was approved by PIRC it would have went out  
19          from Police Scotland.

20          Q. It is not the same as the Dundee Courier evidence? That  
21          is not what we are talking about here, is it?

22          A. I think it might be -- I don't know but I suspect the  
23          Dundee Courier may or may not have taken elements from  
24          that release and built it into a sort of wider media,  
25          you know, for their paper the following day.

## Transcript of the Sheku Bayoh Inquiry

1 Q. All right. Thank you. Let's go back to the email that  
2 I was going to turn to, which we started. It was  
3 PS04984 and if we could have that back on the screen.  
4 This was from a later date, 14 May 2015 and I think we  
5 are going to start at the bottom and work our way up, if  
6 that is all right. So if we start there, this is who  
7 the email is from, William Little, I understand some  
8 people call him Billy?

9 A. Yes.

10 Q. Deputy Senior Investigator with PIRC. And if we move up  
11 to the next page, keep going, please. So we see that  
12 this is an email from William Little, sent on 14 May,  
13 7.55 in the morning, to Keith Hardie -- we've heard he  
14 was involved with MIT -- and Stuart Wilson, who I think  
15 you mentioned earlier in your evidence today.

16 A. Yes.

17 Q. The subject is, "Family press conference". The email  
18 reads:

19 "Morning Keith/Stuart.

20 "The PIRC was made aware of this late yesterday  
21 afternoon, John McSporrان spoke to Mr Anwar late last  
22 night~..."

23 Now, we understand -- we have not heard from him yet  
24 but we understand John McSporrان is someone who is  
25 a member of staff in PIRC?

## Transcript of the Sheku Bayoh Inquiry

1 A. Yes, that is correct.

2 Q. He:

3 "... spoke to Mr Anwar late last night and it would  
4 appear that the thrust of this conference will be to  
5 criticise the police officers' decision not to provide  
6 statements regarding their involvement."

7 Then if we look at the press release, this is dated  
8 Wednesday, 13 May so the day prior to this, from  
9 Aamer Anwar & Co solicitors regarding the death of  
10 Sheku Bayoh in police custody:

11 "Family plea for justice -- press conference  
12 Thursday 14 May~..."

13 So it was a press conference scheduled for the 14th,  
14 and this was prepared --

15 A. On the 13th.

16 Q. And sent -- discussed with Mr McSporran of PIRC. It  
17 says:

18 "Press conference at 10.15 Thursday 14 May ... with  
19 the family of Sheku Bayoh~..."

20 In Edinburgh:

21 "Followed by a private meeting with Lord Advocate at  
22 Crown Office ... at 11.30.

23 "On Sunday morning 3 May ... [Mr Bayoh] a 31 year  
24 old, father of two young children died after an incident  
25 on Hayfield Road, Kirkcaldy. The cause of death is

## Transcript of the Sheku Bayoh Inquiry

1 still unknown, with inquiries still being carried out by  
2 Crown pathologists and our own independent  
3 pathologists."

4 I think that is correct at that time, that the final  
5 post mortem report was pending toxicology results:

6 "It is believed that multiple officers 'detained'  
7 Sheku Bayoh after which he lost consciousness and died.  
8 The family who have serious concerns will speak at the  
9 Press conference along with their solicitor  
10 Aamer Anwar."

11 Do you have any concerns about the accuracy of  
12 anything I have read so far?

13 A. No.

14 Q. "This will be followed by a meeting with the  
15 Lord Advocate at Crown Office. The Lord Advocate has  
16 already instructed that the ... (PIRC) to take over the  
17 investigation into Mr Bayoh's death from  
18 Police Scotland."

19 And we have heard that that is correct:

20 "Background notes for editors."

21 And there is some additional information there that  
22 the Crown Office has directed PIRC to carry out  
23 an independent investigation into the circumstances  
24 surrounding the death of Mr Bayoh and it mentions the  
25 reform of services in April 2013, and PIRC being

## Transcript of the Sheku Bayoh Inquiry

1 established at that time and their role.

2 Is there anything contained in there that causes you  
3 concern in terms of accuracy or the representation of  
4 what had happened?

5 A. No, I am not sure that the cause of death is still  
6 unnoted -- sorry, the enquiry is still being carried out  
7 by Crown and own independent -- I wasn't sighted on that  
8 but it doesn't cause me concern, I am pretty sure that  
9 will be accurate.

10 Q. Thank you. If we can carry on up the page, please. So  
11 this has been sent by Billy Little to Keith and Stuart  
12 who are involved in the investigation. I understand  
13 that this had been given to PIRC by the family's  
14 solicitor. Certainly it would appear from that email  
15 that there has been some communication between them.  
16 Then we see that the next email in this thread is from  
17 Stuart Wilson. Do you see halfway down the page there?

18 A. Yes.

19 Q. From Stuart Wilson to Dougie Milton, who you have  
20 mentioned already today, Nicola Shepherd and yourself.  
21 Cc'd to Keith Hardie, sent at 7.59, so within  
22 a few minutes of that being received it has been  
23 forwarded on by Stuart Wilson to you, and others. It  
24 says:

25 "You will likely already be aware but for

## Transcript of the Sheku Bayoh Inquiry

1 information."

2 So he has very quickly passed that on to you from it  
3 being received. Were you aware of this prior to the  
4 email coming in?

5 A. No.

6 Q. Then if we move up, we see an email from you at 8.08 on  
7 the same day, "Family press conference":

8 "Lucy ..."

9 Is that Lucy Adamson?

10 A. Yes.

11 Q. Is that the member of staff that did the communications  
12 document we saw earlier?

13 A. The director of Corporate Communications, yes.

14 Q. "Lucy, please see below. I think we need to be in  
15 a position to respond to this. I think the best avenue  
16 is most likely Federation. We need to be quick with  
17 this. Will you link in with Exec and Feds around this?"

18 So by the time you have received this email it is  
19 14 May, which is the date that the press conference is  
20 scheduled. Can you tell us a little bit more about your  
21 response here. You are talking about linking with Exec  
22 and Feds and things, could you~...?

23 A. So the concern for me was not what was in the press  
24 release, it was the -- if we can go back just down  
25 a little bit, it's the email from PIRC or the couple of

## Transcript of the Sheku Bayoh Inquiry

1 sentences from PIRC that raised the concern for me.

2 Q. If you hold on a moment we will get that moved down on  
3 the screen. Sorry. If we can go back down, I think you  
4 wanted, wasn't it?

5 A. Please.

6 Q. To the press release.

7 A. That one there, up a little bit.

8 Q. Just up a little bit please.

9 A. That is it.

10 Q. So this is the email circulating the press release from  
11 Billy Little?

12 A. Yes, and the thing that raised concerns for me, which  
13 isn't in the press release below, is that:

14 "... [Mr] McSporran spoke to Mr Anwar late last  
15 night and it would appear that the thrust of this  
16 conference will be to criticise the police officers'  
17 decision not to provide statements regarding their  
18 involvement."

19 So that was the concern for me and what I felt, if  
20 we go back to the top, was that in fairness to all of  
21 the above, the police officers in particular, and the  
22 decision or the instruction and guidance that the  
23 Federation had given that --

24 Q. Perhaps it we can have on the screen your response,  
25 sorry. It's very difficult with these emails to know



## Transcript of the Sheku Bayoh Inquiry

1           when to stop.

2           A. It's always the same. I just felt, my initial feeling,  
3           as you will see, over that sort of 8 minutes when I took  
4           it and passed it on was that if Mr Anwar was going to be  
5           criticising police officers and their decision to not  
6           give statements, I felt somebody should be in a position  
7           to provide an ulterior or a different perspective or on  
8           whatever Mr Anwar was going to say.

9           Q. Why did that cause you concern, that there was going to  
10          be criticism of police officers for not giving  
11          statements?

12          A. Because, you know, I felt it was inappropriate at that  
13          time, 12 days in, for police officers that were right in  
14          the middle of this critical investigation to be  
15          criticised without having any -- any point of rebuttal  
16          or commentary or putting forward their perspective.  
17          I felt it would have been one-dimensional.

