

Transcript of the Sheku Bayoh Inquiry

Thursday, 31 August 2023

(10.00 am)

(Delay in proceedings)

(10.20 am)

Decision on Part 9 applications

LORD BRACADALE: Good morning. I will deal first with the application on behalf of the families of Sheku Bayoh. In her oral application Ms Mitchell identified ten issues. I shall allow some of these to be explored.

Issue number one relates to race as a factor in the decision made by Mr McEwan to call a critical incident. Ms Mitchell identified four specific matters under this heading. I shall allow her to explore the second of these, which I shall call 1b, namely, whether or not had a white man died in custody, would Mr McEwan have been concerned about looting, widespread disorder and criminality.

Issue 4 relates to the attendance of Mr McEwan at the family home of Kadi and Ade Johnson on 3 May 2015, and I shall allow that issue to be explored.

Issue 5 relates to the request by the family for the post mortem examination to be postponed pending the arrival of Mrs Bayoh, and I shall allow exploration of this issue.

In relation to the other matters raised by

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1 Ms Mitchell, I consider that in some instances it would
2 be more appropriate to explore the issues in submissions
3 and in others that I would not be assisted by
4 exploration of the issue with this witness.

5 Turning to the application on behalf of the Police
6 Investigation and Review Commissioner, PIRC, in the
7 light of the evidence given by Mr McEwan in relation to
8 the issue of family liaison officers, I shall allow
9 Mr Scullion to explore the matters set out in the
10 application. For administrative reasons, it is
11 convenient to take the examination by Mr Scullion first.
12 So Mr Scullion, if you would come to the table, and if
13 we could have the witness back, please.

14 CHIEF SUPERINTENDENT GARRY MCEWAN (RTD) (continued)

15 Questions from MR SCULLION

16 LORD BRACADALE: Good morning Mr McEwan, you are going to be
17 asked questions by Mr Scullion KC, who represents the
18 PIRC.

19 Mr Scullion.

20 MR SCULLION: Good morning.

21 A. Good morning.

22 Q. Mr McEwan, on Tuesday you gave evidence regarding issues
23 which arose during 3 May 2015 in relation to the
24 deployment of family liaison officers. I wonder if you
25 could assist the Chair with further information in

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1 relation to that aspect of your evidence.

2 A. I will certainly try.

3 Q. In 2015 where there was a death in police custody which
4 would be investigated by the PIRC, did responsibility
5 for delivery of the death message remain with
6 Police Scotland?

7 A. The responsibility of delivery was initiated for
8 Police Scotland to do it but the oversight of the
9 investigation was with PIRC.

10 Q. All right, and that aspect of it remaining with
11 Police Scotland, was that to avoid delay?

12 A. I'm not sure. It was a direction from PIRC, I'm not
13 sure the reason behind it.

14 Q. On Tuesday during your evidence you said that you would
15 have expected family liaison officers to be deployed
16 within two hours. Did you mean two hours from the time
17 of death or two hours from some other point in the
18 investigation?

19 A. I said I think at the time but certainly my intention
20 was two hours from time of death, so from the back of
21 9 o'clock, if possible.

22 Q. So some time shortly after 11 o'clock.

23 On 3 May 2015 the first Gold Group meeting was at
24 11.30. By that time were you aware of ongoing
25 discussions regarding the investigation between

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1 Deputy Senior Investigator Keith Harrower and
2 Detective Superintendent intent Pat Campbell?

3 A. Was I aware of the ...?

4 Q. That discussions were ongoing by that stage?

5 A. Yes, of course. Yes.

6 Q. Were you aware that they had specific discussions
7 regarding the deployment of family liaison officers?

8 A. I was aware there were discussions ongoing, I assume
9 there will have been a number of discussions outwith my
10 hearing because I was privy only to the Gold discussions
11 round that.

12 Q. During the Inquiry on Day 47, Detective Superintendent
13 Campbell gave evidence that one of the earliest
14 priorities was the identification of family liaison
15 officers; is that what you would have expected to
16 happen?