18          Q. In terms of your role as you have described it to us, is  
19          it of concern if the police are criticised?

20          A. I think it is healthy to get two sides to every story.  
21          So it's interesting for me in that the fact that it was  
22          passed on from PIRC to police, that would suggest to me  
23          there was a similar nervousness around what Mr Anwar was  
24          going to say. So -- yes, so I felt the right thing to  
25          do was to -- to move that up towards our Corporate Comms

## Transcript of the Sheku Bayoh Inquiry

1           and to enable, you know, them to consider should they  
2           put something out media-wise or not to explain further,  
3           perhaps, whatever Mr Anwar was going to say.

4           Q. So it wasn't the press release, the terms of the press  
5           release that concerned you?

6           A. No.

7           Q. It was email --

8           A. Yes.

9           Q. -- saying there was going to be criticisms of police  
10          officers?

11          A. Of course, yes.

12          Q. In your role, do you feel it is part of your role or was  
13          part of your role to defend police officers from  
14          criticism?

15          A. I don't think it is defending them, but it's -- you  
16          know, that would be -- whatever Mr Anwar was going to  
17          say on that day, which he is absolutely entitled to say,  
18          it is his perspective, so I felt if there was going to  
19          be criticism of police officers then I should at least  
20          alert Corporate Comms and you know potentially the  
21          Federation to consider if they wished to provide  
22          a different perspective or maybe agree with whatever  
23          Mr Anwar was going to say.

24          Q. Are SPF, the Federation, known to agree with criticisms  
25          of police officers?

## Transcript of the Sheku Bayoh Inquiry

- 1 A. I couldnae tell you. I mean, the Federation are  
2 predominantly there to defend police officers but I do  
3 know occasions where the Federation will -- you know,  
4 if -- they can take a different perspective. They are  
5 not going to defend the police if it is wholly  
6 inappropriate to do so.
- 7 Q. Who are Corporate Comms? Is that the department that  
8 Lucy Adamson was involved in?
- 9 A. Yes, so that is --
- 10 Q. That prepared that document we looked at earlier?
- 11 A. Yes.
- 12 Q. Is part of their role to facilitate a sort of balanced  
13 reporting in the media?
- 14 A. Yes, I would hope so. Yes.
- 15 Q. In terms of your receipt of that email from Mr Little,  
16 were you given any additional information around the  
17 circumstances whereby he had been given the press  
18 release?
- 19 A. No.
- 20 Q. Or any information about any conversation that McSporran  
21 had with Mr Anwar apart from what is in that email?
- 22 A. No, all I knew was what was in that email.
- 23 Q. Did you have any concerns about sharing that information  
24 from PIRC with Corporate Comms or the Federation?
- 25 A. None whatsoever. I didn't share it with Federation,

## Transcript of the Sheku Bayoh Inquiry

1 I shared it with Corporate Comms but I suggested that it  
2 may be worthwhile sharing with Federation.

3 Q. What did you expect Corporate Comms to do with that  
4 suggestion?

5 A. They would make an independent assessment and they  
6 would -- they would take whatever they felt was in the  
7 best interests and the best decision to take.

8 I actually don't know they did. I don't know if you  
9 know but I don't actually know what action they took  
10 from memory.

11 Q. We've not heard yet from PIRC in relation to the press  
12 release. We will be hopefully hearing evidence about  
13 this next year. You have said here:

14 "I think the best avenue is most likely Federation."

15 Can you explain why you thought that was perhaps the  
16 best avenue?

17 A. From my perspective, bearing in mind, as I said earlier,  
18 it was because it was the Federation legal experts  
19 and/or the Federation that were advising the police  
20 officers not to give statements, and Mr Anwar was going  
21 to criticise police officers for not giving statements,  
22 I felt the Federation should be in that position to give  
23 their perspective and their view on why they are  
24 instructing the officers not to do that, or advising.

25 Q. Did you have any views about how likely it would be that

## Transcript of the Sheku Bayoh Inquiry

1           the Police Federation would put forward a defensive  
2           position towards any criticism levelled?

3           A. I don't know, I suppose it would be dependent upon what  
4           was said at the press conference because, as I said at  
5           the beginning, there's nothing in that original email  
6           there that raises any concern for me, it's the -- it's  
7           the off-table -- it's the discussion between Mr Anwar  
8           and Mr McSporrán that raises the concern for me.

9           Q. You have mentioned that obviously Mr Bayoh died on the  
10          3rd, and the police officers didn't give statements  
11          initially and didn't give them until 4 June, which was  
12          just over a month from the date of death. Did you feel  
13          that there was any merit in the officers being  
14          criticised for that delay in providing operational  
15          statements?

16          A. As I said this morning they were taking the advice of  
17          a Federation legal representative, so for me that was --  
18          you know, legal advice is there for a reason, and they  
19          were taking that legal advice, so that was a decision  
20          and, you know, for me it was about moving on from that.

21                 If somebody independent was going to come and  
22          criticise the police officers for taking that legal  
23          advice, I felt at the very least that the public should  
24          be aware of the full circumstances, rather than perhaps  
25          potentially a one-dimensional side of things.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Can we look at your Inquiry statement, please. If we  
2 can look at paragraph 159. This is under a reference to  
3 the same email that we have been looking at:

4 "Mr Anwar was going to appear on the TV and  
5 criticise the police officers. It was important that  
6 somebody is in place to respond to that. The Federation  
7 is the staff association and may choose to respond. For  
8 the welfare of our police officers somebody needs to be  
9 able to give a formal response to what Mr Anwar was  
10 going to say. The reason I'm referencing the Federation  
11 in advance is that the Federation are the ones who are  
12 giving advice to police officers. The Federation may  
13 have gone public around that time about why the police  
14 officers were involved and were doing or not doing  
15 certain things."

16 When you say at the end they may have gone public,  
17 do you mean they had gone public around that time or you  
18 thought they might in response to this press release?

19 A. No, I had no idea what the Federation would do, because  
20 I had no contact with the Federation at all, but round  
21 about that time, you know, I was conscious in the papers  
22 there was -- there was Federation commentary but I don't  
23 know if that was before this, after this, or before and  
24 after. I just -- I was aware that there was some  
25 Federation input in the media, but I couldn't tell you

## Transcript of the Sheku Bayoh Inquiry

1 exactly when.

2 Q. You've talked about the monitoring of social media,  
3 which I think you said would be the media department's  
4 role?

5 A. Yes.

6 Q. Was there monitoring of the social media or the media  
7 engagement of SPF?

8 A. If there was -- there would be monitoring of any open  
9 source media that made reference to most likely anything  
10 to do with this enquiry, so if the Federation had put  
11 media messaging out, I would assume -- you would have to  
12 confirm with the Comms -- that the Comms would pick up  
13 on that and would capture that as well. So it wasn't  
14 just one, it was every -- every piece of open source  
15 media that was going out in relation to this enquiry  
16 will have been getting captured by Corporate Comms.

17 Q. And that would include any SPF media engagement?

18 A. Yes.

19 Q. If there was media engagement of some description by SPF  
20 which of itself appeared one-sided, would you have  
21 expected Police Scotland to be liaising with the family  
22 to say their solicitors might wish to give  
23 an alternative view?

24 A. I certainly would -- I mean, I have previously publicly  
25 put media messaging out that contradicts or that

## Transcript of the Sheku Bayoh Inquiry

1 challenges some Federation media that has been put out,  
2 it was all about staff redundancies and a remodeling  
3 exercise, a restructuring exercise that I led on, but  
4 I felt that some of the information that the Federation  
5 were putting out in the media was wholly inaccurate so  
6 I went to the media and explained why it was.

7 Q. In relation to the death of Mr Bayoh, were you involved  
8 at any stage in countering any one-sided media expressed  
9 by SPF?

10 A. No, that was not my role, I was not the media lead for  
11 this, so, no.

12 Q. Were you involved in any way with Comms or Media in  
13 relation to responding to any criticisms or comments by  
14 SPF?

15 A. No.

16 Q. Were you aware of any communications with the family --  
17 obviously you were heavily involved for a time -- where  
18 they were invited to respond to perhaps criticisms or  
19 comments from SPF?

20 A. I certainly didn't do it, no, I'm not aware of that.

21 Q. From a wider perspective, in the role that you were in,  
22 in terms of carefully monitoring possible community  
23 tensions, did it cause you concern that there may be  
24 different perspectives playing out in the media or in  
25 social media, the family's perspective perhaps and the



## Transcript of the Sheku Bayoh Inquiry

- 1           SPF's perspective, insofar as they may have differed?
- 2           Did that cause you tension in regard to trying to take
- 3           the heat out of any possible community tension?
- 4       A.    So I was conscious of that, but I did not -- there was
- 5           nothing that alerted me that that had led to an increase
- 6           in community tension or community impact, so there was
- 7           no need for me to basically go to the media or to do
- 8           anything publicly because there was no sense of
- 9           community unrest as a consequence of what was getting
- 10          played out in the media.
- 11       Q.    Did the Media department or anyone in that that
- 12           department, or in Comms come to you and say: there is
- 13           situations being inflamed because of things that are
- 14           appearing in the media, can you advise us or assist in
- 15           that?
- 16       A.    No, so that is the crux of it, if that had happened then
- 17           I would have made an assessment and made a decision
- 18           around doing something. Who knows what that would have
- 19           been because it didn't actually happen, but if that had
- 20           happened always in the forefront of my mind is -- was
- 21           the community -- was there any tensions that may arise.
- 22           But thankfully that didn't happen.
- 23       Q.    When you say that didn't happen, do you mean that didn't
- 24           happen, there wasn't tension between media engagement
- 25           with SPF and the family, or the Media department and

## Transcript of the Sheku Bayoh Inquiry

1 Comms didn't come to you and ask you about possible  
2 tensions arising?

3 A. Certainly I -- so I was not aware of any heightened  
4 community tension as a consequence of this particular  
5 press release or whatever -- whatever public statements  
6 were getting made in the media from lawyers or lawyers  
7 from either side.

8 Q. I know you explain some of the background to this in  
9 your Inquiry statement, but am I to understand that you  
10 were involved with the Sheku Bayoh investigation for  
11 some time after 3 May, I think you say at one point you  
12 were supposed to be starting a new job?

13 A. Yes, so -- so I was meant to start my new national job  
14 on 4 May, so I had actually technically finished as the  
15 commander of Fife probably on 1 May, if that was the  
16 Friday, that was my last working day. I just happened  
17 to be working that weekend and then of course when the  
18 incident kicked off on the Sunday and I met with the  
19 family on the Sunday night, I had a conversation with  
20 the Chief Constable and I actually asked to stay on  
21 because I felt there needed to be some continuity with  
22 the family, and I said I was happy to do that.

23 I actually wanted to do it, and that's -- he agreed and  
24 that is what we did.

25 Q. So despite moving to your new role, you kept

## Transcript of the Sheku Bayoh Inquiry

1 an involvement in the Sheku Bayoh enquiry?

2 A. So I actually -- I'd basically done both jobs,  
3 I remained the commander of Fife, worked with the family  
4 as best I could and began my new job.

5 Q. Right. Can we look at your Inquiry statement again,  
6 paragraph 165:

7 "Examples in this case ties into what I stated about  
8 my initial actions. Despite PIRC having oversight of  
9 the investigation, the fact they didn't have the  
10 capacity or will to speak to the family meant that the  
11 organisation would be criticised for this would be  
12 Police Scotland not the PIRC."

13 Was that an ongoing concern that perhaps PIRC would  
14 not be the focus of criticisms but it would in fact be  
15 Police Scotland, even though you were no longer leading  
16 on the investigation?

17 A. Yes, and I think -- I mean, I might be doing the  
18 communities a disservice but Police Scotland and PIRC,  
19 I don't think the majority of the public would have  
20 noted a difference between the two organisations. They  
21 probably felt they were one, and by default the actions  
22 of the PIRC would then -- any inaction or failings of  
23 the PIRC I felt could -- you know the public would see  
24 that as a failing of Police Scotland.

25 Q. So was this another factor -- although PIRC are leading

## Transcript of the Sheku Bayoh Inquiry

1           the investigation, even beyond the sort of initial days,  
2           that -- did you still have an interest in your role  
3           because of the potential criticism in relation to  
4           Police Scotland as an organisation and the community  
5           tensions that could grow?

6           A. Yes, as I said yesterday, any -- the community tensions  
7           would or could come from the inappropriate or the  
8           service -- the inadequate service that was provided to  
9           the family, and other, you know, community tensions  
10          could be raised just by actions or inactions of PIRC or  
11          any other organisation and I was really conscious of  
12          that. And you know, because that was at the forefront  
13          of my mind, that could be a trigger or a catalyst  
14          towards action from, you know, groups of people that  
15          I didn't want to see that could harm wider communities.

16          Q. So even although long-term the PIRC are leading the  
17          investigation, it's not as if the police can simply back  
18          away from that and avoid any criticism; is that fair to  
19          say?

20          A. I think it is just because -- because PIRC was not  
21          widely known I think that was a real risk at that  
22          particular time. It may be different now, but at the  
23          time, you know, I think the vast majority of the public  
24          will never have heard of the PIRC and even understood  
25          what their role was because they were a very new and

## Transcript of the Sheku Bayoh Inquiry

1 young organisation, whereas policing had been around for  
2 hundreds of years, so it is easy to then you know focus  
3 on the police.

4 Q. It says:

5 "The family and papers wouldn't say it was PIRC who  
6 was responsible, it would be the Police Service. It's  
7 one of reasons I went to see the family from  
8 a Police Scotland leadership point of view. It's also  
9 about media responses being balanced and not one-sided.  
10 Police should be balanced and informed in what they are  
11 saying publicly."

12 Was that your view that things that come from  
13 Police Service should be balanced and informed and not  
14 one-sided?

15 A. Yes, absolutely.

16 Q. When you say "police" do you mean not just the  
17 Police Service but individual officers, or is it  
18 different when you get down to that level?

19 A. I would hope individual officers. You can't control  
20 what every individual officer was to say but as  
21 an organisation, if we are to maintain that public trust  
22 and confidence and police by consent then the public  
23 need to trust and rely on us to be honest and open in  
24 our actions.

25 Q. Thank you. I asked you earlier before lunch some

## Transcript of the Sheku Bayoh Inquiry

1           questions about the statements and the notebooks and  
2           I wanted to ask you about a particular paragraph,  
3           paragraph 80 in your Inquiry statement. This relates  
4           specifically to use of spray and use of force forms.  
5           I will just explain to you -- we will read out the  
6           paragraph first of all:

7                     "It's not a legal requirement to complete Use of  
8           Force or spray forms. I don't know if it's in the  
9           guidance but it's really seen as best practice for me.  
10          There's a few elements to it. The use of spray when the  
11          form is completed it gives others the opportunity to  
12          scrutinise it for best practice. It's also good for the  
13          statisticians in Police Scotland to understand whether  
14          officers are using spray and why."

15                    You have said there that it's not a legal  
16          requirement but I wonder if you could just look at  
17          something. I know you are retired. It is a memo from  
18          Police Scotland PS11500, and this is dated 1 April 2013.  
19          We've heard a number of people give evidence about this.

20          A. Okay.

21          Q. So it's effectively the date that Police Scotland came  
22          into being, and it was a memo sent by the Assistant  
23          Chief Constable to divisional commanders and heads of  
24          department. You will see at the beginning of this it  
25          says:

## Transcript of the Sheku Bayoh Inquiry

1           "Police investigations and Review Commissioner --  
2           operational discharge of CS incapacitant spray.

3           "From 1 April 2013 there is a legal requirement for  
4           the Police Service of Scotland (PSoS), the ... (SPA),  
5           and the Police Investigations and Review Commissioner  
6           ~... to ensure compliance with the provisions of ..."