17 A. Yes.

18 Q. He also gave evidence that family liaison officers would
19 be deployed initially by Police Scotland, and there
20 would later be a handover to PIRC. Is that something
21 you were aware of on the morning of 3 May?

22 A. Again, my sort of awareness of it all was that from, you
23 know, back of 10 on the Sunday morning PIRC had
24 oversight and ownership of the investigation and they
25 would direct Police Scotland, so one of the directions

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1 was around the early deployment of FLOs.

2 Q. So were you aware from the morning that Police Scotland
3 were going to initially deploy FLOs?

4 A. The intention was, yes.

5 Q. All right. During your evidence generally you spoke
6 about the importance of the family to you in the context
7 of the investigation. At the first Gold Group meeting
8 did you ask Detective Superintendent Campbell to confirm
9 what the plan was in relation to family liaison
10 officers?

11 A. Not that I recall, no.

12 Q. I wonder if you could look at a document, please, and
13 it's the minute from the first Gold Group meeting at
14 11.30. It's PS06491. That is a Gold Group meeting
15 which you attended; that is right, isn't it?

16 A. Yes, that's correct.

17 Q. I wonder if you could look at item number five under the
18 heading, "Family concerns". Item 5 reads:
19 "Circumstances discussed regarding Collette Bell
20 contacting Police and being informed that male believed
21 to be her partner (Sheku Bayoh) was deceased but subject
22 to formal identification. She provided details of NOK
23 [next of kin], his sister who she did not have contact
24 with her."

25 The final sentence is:

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1 "Decision to be made re FLO deployment by MIIT
2 officers."

3 Do you remember that discussion?

4 A. Not specifically, but you know that would make sense,
5 what I'm reading there.

6 Q. And the MIT or MIIT, is that the Major Investigation
7 Team?

8 A. Yes.

9 Q. And that's part of Police Scotland?

10 A. Yes.

11 Q. So at the first Gold Group meeting the briefing appears
12 to have been around Police Scotland providing family
13 liaison officers?

14 A. What the phraseology says there is, "Decision to be
15 made", so the decision hasn't been made at that point,
16 I would probably suggest.

17 Q. But there's specification that it's MIT officers that is
18 under consideration, would you agree?

19 A. Yes, under consideration. Yes.

20 Q. Do you remember that now?

21 A. I don't remember the specific discussion genuinely.

22 Q. During your evidence you explained the structure of
23 those involved in the investigation. I think you told
24 us that Detective Chief Superintendent Boal was part of
25 the investigation team, along with

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1 Detective Superintendent Campbell?

2 A. I think probably my explanation was around the lines
3 that Detective Chief Superintendent Boal was there to
4 support the SIO, Detective Superintendent Pat Campbell,
5 yes.

6 Q. So in relation to the area of investigation?

7 A. Yes.

8 Q. All right. Detective Chief Superintendent Boal has not
9 yet given evidence but she has provided a statement to
10 the Inquiry, and I wonder if you could look, please, at
11 a paragraph in her Inquiry statement. It's SBPI 00223
12 and it's paragraph 307. (Pause).

13 LORD BRACADALE: Paragraph 307?

14 MR SCULLION: Paragraph 307, yes. If you look,
15 paragraph 307 reads:

16 "My understanding was that PIRC's FLOs weren't
17 available and they weren't being deployed immediately.
18 Therefore my understanding was Police Scotland would
19 deploy [family liaison officers] and PIRC's [family
20 liaison officers] would take over from them. I think
21 from my statement I wasn't sure when that was going to
22 be. Nothing made me think there was going to be PIRC
23 [family liaison officers] attending that day, but I knew
24 we needed somebody who was well trained in the role of
25 a [family liaison officer]."

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1 Would you agree that on the face of that
2 information, Detective Chief Superintendent Boal
3 appeared to be aware during the day that the family
4 liaison officers would be provided by Police Scotland?

5 A. Yes.

6 Q. During 3 May did you become aware that there was
7 an issue in relation to the officers from
8 Police Scotland who had been identified to perform the
9 role of family liaison officer?

10 A. No.

11 Q. Do you remember being informed that officers who had
12 been identified to perform the role weren't in fact on
13 duty?

14 A. The honest truth, I don't recall that but that is not
15 unusual. So that wouldn't surprise me.

16 Q. If what I've suggested to you is correct, would that
17 sort of issue be the fault of Police Scotland or PIRC?

18 A. I wouldn't say it's a fault of anybody, it's just the
19 reality of the circumstances in that if there is not
20 a FLO on duty, there's not a FLO on duty. But the
21 priority would then be to get a FLO on duty.

22 Q. Sorry, perhaps you misunderstand or misunderstood me.
23 What I am suggesting to you is that certain FLOs had
24 been identified as being on duty and it was then later
25 discovered that the information was wrong and they

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- 1 weren't on duty?
- 2 A. Yes, so I don't know the rationale behind that, but yes
- 3 that would be a flaw in the system or -- I'm not sure
- 4 how but ...
- 5 Q. Would that flaw in the system be the fault of
- 6 Police Scotland or PIRC?
- 7 A. It would be the Police Scotland system, I'm assuming.
- 8 I don't know enough of the detail but I'm assuming that
- 9 would be correct.
- 10 Q. On 3 May you attended the subsequent Gold Group meeting
- 11 at 2.30; that is right, isn't it?
- 12 A. That is correct.
- 13 Q. At that stage investigators from PIRC were present at
- 14 the meeting?
- 15 A. That is correct.
- 16 Q. Was deployment of family liaison officers discussed at
- 17 that meeting?
- 18 A. I think so, from having read the minutes over the last
- 19 couple of days certainly.
- 20 Q. I wonder if we could look at the minutes of the second
- 21 Gold Group meeting. It's PS07268. If you look to the
- 22 front page of the document it's clear you were present
- 23 at the meeting.
- 24 A. Absolutely.
- 25 Q. And if we move down the list of those present,

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1 Keith Harrower from PIRC is listed as being present and
2 I think John Ferguson was also from PIRC. I wonder if
3 we could look to the second page at bullet point or
4 heading number 3, "Investigative process". If we could
5 look to the ninth bullet point at issue 3, you see the
6 ninth bullet point is, "[Next of kin] strategy". It
7 reads:

8 "... Partner of deceased made aware and statement
9 noted. No formal ID has taken place but ID has been
10 done by a Facebook image initially. [Next of kin]
11 identified as sister and a [family liaison officer]
12 being identified. (2 x Police Scotland FLOs have been
13 identified 1 x DI as FLO to brief and co-ordinate)."

14 The issue of family liaison officers was obviously
15 discussed at the second Gold Group meeting, and would
16 you agree that at that meeting it was confirmed that two
17 Police Scotland family liaison officers had been
18 identified?

19 A. Yes.

20 Q. Do you now recollect that at that stage the names of the
21 officers were used who had been identified?

22 A. Sorry, no.

23 Q. At that bullet point a DI was to brief and co-ordinate,
24 that would be a detective inspector?

25 A. Yes.

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- 1 Q. Again, an officer from Police Scotland.
- 2 A. Yes.
- 3 Q. If you look at bullet point 10, it reads:
- 4 "[Family liaison officer] to be briefed in relation
- 5 to equality and diversity, [next of kin] has been
- 6 informed by DC Parker and DC Mitchell."
- 7 A. That is correct.
- 8 Q. Is that something that you remember?
- 9 A. Not specifically, but again that would not be of
- 10 surprise to me.
- 11 Q. But that would be important in the circumstances of this
- 12 case, that the family liaison officers were briefed in
- 13 relation to equality and diversity; is that right?
- 14 A. They were to be briefed, yes.
- 15 Q. Yes. So you would agree -- would you agree that by that
- 16 stage there doesn't appear to be any ambiguity about
- 17 what was happening in relation to family liaison
- 18 officers?
- 19 A. No, from reading that at whatever time that was, again
- 20 two have been identified and those that have been
- 21 identified are to be briefed.
- 22 Q. Were you aware on 3 May that family liaison officers
- 23 ultimately attended at the station?
- 24 A. No.
- 25 Q. During your evidence generally you indicated that you