7           The Act that's set out there. And:

8           "This means that on every occasion where CS spray is  
9           discharged operationally there is a legal requirement to  
10          record the incident and report onwards to PIRC within  
11          24 hours."

12          I wondered if maybe, on reflection, having seen that  
13          memo, you maybe want to alter that --

14          A. It clearly is a legal requirement. Yes.

15          Q. Thank you. I just wanted to give you that opportunity.

16          A. Thank you.

17          Q. I would like to ask you about paragraph 199, if we can  
18          go back to your Inquiry statement, please:

19          "I'm asked about racially discriminatory behaviour  
20          in the police."

21          Do you see that?

22          A. Yes.

23          Q. "Yes, I have come across racially discriminatory  
24          behaviour in the police. I've chaired misconducts where  
25          a serving member of staff on Facebook put a racial image

## Transcript of the Sheku Bayoh Inquiry

1           on Facebook. I am going back maybe 5 years~..."

2           Is that five years from the date of your statement?

3       A. Yes.

4       Q. "... and somebody was jumping off a cliff with  
5       a parachute and it was a black man or woman and the  
6       police officer had said 'no strings attached' or  
7       something. I chaired a misconduct and sacked him for  
8       that. I have been aware of this over the years.  
9       There's nothing that I have witnessed to my face but  
10      I've been aware of through chairing misconduct hearings  
11      around ethnicity or gender or whatever. These hearings  
12      were not in the dozens, I've terminated employments  
13      based on it."

14           You have said you have chaired misconducts. Can you  
15      describe to us what your role was?

16      A. So you have sort of various different levels of  
17      misconduct hearings, you have misconduct hearings that  
18      have different -- I can't remember the phraseology now,  
19      punishment is not the right word but different levels of  
20      punishment, let's just call it that. So there's the  
21      more serious ones, which could involve the option of  
22      fining an officer or police member of staff or  
23      dismissing them or taking annual leave off them, there  
24      are various different levels of authority there. So in  
25      the sort of latter part of my service I was involved in



## Transcript of the Sheku Bayoh Inquiry

1            chairing the most serious misconduct hearings which had  
2            that option in them to -- one of many options but had  
3            the option to dismiss staff. So it was the more serious  
4            allegations that had been investigated in the service.

5            Q. How many years did you take that role chairing  
6            misconduct proceedings?

7            A. Probably ... 10/15 years maybe.

8            Q. Can you help the Chair understand how often you would  
9            come across a misconduct allegation which related to  
10            racially discriminatory behaviour?

11           A. Not, not often. Across the whole of Scotland, again the  
12           facts and figures would -- you could get access to those  
13           facts and figures. I would be surprised if there was  
14           you know one, two, maybe three misconduct hearings in  
15           a year that were focused on hate or racial  
16           discrimination. But I might be -- genuinely -- there  
17           will be others -- Professional Standards will be able to  
18           give you those facts and figures.

19           Q. But in relation to those, Police Scotland would take  
20           those seriously and people could be dismissed?

21           A. Yes, so that was just one example where I did exactly  
22           that, yes.

23           Q. Can you remember over those ten or 15 years how often  
24           you were personally dealing with matters relating to  
25           racially discriminatory behaviour?

## Transcript of the Sheku Bayoh Inquiry

1 A. Not often. I would be predicting over the course of  
2 that 10/15 years, maybe three or four times maximum.

3 Q. Can you explain to us whether, after a misconduct  
4 hearing, if someone was dismissed for example, what  
5 learning opportunities were created out of that, if any?

6 A. So what would happen with a situation such as that is  
7 I would make the decision but then the member of staff  
8 would have the right to appeal that decision and then it  
9 would go to the Scottish Police Authority, and I would  
10 present my justification to the police authority and  
11 then they would uphold or otherwise my decision. The  
12 Professional Standards department then would retain my  
13 rationale, you know, my words of conclusion, which  
14 should run to pages to be honest with you, and then they  
15 would retain them.

16 In relation to feedback across the organisation,  
17 I don't think that was something that we did very often  
18 and I would suggest could be improved upon if it has not  
19 already been improved upon.

20 Q. So from what you are aware of at the moment,  
21 I appreciate you have retired, can you help the Chair  
22 understand what improvements could be made in this area?

23 A. It depends on the specific case, I suppose. You know.  
24 But for me sometimes -- sometimes ignorance is actually  
25 a greater -- not with this one but in general terms

## Transcript of the Sheku Bayoh Inquiry

1           ignorance is sometimes as strong an aspect of certain  
2           cases that, you know, if we could cascade the learning  
3           from that and educate the officers and police staff  
4           around why certain things were inappropriate, then that  
5           would hopefully move towards preventing further cases  
6           around that.

7           Q. It wasn't done necessarily at the time though?

8           A. I don't -- not that I remember, no. This is not  
9           ignorance, this one that's on the screen, that is clear  
10          offensive racial hatred and that is why I sacked that  
11          person. But in a general sense the cascading of  
12          decisions maybe could -- maybe they are better now, I'm  
13          not really entirely sure.

14          Q. We may hear more about that.

15          A. Yes.

16          Q. Can I ask you to look at another document, please.

17          PS03470. This is a letter that was sent to you. It's  
18          headed up, "Fife Islamic centre, 14 May 2015" sent to  
19          yourself. And it relates to an incident. Sent from  
20          I think -- if we go down the page, I think it says the  
21          chairman of the association. Thank you. If we go back  
22          up:

23                 "Fife Islamic Centre has for many years worked  
24                 closely with Fife police to address many issues and  
25                 concerns of importance to Muslim community. We

## Transcript of the Sheku Bayoh Inquiry

1           acknowledge the hard work that Fife police do. However  
2           in this instance we believe police did not act  
3           responsibly, this incident happened on 3 May and the  
4           people living in the house was thrown out of house  
5           (including 7 weeks old baby and a disable person who is  
6           an~...) into the street without any explanation. As  
7           this incident has been reported to Islamic Centre's  
8           committee we are seeking a meeting with yourself to  
9           safeguard safety of our Muslim community as soon as  
10          possible thank you very much for your kind attention."

11           We have heard evidence about this letter, that it  
12          was sent at the request of Mr Ahmed who is the father of  
13          Zahid Saeed.

14          A. Right.

15          Q. And it was the family home that was seized on 3 May by  
16          officers, and they were asked to leave the house and  
17          there were considerable concerns by members of the  
18          family about the way they were treated on that day.  
19          Now, when you received this letter, what did you do with  
20          it?

21          A. I genuinely -- I can't remember. I actually can't  
22          remember seeing that letter, but -- I'm not saying  
23          I didn't but I just genuinely can't remember.

24          Q. If we look at PS03477, so this is a response from  
25          Sir Stephen House, the Chief Constable, to Mr Ahmed. It

## Transcript of the Sheku Bayoh Inquiry

1           says:

2           "Dear Mr Ahmed ..."

3           So this is a response:

4           "Complaint about Police [redacted].

5           "Thank you for attending at Levenmouth Police

6           Station on Tuesday 26 May ... in order to discuss issues

7           which occurred ... on 3 May~...

8           "... officers from P Division ... attended at

9           [redacted] in connection with an incident which had

10          occurred earlier at Kirkcaldy.

11          "... [they] were instructed to secure the premises

12          as there was potential forensic evidence within which

13          required to be secured.

14          "On arrival the premises were occupied by your wife,

15          son and daughter. The police subsequently secured the

16          premises and requested that the occupants find

17          alternative accommodation until the forensic examination

18          was complete.

19          "You have raised concerns that the police officers

20          failed to communicate the purpose of their attendance

21          fully to you which resulted in confusion.

22          "Having discussed the matters with you in detail it

23          is clear there have been shortcomings with regard to

24          the standard of communication between the police and

25          members of your family."

## Transcript of the Sheku Bayoh Inquiry

1           Then it goes on to comment about potential forensic  
2           evidence and a balance to be struck. So it appears this  
3           letter was a response to the complaint that was made,  
4           and that there had been a meeting. We saw that  
5           referenced in the first paragraph, and this is  
6           a response from the Chief Constable himself. Were you  
7           involved in any of this at all?