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- 1 were raising issues surrounding family liaison officers.
- 2 I wonder if you could help the Chair, if you were
- 3 raising issues surrounding family liaison officers,
- 4 surely you would have been told that officers from
- 5 Police Scotland had been identified and that the issue
- 6 was in hand?
- 7 A. My issue was that if you fast forward a couple of hours,
- 8 at 5 pm that day the next of kin to Sheku Bayoh had had
- 9 no family liaison officers deployed to them. That was
- 10 my concern.
- 11 Q. I appreciate that may well have been your concern, but
- 12 if you were raising that concern at the time within
- 13 Kirkcaldy Police Office, presumably you would recall
- 14 being informed by those who were involved in the
- 15 investigation that family liaison officers had been
- 16 identified and that issue was being dealt with?
- 17 A. I certainly know family liaison officers had been
- 18 identified but it was still a moving feast at that
- 19 point. They had not been deployed so ...
- 20 Q. During your evidence you told the Chair that during the
- 21 course of the day you were informed that PIRC family
- 22 liaison officers would not be available until the
- 23 following day and that the family would be seen the
- 24 following day, but the information contained in
- 25 the minutes of the meeting would appear to suggest that

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1 in fact they were to be seen by family liaison officers
2 from Police Scotland that day.

3 A. Yes, yes, I agree with that. That was the intention at
4 that point. My point over the last couple of days was
5 that the PIRC FLOs were not to be deployed that day.

6 Q. But surely the important point would be whether the
7 family were to be seen by family liaison officers, not
8 whether they were seen by family liaison officers from
9 PIRC or Police Scotland?

10 A. Absolutely, I agree with that. The problem was that
11 what happened post this meeting was officers from
12 Fife Division had went and visited the family with the
13 death messages number two and three, and there was
14 a significant fallout from that and an absolute mistrust
15 and distrust around policing because Sheku had died
16 following police contact. So at that point for me the
17 opportunity to deploy a Police Scotland FLO would have
18 added little benefit because of that distrust that had
19 emerged over the sort of preceding four or five hours.

20 Q. I wonder if I could ask you about that issue then and
21 the chronology of it. Officers from Police Scotland
22 visited the family on two occasion on 3 May; that is
23 right, isn't it?

24 A. I think so, yes.

25 Q. After the second meeting did you speak to

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1 Detective Constables Mitchell and Parker?

2 A. Very briefly.

3 Q. When you spoke to them, after speaking to them you
4 visited the family?

5 A. That is correct.

6 Q. You gave evidence regarding your reasons for going to
7 visit the family but did you go and see the family
8 because the family of Mr Bayoh demanded to see you?

9 A. There was two reasons as per -- that is in my statement,
10 albeit it never came out in the last couple of days.
11 But as per my statement, there were two reasons I went
12 there. Number one was that the family had asked for
13 a senior officer and/or Garry McEwan to attend within
14 24 hours was the feedback to me. And secondly, and most
15 importantly the reason I went, is that eight or
16 nine hours on since the death of Sheku, nobody had been
17 in a position to give the family some of the important
18 detail that they deserved to hear before they heard it
19 elsewhere, on social media or wherever else.

20 Q. I wonder if we could look at that passage of your
21 operational statement, which is PS03136. It's page 2 of
22 5. It's the fifth paragraph on that page. At the fifth
23 paragraph, does it read:

24 >About 1645 hours DS Dursley informed CI Shepherd
25 that two detective officers had attended at the home of

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1 the deceased's family and were met with a highly charged
2 emotional and at times confrontational environment.

3 I thereafter spoke to both officers (DCs Mitchell and
4 Parker) and informed that the family demanded my
5 attendance to 'get answers'."

6 Was that why you attended?

7 A. Sorry, I thought I had explained that. There was two
8 reasons I attended: one was that the family had asked,
9 but that was within a 24-hour period. But the second
10 and most important was that by that time, eight hours on
11 since Sheku's death, no one had been in a position to
12 give the family some of the important information that
13 I felt they deserved to hear at that point.