8           A. I genuinely don't remember. I would expect that the  
9           local area Chief Inspector, so you hence one of reasons  
10          that I asked Nicola Shepherd to come out for the  
11          incident that happened in Kirkcaldy because she had the  
12          local knowledge, the local Chief Inspector for  
13          Levenmouth, whose name escapes me, it might be on the  
14          bottom of the letter --

15         Q. Let's go to the bottom of the letter.

16         A. I don't know who signed the letter. Yes, so Tom Brown,  
17         so that is the right -- that is the right person. He is  
18         the Chief Inspector currently I think in Fife,  
19         somewhere. Him or the Chief Inspector are the right  
20         people to deal with that, in my view, because they know  
21         the local community, they have the relationship, the  
22         contact, the trust, so I am pleased to see that Tom did  
23         meet with that individual.

24         Q. So although the original letter was addressed directly  
25         to you, you were named, is it possible for that simply

## Transcript of the Sheku Bayoh Inquiry

- 1 to be re-routed to Tom Brown, the inspector at  
2 Levenmouth, without you having become involved at all?
- 3 A. I think most likely I would have been given sight of it,  
4 I just can't remember it. But Tom Brown is the right  
5 person to deal with that. It's like, you know, in any  
6 organisation a lot of members of the public write to the  
7 head of the organisation but the head of any  
8 organisation doesn't then write a letter of response or  
9 meet with every complainant or interested party. It's  
10 about the local contact, the local relationships, and  
11 the local inspector is the appropriate level for that.
- 12 Q. So can we look at the date -- I'm not sure if I read out  
13 a date actually. This letter talks about a meeting on  
14 26 May. So by that stage there had been a meeting,  
15 sorry in the first paragraph, it mentions a meeting at  
16 Levenmouth Police Station and this letter was after that  
17 meeting.
- 18 A. Yes.
- 19 Q. Given your role and your involvement in the incident,  
20 does it -- did it cause you any concern to know that  
21 a complaint has been received about the securing of  
22 these premises?
- 23 A. I mean, complaints are received a large number of times.  
24 It is more about if the complaints are properly  
25 investigated, and if the matter is resolved to

## Transcript of the Sheku Bayoh Inquiry

1 a satisfactory conclusion is the bit that interests me.  
2 You'd have to ask Tom Brown or Mr Ahmed to come in, the  
3 sense I am getting is that has been a positive and  
4 constructive meeting, but clearly I wasn't there.

5 Q. All right. Thank you. Are there records kept by  
6 Police Scotland of complaints of racist behaviour?

7 A. There should be, yes.

8 Q. Is there anyone -- you've talked to us earlier about  
9 Gillian Boulton, is there anyone in the Police Service  
10 whose task is to identify racist attitudes amongst  
11 officers or staff in Police Scotland?

12 A. You'd be better to ask a serving -- a current serving  
13 officer about that. I'd be -- I'm too long out the  
14 service to probably add value to that.

15 Q. In your experience dealing with misconduct proceedings,  
16 so 10/15 years you said, and from your own experience of  
17 being in the Police Service, do you have any views on  
18 whether there is under-reporting of racist attitudes or  
19 racist behaviour?

20 A. I don't have any evidence of it. I suspect -- I suspect  
21 there will be because what my experience has told me --  
22 not in the police, I'm talking about across society --  
23 is that there is under-reporting of hate-related  
24 incidents and/or crime, so why would that not manifest  
25 itself in a huge organisation like Police Scotland?



## Transcript of the Sheku Bayoh Inquiry

1           So ...

2           Q. Knowing what you knew at the end of your career, the  
3           10/15 years where you were deal with misconduct, is  
4           there anything, looking back at that now, that -- where  
5           you think reporting mechanisms within the police may  
6           have hampered reporting of racially discriminatory  
7           behaviour?

8           A. Not hampered. No, I can't think of any -- like  
9           technological or cultural issues that would hamper the  
10          reporting, but again I'm not the best person to ask.  
11          The best person or the best people to ask would be those  
12          that are underrepresented in the organisation to see if  
13          they felt that there were any barriers or inhibitors  
14          towards them reporting racial discrimination or whatever  
15          it is we are focused on here.

16          Q. When you went to visit the family on 3 May, did they  
17          raise issues with you at that meeting about whether  
18          possible racism or racially discriminatory behaviour had  
19          been a contributor to Mr Bayoh's death?

20          A. No, the meeting was too -- was too frantic at that  
21          point. No, that was not ... that was not a sort of  
22          point of conversation. No.

23          Q. Can I ask you to look at paragraph 37 of your Inquiry  
24          statement, please. This is at an early stage in the  
25          Inquiry statement when you have been asked about

## Transcript of the Sheku Bayoh Inquiry

1           the critical incident being declared. You have said:  
2           "I took learning from other events across the  
3           country in which policing had been criticised for the  
4           response. One example which I was aware of was the  
5           tragic death of a Vietnamese delivery driver in  
6           Edinburgh. It was in 2009 or thereabouts. One of  
7           the learnings of that incident was it was never declared  
8           a critical incident by the police. That failure to  
9           declare a critical incident meant the police were unable  
10          to step up their response and to give it the priority it  
11          perhaps deserved. I didn't want to make that mistake."

12          I'm interested in your reference to this death in  
13          2009. Was that something that had been -- had learning  
14          been cascaded by the police at that time?

15          A. Yes. Both by -- we were individual police forces at  
16          that time, so it wasn't a single Police Service in 2009  
17          but the tragic death of Simon San and the subsequent  
18          enquiry into it certainly made it clear and the learning  
19          that I took from reading the various publications was  
20          that the police could have identified this as a sort of  
21          racially motivated crime, and acted differently. The  
22          outcomes and the findings are for all to see but that  
23          was certainly part of the learning that I took  
24          personally from it.

25          Q. Did this actually relate to -- it is public knowledge,

## Transcript of the Sheku Bayoh Inquiry

- 1           it was a Simon San?
- 2       A. Yes, delivery driver.
- 3       Q. At Lochend in Edinburgh?
- 4       A. That is right.
- 5       Q. Your recollection, interestingly, is that he was
- 6           Vietnamese and as I understand the situation he had been
- 7           wrongly described as Vietnamese at the time --
- 8       A. Right.
- 9       Q. -- when in fact he was Chinese. I think that was
- 10           something that the police reflected on as a part of the
- 11           review. Is that an interesting example how
- 12           misinformation at an early stage can still linger in the
- 13           mind and be remembered? You know, this happened in
- 14           2009, here we are in 2023 and we see in your statement
- 15           that he is a Vietnamese delivery driver?
- 16       A. Yes, it could be.
- 17       Q. So does this reflect, in a way, the significance of
- 18           misinformation being shared at an early stage and the
- 19           impact it can have long-term?
- 20       A. Perhaps, yes.
- 21       Q. I have a few more questions if I may. The CCTV cameras
- 22           in the police office at Kirkcaldy and in the van, the
- 23           first van to arrive at Hayfield Road, were out of order
- 24           and had been for some time. Can you help us understand
- 25           whose responsibility would that have been to ensure

## Transcript of the Sheku Bayoh Inquiry

1 maintenance of CCTV, either fixed CCTV in an office or  
2 a -- a police office or in a van?

3 A. So in 2015 that would be the responsibility of the  
4 Estates department, which would be located centrally.  
5 I couldn't tell you exactly where. Yes.

6 Q. Was it their responsibility to monitor CCTV and check  
7 that it was working, or was that not part --

8 A. No, that would be done locally, but the reality was --  
9 I don't know if it still is but the reality was that  
10 there was more equipment -- the estate of certain areas  
11 of Police Scotland, including CCTV, some were in more  
12 dire need of improvement and repair and upgrade than  
13 others, so what the Estates department, or part of their  
14 responsibility would be to prioritise. There is no sort  
15 of bottomless pit of money so it would be about trying  
16 to prioritise the areas of highest risk for upgrade or  
17 repair. So was that the backyard, did you say?