14 Q. By that time on 3 May were family liaison officers
15 in fact at Kirkcaldy Police Station?

16 A. I'm not sure about that.

17 Q. But if you attended because family liaison officers had
18 not attended, would you not have tried to find that out
19 before going?

20 A. As I mentioned earlier, the police -- for me the
21 distrust that had emerged because of the scenario that
22 had played out that afternoon, the requirement or the
23 benefit of Police Scotland FLO attending I think would
24 probably have escalated matters. The reality was there
25 was no FLO there, the family were absolutely devastated

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1 and upset and what I felt as a senior officer, as the
2 most senior officer in Fife Division, that family
3 deserved to hear the facts that I -- as I knew them at
4 that time.

5 Had the FLOs been in position and been with the
6 family -- and again, I think I mentioned this earlier in
7 the last couple of days -- I would not have attended
8 that day. I would've probably left it two or three days
9 and then went as a mark of respect as a senior officer,
10 but the reality was there were no FLOs deployed and that
11 family deserved to be given some form of explanation and
12 I took it upon myself to do that.

13 And, sorry, finally is that that was -- you know,
14 that was ran by the ACC, the Gold commander, PIRC were
15 aware of my intention to go up, that was not just me
16 going in isolation.

17 Q. So you went to see the family on the evening of 3 May?

18 A. Yes.

19 Q. On Tuesday senior counsel to the Inquiry showed you
20 passages of evidence from members of Sheku Bayoh's
21 family, Kadi and Ade Johnson, and you were shown
22 passages of evidence containing their accounts of what
23 you told them at the meeting on the evening of 3 May.
24 I think it was suggested that the accounts provided by
25 the family of what was said were very similar to the

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- 1 description of events which was given at the second
2 Gold Group meeting.
- 3 A. I think there were certainly some elements of that, yes.
- 4 Q. When that was being put to you, did you agree that the
5 accounts provided by the family were similar to the
6 information which was noted in the manuscript version of
7 the second Gold Group meeting?
- 8 A. Certainly elements I think, yes.
- 9 Q. Given the similarity between the content of the
10 handwritten minute of the second Gold Group meeting and
11 the accounts given by the family, do you think that you
12 did provide that information to the family?
- 13 A. What information specifically?
- 14 Q. The information, for example, in relation to Mr Bayoh
15 having kicked the female officer?
- 16 A. I genuinely don't recall saying that.
- 17 Q. It would be a coincidence if that was the information
18 that was in the Gold Group minute and the family claim
19 to have been given that information later in the day;
20 that would be a coincidence, wouldn't it?
- 21 A. I don't know if it would be a coincidence or not but
22 I genuinely don't remember saying it. If I had said it,
23 I would've said I'd said it.
- 24 Q. Looking back is it possible that your visit to the
25 family added to their concern that Police Scotland had

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1 provided them with changing and contradictory
2 information?

3 A. I think the information that I gave to the family that
4 evening was certainly far more -- not specific, far more
5 in-depth than the information they had been given up to
6 that point so they were absolutely shocked at the
7 information that I provided because that was not what
8 I think they believed had happened up until that point.

9 Q. So in terms of my question, is it possible that your
10 visit to the family added to their concern that
11 Police Scotland had provided them with changing and
12 contradictory information?

13 A. No, I think I was honest with the family and I think
14 part of leadership in any organisation is being honest
15 with the people that you speak to, so whether that was
16 not well received by the family or not is a point for
17 the Chair to determine, but the important thing is as
18 a leader in an organisation you have to be honest with
19 a family that has just lost a next of kin, and that is
20 what I tried to do.

21 Q. Please don't think I am criticising you, I am just
22 trying to ascertain whether you think it is possible
23 that your meeting exacerbated feels of distrust and
24 hostility towards Police Scotland, despite your
25 intentions?

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1 A. Actually no, I don't think it added to the distrust
2 actually because when I left that house they were
3 thanking me for being there or having attended, the
4 family, so I think it actually helped to regain
5 an element of trust.