18 Q. Yes, in Kirkcaldy Police Office it was at the back.

19 A. Yes, so that is a pretty low risk CCTV. There are other  
20 far more important areas, such as custody cells, custody  
21 booking-in areas, that would -- you know, if we are  
22 going to invest or if policing are going to invest their  
23 limited pot of money to upgrade, it would be those areas  
24 and it would just be a prioritisation exercise.

25 Q. Thank you. Yesterday you mentioned the Police

## Transcript of the Sheku Bayoh Inquiry

1           Commanders Forum?

2           A. Yes.

3           Q. At an early stage yesterday morning. You -- I think  
4           from recollection you said they met every four weeks or  
5           every month?

6           A. Yes, I think so.

7           Q. Something along those lines, and you talked about them  
8           discussing best practice and sharing ideas. Thinking of  
9           that in 2015, after the events involving the death of  
10          Mr Bayoh, at the subsequent Police Commanders Forum was  
11          there discussion about what had happened, lessons that  
12          could be learned, improvements that could be made, that  
13          type of thing?

14          A. Yes, I mean I certainly -- I would have given a briefing  
15          to the commanders around, you know, the circumstances --  
16          yes, the circumstances, the transfer of command, and you  
17          know just a briefing as from a policing commander's  
18          perspective, and any emerging lessons or initial lessons  
19          learned or whatever, I may -- I likely would have  
20          communicated them because the important part of that for  
21          me is that this could happen anywhere in the country, it  
22          just so happened sadly it happened in Hayfield Road in  
23          Kirkcaldy but it could have happened in Glasgow or  
24          Aberdeen or one of the islands, so it's important that  
25          we as an organisation learn from these and try and -- if

## Transcript of the Sheku Bayoh Inquiry

1           it happens again tomorrow, which it can, it could,  
2           different ethnicity, different location but something  
3           not dissimilar could happen again and we need to be in  
4           a position to try and perform better than we did on this  
5           occasion and continually improve.

6           Q.   Would there be -- would that be a standing item on the  
7           agenda going forward, to think about lessons learned and  
8           improvements that could be made or would it have been  
9           discussed at the first forum meeting after Mr Bayoh's  
10          death?

11          A.   I couldn't tell you.  You know, it depends.  I don't  
12          know when the next commanders meeting was after 3 May  
13          but I would imagine the Chair would have asked me  
14          because that was what we did, he would have asked me to  
15          give an initial insight to my colleagues around the case  
16          that we are here for today.

17          Q.   Who would have identified those lessons learned?  Would  
18          it be you in your role as commander?

19          A.   It would -- it would have been -- yes, it's actually  
20          less a formal lessons learned to more my experience, so  
21          it was the commander's experience of it, so other  
22          commanders that were round the table could gain  
23          an insight, so if he or she was in a similar situation  
24          at some point in the future, then they could reflect  
25          back on some of the experiences that I had, and maybe do

## Transcript of the Sheku Bayoh Inquiry

1 things differently or follow good practice or whatever  
2 that may be.

3 Q. Apart from the Police Commanders Forum, was there  
4 a formal lessons learned process that Police Scotland  
5 engaged in after Mr Bayoh's death?

6 A. I'm not sure to be honest with you, because I moved --  
7 as I said, I then moved to a national job, probably you  
8 know, at least six weeks after that, so the commander  
9 that came in after me would have been responsible for  
10 whatever role they played. So I don't know to be  
11 honest.

12 Q. Do you remember who that was?

13 A. There was -- there was two that came in, in very quick  
14 succession. Andy -- aye, Andy Edmonston or Angela  
15 McLaren. One is retired and Angela works down in London  
16 now.

17 Q. Thank you very much. Finally can I ask you to look at  
18 SBPI 00270. This is another statement which I didn't  
19 have in your folder yesterday and I would just like to  
20 refer you to it today, just to complete the bundle that  
21 you have looked at. This again is a response to  
22 a Rule 8 request from the Inquiry, and it is from you  
23 and I think on the final page we see it was signed by  
24 you, all pages were signed on 24 February this year.

25 A. Okay.

## Transcript of the Sheku Bayoh Inquiry

1 Q. This relates to training and the extent to which you  
2 were engaged as a strategic firearms commander. I think  
3 you explained yesterday that you were -- it wasn't  
4 declared a firearms incident.

5 A. No.

6 Q. And you were not acting in your role as a strategic  
7 firearms commander?

8 A. That is correct.

9 Q. But this really is your response to that. Sorry, we  
10 just had the last paragraph there, it said:

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

15 And you've signed every page. Can I ask you one  
16 thing. It relates to paragraph 3 or answer 3. And it's  
17 on the following page. If we go up to 3, you were  
18 asked:

19 "When you were first informed of the circumstances  
20 of the incident, did you consider that it could or  
21 should have been declared a firearms incident? Please  
22 explain in as much detail as possible."

23 Then I think your response is:

24 "... I was first made aware of the incident,  
25 Sheku Bayoh had already been restrained by officers.



## Transcript of the Sheku Bayoh Inquiry

1           The matter was already under control. The declaration  
2           of a firearms incident certainly could have been made at  
3           an earlier stage by officers engaged earlier but that  
4           would be based on their assessment of the information  
5           available at that time.

6           "As set out in the Armed Policing SOP ... at  
7           paragraph 8.4.1, an incident can still be treated as  
8           a firearms incident, even if not involving  
9           a firearm ..."

10          We have heard other evidence from people that it  
11          could actually be a bladed instrument?

12          A. Yes.

13          Q. "... where it is 'otherwise so dangerous that  
14          the deployment of police firearms resources may be  
15          required to safely control the situation'."

16          So it doesn't have to be a gun effectively, it could  
17          be something else. If there are -- if it is dangerous  
18          situation.

19          A. That is correct.

20          Q. "The question of whether that should have happened is  
21          really one for the officers who were on the scene.

22          "Personally, had it been my decision then I might  
23          well have declared it a firearms incident depending on  
24          the information that was available at that time. But  
25          these are immediate operational decisions taken in

## Transcript of the Sheku Bayoh Inquiry

1 a fluid operational setting and the officers on duty  
2 were entitled to take their own decisions based on what  
3 they knew."

4 You have said there that you might well have  
5 declared a firearm incident depending on the information  
6 available at the time. What sort of information would  
7 you have required if you had been going to declare  
8 a firearms incident?

9 A. It's -- it's -- each scenario can be different but if  
10 you look at this scenario in its basic sense, where you  
11 had multiple calls of an individual in possession of  
12 a knife at 7 o'clock, give or take, in the morning and  
13 I think I mentioned before that to me you know it  
14 strikes me as being accurate, as being real, whereas you  
15 sometimes do get the odd call at 2 o'clock in the  
16 morning and you know it's probably unlikely to be true.  
17 But for me this -- there is no doubt in my mind with the  
18 independence of the calls that it's likely to be true,  
19 and the time of morning. So on that basis alone  
20 I may -- if I had been the inspector in Bilston, I may  
21 have considered it appropriate to declare this  
22 a firearms incident and may have deployed firearms  
23 towards the scene.

24 MS GRAHAME: Thank you. Could you give me a moment, please.

25 (Pause).

## Transcript of the Sheku Bayoh Inquiry

1           Thank you very much, I have no further questions.

2       LORD BRACADALE: I will come to Mr Hamilton in a moment but  
3           are there any other Rule 9 applications? Ms Mitchell  
4           and Mr Scullion. Mr McEwan, would you mind withdrawing  
5           to the witness room, please.

6                               (The witness withdrew)

7       LORD BRACADALE: Ms Mitchell.

8                               Rule 9 Application by MS MITCHELL

9       MS MITCHELL: I have headed them under topics, the first one  
10           being race. A question I would like to ask this witness  
11           arising from his evidence was that he gave evidence  
12           yesterday that an important factor in the matter having  
13           been called a critical incident was, amongst other  
14           things, the ethnicity of Mr Bayoh. He immediately  
15           realised that, as he said, that might cause concern. So  
16           what we have heard from this officer is that he  
17           immediately thinks that is important, yet nowhere in any  
18           of his statements does he mention race in particular,  
19           does he say this is a particular issue.

20                           The Inquiry has also heard evidence from all the  
21           police officers, who almost every one came in and said  
22           they simply hadn't thought of the issue of race, that in  
23           all the time they were there waiting, that hadn't  
24           crossed their mind. So what I would like to ask this  
25           witness was firstly, does he think that there is

## Transcript of the Sheku Bayoh Inquiry

1 a problem within the police force of people being scared  
2 to mention race, is there some reason why that is not  
3 being mentioned? Further, to ask him whether or not,  
4 had a white man died in custody would he have been  
5 concerned also, as he describes it, about "looting,  
6 widespread disorder and criminality", or was his race  
7 a factor in that?

8 I would also like to ask this witness was he trained  
9 in unconscious bias, and was, in the period of time he  
10 was working in the Police Service, a colour-blind  
11 approach used in relation to the police?

12 Moving on, Lesley Boal, who we will come to hear  
13 evidence of, gave her statement on race, and a statement  
14 was put by my learned friend to Lesley Boal which was  
15 taken, and Lesley Boal said:

16 "Chief Super McEwan and I didn't discuss the nature  
17 of the investigation. Race as a possibility was not  
18 discussed with Chief Super McEwan. However, it is in  
19 the back of your mind when you are thinking about all  
20 the possibilities. In terms of hypotheses, one would  
21 have been that the male had been treated differently  
22 because he was a black male. I can't remember having  
23 a conversation with anyone else about it but the feeling  
24 I got was that everybody was thinking along the same  
25 lines as me, that there was a possibility that

## Transcript of the Sheku Bayoh Inquiry

1           the actions of the police officers or a police officer  
2           was because Mr Bayoh was black."

3           I would like to ask him is that something that he  
4           was thinking, was that a hypothesis that he had? And  
5           I should remind the Inquiry that this comes within  
6           a context where this witness has given evidence that he  
7           has considered various hypotheses because in relation to  
8           giving out the post mortem reports he has given evidence  
9           that he considered there was no question of criminality  
10          arising with the police.

11          I would also like to ask him about a further  
12          hypothesis. The officer describes the "match fit"  
13          investigators that were all involved: Pat Campbell,  
14          Colin Robson, Graeme Dursley, and said that from the  
15          outset, for example, counter-terrorism was considered  
16          and it was ruled out. What I would like to ask this  
17          witness was: do you think any part of this discussions  
18          should have considered the issue of positional asphyxia?  
19          And whether or not, if he did that, he mentioned it to  
20          anyone at that meeting or subsequent meetings.

21          Moving on a different topic, attending at the family  
22          home. Pat Campbell on Day 49 gave evidence in relation  
23          to the attendance of the witness, McEwan, at the family  
24          home and that is from line 55 onwards. What he  
25          indicated was that:

## Transcript of the Sheku Bayoh Inquiry

1           "DCI Chief Superintendent McEwan had indicated he  
2           was aware of the brother-in-law of the deceased and that  
3           also came back from the two officers who had delivered  
4           the second death message that a family member~..."

5           LORD BRACADALE: Can you slow down a little bit,  
6           Ms Mitchell, I think the stenographer is struggling  
7           a bit.

8           MS MITCHELL: Sorry. I will cut it short to say that it was  
9           made clear that the family had asked for Mr McEwan to  
10          make contact with the family or provide them with some  
11          further information. So it is just to get his  
12          reflection on that because his evidence yesterday was  
13          that he had decided to go and that he didn't remember at  
14          that particular time that he knew the family members,  
15          but it appears there is contradictory evidence  
16          suggesting it was the Bayoh family that requested  
17          a senior officer to come to the house and explain to  
18          them what was happening. And, with respect, I think  
19          that is important when it comes to the issue of  
20          post-incident management as to whether or not it was the  
21          family who had to ask for someone to attend.

22          Further, resistance from family. Pat Campbell gave  
23          evidence on Day 49, at line 80 and following, that there  
24          was still resistance from the family about attending to  
25          identify Mr Bayoh prior to the post mortem actually

## Transcript of the Sheku Bayoh Inquiry

1 taking place the following day. When he was asked about  
2 that level of resistance he said:

3 "Answer: It really came from Garry McEwan, to be  
4 honest with you, and it was really about the fact that  
5 they had made it clear that they would not attend for  
6 the post mortem examination for the identification  
7 aspect."

8 Then it was put to this witness:

9 "Question: We have heard evidence that they wished  
10 to give time for the deceased's mother to arrive from  
11 London before they would formally identify Mr Bayoh  
12 prior to the post mortem~..."

13 And he was asked about his recollection of that and  
14 I would like to put to this witness what his  
15 recollection of that matter was as well. In particular,  
16 whether or not he recalled that the family rather than  
17 simply not cooperating wished to wait until Mrs Bayoh  
18 came up the next day.

19 The next issue that I would like to raise with this  
20 witness is treating officers differently from the  
21 friends and family of Sheku Bayoh. This officer has  
22 explained the balance between investigation and ensuring  
23 the welfare of officers. What I would like to set out  
24 for him is the various ways in which the friends and  
25 family of Mr Bayoh were treated, including Zahid Saeed,

## Transcript of the Sheku Bayoh Inquiry

1           his family, the home of Martyn Dick and Kirsty MacLeod,  
2           them being interviewed, Collette Bell being interviewed  
3           12 minutes at maximum after she had been told her  
4           partner may be dead, because the rationale for that was  
5           it was important for the police to get as much  
6           information as soon as possible.

7           There are various other examples of that, that it --  
8           not to tell Collette Bell that it was after contact with  
9           the police that her partner may have died as it might  
10          have compromised the investigation. Yet, when this  
11          officers comes to the issue of how to treat the police  
12          officers, he explains that it's about the best evidence  
13          and not the quickest evidence and went on to explain  
14          that in some detail.

15          We have the position in contrast with the police  
16          that were put into a room together, it appears there  
17          were clearly discussions about whether or not to give  
18          statements and in what circumstances that would happen,  
19          and it took no less than 32 days, over a month, before  
20          Police Scotland got statements from professional witness  
21          who were present and who were active in his restraint.

22          What I want to ask against that background is does  
23          he see why there might be a public perception that  
24          the police officers who were not providing statements  
25          were being treated in a way that above all took



## Transcript of the Sheku Bayoh Inquiry

1           consideration of their wellbeing and that the  
2           investigation was being carried out with considerably  
3           less consideration to the wellbeing of the friends and  
4           family of Sheku Bayoh?

5           In relation to -- moving on in relation to  
6           the outcome of the post mortem, the evidence of  
7           Pat Campbell at Day 49 was at page 90, line 24:

8           "Answer: I think it was Garry McEwan that had raised  
9           the matter around it and he raised it to the Chair  
10          around about the disclosure of post mortem results to  
11          the officers involved in the restraint. So there is  
12          quite a detailed discussion around that and PIRC were  
13          involved in it to an extent. But again, the main  
14          representative from PIRC was Billy Little."

15          Then it goes on. What he also says was that -- it  
16          was put to him:

17          "Question: We may have heard the suggestion that  
18          without information about the cause of death from the  
19          post mortem, officers would be unwilling to give any  
20          sort of statement. Was that part of the discussion that  
21          you either had at the Gold Group meetings or the meeting  
22          with PIRC at 7.30 in the evening?"

23          And Pat Campbell says:

24          "Answer: There was some reference to it. I think it  
25          came from Chief Inspector Shepherd or potentially

## Transcript of the Sheku Bayoh Inquiry

1 Garry McEwan. I'm not sure that there was information  
2 about the fact that officers were not going to provide  
3 a statement until the results of the post mortem  
4 examination, so that there was information there that  
5 hadn't come directly to me but it was discussed at the  
6 Gold Group and I knew it was perhaps an extension of  
7 what I already knew, that they weren't willing to  
8 provide statements."