6 Q. When you left the family, did you return to Kirkcaldy
7 Police Station?

8 A. Yes.

9 Q. What did you do when you returned to Kirkcaldy Police
10 Station?

11 A. We, not far after that, went into the Gold meeting.

12 Q. Before going into the Gold meeting or when you were at
13 Kirkcaldy, whether before or after, did you meet with
14 the family liaison officers who had been identified?

15 A. I genuinely don't remember that if I did.

16 Q. Do you remember meeting with an officer named
17 Kevin Houliston?

18 A. I don't, sorry.

19 Q. The Inquiry has not yet heard from Kevin Houliston but
20 he has given a statement to the Inquiry and it is
21 SBPI 00354 and I wonder if I could ask to you to look at
22 paragraph 120. This is Officer Houliston:

23 "What I do actually specifically remember is being
24 told at that stage to stop ..."

25 I think that relates to a briefing in relation to

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1 the family liaison officers:

2 "... because Chief Superintendent ... was out
3 visiting the family."

4 Would you agree that would suggest that the family
5 liaison officers were in the station when you were
6 visiting the family?

7 A. Certainly that family liaison officer, yes.

8 Q. It says "we", which sounds pleural:

9 "We were told to wait at that particular time, so,
10 again, we waited. For how long I could not even guess
11 at, but I have a specific memory of being at a meeting.
12 I was up there in the room when a conversation took
13 place for Chief Superintendent McEwan had returned from
14 visiting Mr Bayoh's family. He explained that the
15 family were distressed, angry, upset, specifically with
16 the police."

17 If you look to the next paragraph:

18 "I cannot recall if they specifically requested that
19 they did not want further police officers going to their
20 address, or if that was the recommendation that it would
21 be unwise for police officers to attend at that address.
22 At that stage, after some discussion, the decision was
23 made at that stage that we would not be deployed as
24 FLOs, so that ended my involvement then."

25 Do you now remember having a meeting with the family

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- 1 liaison officers?
- 2 A. I genuinely don't and I am actually -- I'm sure they
3 will be giving evidence, I'm not clear from that if
4 I did actually meet them or if he was privy to
5 a conversation I had. But either way I am absolutely
6 content with what he is saying there, I think that is
7 absolutely fair. When I came back I did explain to
8 whoever was present that the family were distressed,
9 angry, upset, specifically with police at that time. So
10 I did say, that yes.
- 11 Q. Would you agree that the information contained in
12 the minutes and in the statement confirmed that by the
13 evening of -- the early evening of 3 May 2015 there were
14 in Kirkcaldy Police Office family liaison officers who
15 were briefed and ready to go?
- 16 A. Sorry, go on, repeat that.
- 17 Q. Family liaison officers were there, they were briefed or
18 being briefed and they were ready to go and see the
19 family?
- 20 A. You would have to ask -- I don't know enough of the
21 detail around that to say yes or no, to be honest.
- 22 Q. And you don't remember it?
- 23 A. Remember what?
- 24 Q. Well, the issue of the family and family liaison
25 officers was very important to you?

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- 1 A. Absolutely.
- 2 Q. And during your evidence the suggestion appeared to be
3 that family liaison officers would not be available
4 until the following day, the 4th but the information
5 contained in these documents suggests that on the 3rd
6 family liaison officers were within Kirkcaldy Police
7 Station and were available to see the family.
- 8 A. So what I said, I think, in previous evidence was that
9 PIRC family liaison officers were not available until
10 the 4th.
- 11 Q. But there was never any question during the 3rd that
12 PIRC family liaison officers were going to be available?
- 13 A. Well, you will have to ask PIRC about that. My point
14 was that to deploy -- eight hours later, or probably
15 more by that time, we are probably approaching 12 hours
16 later, family liaison had not been deployed. The family
17 was distressed, angry, upset, you know, as is documented
18 there. The benefit of at that point deploying
19 Police Scotland family liaison officers would have added
20 probably to that distrust.
- 21 Q. I wonder if we could look at a passage from your
22 evidence on Tuesday, which is at page 109 of the
23 transcript beginning at line 22. No? I will read it to
24 you. At page 109, line 22 you said:
- 25 "Answer: I think that was probably moving on

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1 a little bit around once the death messages et cetera
2 had been presented. I mean, it was clear to me and it
3 was clear I think to everybody at that point that to
4 then introduce Police Scotland FLOs into that family
5 dynamic was not going to add any value, because of the
6 distrust that had come because of me and my team's
7 previous -- the policing~..."