9 So what I would like to ask in relation to that is  
10 obviously whether or not that jogs his memory that it  
11 was him that may have brought it up and that there was  
12 some kind of discussion with regard to what might be  
13 looked at as a trade of information for information.

14 Moving on to the issue of tensions growing, we heard  
15 evidence from one of Mr McEwan's colleagues,  
16 Detective Superintendent Nicola Shepherd, on Day 52, and  
17 that was 17 March 2023. She says at page 10:

18 "Answer: There was a question around the issue of  
19 counter-terrorism or whether or not this had been  
20 a terror-related incident."

21 And she said "yes". The question is put to her:

22 "Question: Put short, your evidence was I wasn't  
23 able to help them' ..."

24 And this is lay people and the public:

25 "... I wasn't able to help them because I wasn't

## Transcript of the Sheku Bayoh Inquiry

1           able either confirm or deny whether this was  
2           a terrorist-related incident because the time I was  
3           dealing with the PIRC had control of the investigation."

4           So we know that from an early point in time the  
5           issue of terrorism had been ruled out in this case. We  
6           know that Garry McEwan was intent on trying to avoid  
7           public unrest and the question I would like to put to  
8           him was: does he recall whether or not he spoke about  
9           the issue of terrorism that might put people's minds at  
10          rest, as was being flagged up by  
11          Detective Superintendent Nicola Shepherd.

12          Further, given the evidence that he has already  
13          given, does he consider that Nicola Shepherd's  
14          explanation for that ties in well with his role of  
15          continuing to deal with Comms even though PIRC was  
16          involved.

17          Coming to the end, in relation to media, there was  
18          a document which -- I think my learned friend indicated  
19          that she would cover these issues, but perhaps not this  
20          particular -- she didn't say anything about  
21          the document, she just said the issues would be  
22          explored, and that was a document where the Comms  
23          department had set out a summary of media coverage and  
24          had identified the media coverage in certain ways.  
25          For example, if it was favourable or not favourable to

## Transcript of the Sheku Bayoh Inquiry

1           the police. That was sent on to Garry McEwan, who  
2           replied to the media summary that it had been  
3           first-class and I just want to ask him about  
4           the contents of what was contained there, including  
5           phrases -- where they appeared to be balancing whether  
6           or not these reports reflected a benefit to the family  
7           or to the police. And as part of that question and  
8           asking those questions I want to know what part of the  
9           post-incident management procedure was looking at the  
10          press and managing the press response to matters.

11       LORD BRACADALE: What was that document you were talking  
12          about?

13       MS MITCHELL: That document is PS02581. Finally a matter  
14          arising from the questions by my learned friend in  
15          relation to the email of 14 May about the family press  
16          conference. I would like to ask in particular questions  
17          about the use of the corporate "we" as he described it  
18          was a collective. He has set out why he thinks that it  
19          would be a good idea -- or why he thinks it is a good  
20          idea to have balance in the reporting and he set out  
21          what his view is, and my question is: if that was the  
22          position why didn't Police Scotland put out the media  
23          report? Why was it better to send it and to be sent  
24          from PIRC? Also what does he mean by "we" in that  
25          context. Because it is clear that the "we" seems to

## Transcript of the Sheku Bayoh Inquiry

1 reflect the police as a whole and not differentiate  
2 Police Scotland from the Federation.

3 That is all.

4 LORD BRACADALE: Thank you. Mr Scullion.

5 MS GRAHAME: I am sorry to interrupt proceedings.

6 I understand that the stenographer is in need of  
7 a break.

8 LORD BRACADALE: In that case we will take a 15-minute  
9 break.

10 (3.25 pm)

11 (A short break)

12 (3.45 pm)

13 LORD BRACADALE: I am going to hear Mr Scullion's  
14 application and then adjourn for the night in order to  
15 consider the applications.

16 Mr Scullion.

17 Rule 9 Application by MR SCULLION

18 MR SCULLION: Sir, there is a written Rule 9 application and  
19 it relates to issue 2 in that application. But I would  
20 seek to ask the witness questions about his evidence  
21 regarding the delay and ultimate failure to deploy PIRC  
22 family liaison officers during 3 May 2015.

23 The witness was highly critical of PIRC in relation  
24 to this issue, and I would seek to explore the factual  
25 basis upon which the criticism was made. In particular,

## Transcript of the Sheku Bayoh Inquiry

1 I would like to ask him about his knowledge of  
2 an instruction given by Deputy Senior Investigating  
3 Officer Keith Harrower on the morning of 3 May 2015 that  
4 the family liaison officers were initially to be  
5 deployed by Police Scotland which would then transfer  
6 later to PIRC. I would like to ask him about his  
7 knowledge on the morning of 3 May 2015 of an agreement  
8 by Police Scotland that they would be deploying family  
9 liaison officers.

10 I would like to explore with him his knowledge of  
11 difficulties which arose internally for Police Scotland  
12 in relation to the deployment of family liaison officers  
13 on 3 May 2015.

14 I would like to ask him if he was aware that  
15 the family liaison officers initially identified by  
16 Police Scotland turned out not to be on duty and, by  
17 reference to the Gold Group meeting minutes, the  
18 Gold Group at 14.30 hours, which he attended, I would  
19 like to ask him to comment on the entry in those minutes  
20 which would appear to confirm that family liaison  
21 officers from Police Scotland had in fact been  
22 identified. I would like to invite him to comment on  
23 the proposition that by 2.30 in the afternoon  
24 arrangements were in place for Police Scotland family  
25 liaisons to be briefed, including a briefing in relation

## Transcript of the Sheku Bayoh Inquiry

1 to equality and diversity.

2 Yesterday and again today the witness gave evidence  
3 regarding his visit to the family home of Sheku Bayoh.  
4 He said he visited the family because of PIRC's failure  
5 to deploy their family liaison officers. I would like  
6 to ask him to comment on whether in fact he visited the  
7 family because he was told that the family had demanded  
8 to see him. Yesterday the witness gave evidence about  
9 the detail of that meeting and, in the course of his  
10 evidence, senior counsel put to the witness evidence  
11 which was obtained from the family in relation to  
12 information said to have come from him at the meeting.  
13 The information would appear to be very similar to that  
14 noted in the manuscript version of the document produced  
15 at the first Gold Group meeting and I would like to ask  
16 the witness whether the family's upset and feelings of  
17 hostility towards Police Scotland seemed to be  
18 exacerbated as a result of his meeting and whether he  
19 felt his meeting added to their concern that they had  
20 been given changing and contradictory information by  
21 Police Scotland.

22 I would want to ask him if it was following his  
23 visit to the family and because of the family's reaction  
24 during his visit that a decision was taken that it was  
25 no longer possible to deploy Police Scotland family

## Transcript of the Sheku Bayoh Inquiry

1 liaison officers to the family and if that is in fact  
2 the reason why the family were not visited on 3 May 2015  
3 by trained family liaison officers. And finally if, in  
4 fact, that is why Deputy Senior Investigator Harrower  
5 had to go and see the family late on the evening of  
6 3 May before deploying PIRC family liaison officers on  
7 4 May.

8 Those are the questions that I would wish to raise.

9 LORD BRACADALE: Thank you. Is there an issue?

10 MS GRAHAME: I understand that there is a technical issue  
11 with the YouTube channel which is streaming proceedings  
12 and, as a result, we are no longer at this moment  
13 streaming the hearing.

14 LORD BRACADALE: We are about to adjourn in any event, but  
15 no doubt, if it is being recorded, it can be put on the  
16 website and people can catch up.

17 Very well, I will adjourn until 10 o'clock tomorrow  
18 morning.

19 (3.50 pm)

20 (The Inquiry adjourned until 10.00 am on Thursday,  
21 31 August 2023)

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Transcript of the Sheku Bayoh Inquiry

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9  
10  
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12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

INDEX

CHIEF SUPERINTENDENT GARRY MCEWAN .....1  
(RTD) (continued)  
Questions from MS GRAHAME (continued) .....1  
Rule 9 Application by MS MITCHELL .....139  
Rule 9 Application by MR SCULLION .....149

## Transcript of the Sheku Bayoh Inquiry

1

2