8 A. Yes.

9 Q. Does that part of your evidence sum up why
10 Police Scotland family liaison officers were not
11 deployed in the evening?

12 A. I think that is what I have been trying to explain,
13 absolutely. Due to the delay, due to the poor cause of
14 death or -- not cause of death, sorry, but the death
15 messages that has absolutely exacerbated, if that's the
16 right phrase, the situation.

17 Q. Finally, therefore, from the material you have been
18 shown this morning would you now agree that at no point
19 on 3 May 2015 was there an expectation on the part of
20 senior police officers at Kirkcaldy Police Station that
21 PIRC family liaison officers would be deployed that day?

22 A. I think my understanding or expectation is that PIRC,
23 whether the intention was or was not for them to deploy,
24 they did not have the capacity to do so.

25 Q. But there was no expectation at any stage during that

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1 day that they would be deployed?

2 A. I suppose the bottom line is that the instruction was
3 that -- from PIRC was that Police Scotland would deploy
4 FLOs.

5 MR SCULLION: Thank you.

6 LORD BRACADALE: Mr Scullion, if you can go back to your
7 seat please, and Ms Mitchell if you come forward to the
8 table.

9 Mr McEwan, you will be asked questions by
10 Ms Mitchell KC who represents the families of
11 Sheku Bayoh.

12 Questions from MS MITCHELL

13 MS MITCHELL: We heard evidence yesterday that when you
14 spoke to your colleague on the phone and found out there
15 has been a death in police custody, the first thing that
16 came to mind when you heard hesitation in his voice or
17 something in his voice was: what's the ethnicity of this
18 person? And you became aware that it was a black man
19 that had died in police custody.

20 You then went on later to explain your important
21 concerns about how the community would react to this,
22 and you said that what you wanted to do was to try your
23 hardest to ensure that disorder and looting and
24 criminality did not occur in the community. What
25 I would like to ask you is, had a white man died in

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1 police custody, would you have been concerned about
2 criminality; would you have been concerned about looting
3 and disorder? And if not, why not?

4 A. I would absolutely have been concerned. I have
5 actually -- you know, I was at that point in the police
6 for 25 years, I was actually specifically involved in
7 a set of circumstances where a white man died in police
8 custody and there was severe disorder, police vehicles
9 were set on fire and I was a young officer involved in
10 that, so yes, absolutely, that would have been a concern
11 of mine also.

12 Q. So you gave evidence yesterday at 43/22 where you said:
13 "Answer: Where men, black men had died following
14 police contact and the community impact on that around,
15 you know -- you know, in Manchester and London and I had
16 the safety of the wider Scottish population to think
17 about as well, so I wanted to try my hardest to ensure
18 that disorder and looting and other things that came in
19 other areas didn't happen in Kirkcaldy, Fife or across
20 Scotland."

21 You are saying that your clarification, "Where men,
22 black men, had died", that is not necessarily the case;
23 you would have had the same concerns if it was a white
24 man?

25 A. Well, the situation we were dealing with as in this

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1 Inquiry is a black man that died following police
2 contact so I was trying to make reference to
3 similarities. But your question was if it was a white
4 man. I have had experience of a white man dying in
5 police custody and there being rioting and severe
6 disorder, so both elements. It really depends on how
7 the community responds.

8 Q. When you said:

9 "Answer: ... you know, I had not been involved but
10 had exposure to other events, down south in particular,
11 and debriefs of them~..."

12 Were you referring to white men or black men?

13 A. Black men. Or a black man, actually. It was the
14 Mark Duggan case I was referring to, I think I maybe
15 referenced that at the time.

16 Q. Yesterday?

17 A. Yes.

18 Q. Moving on. Following on from my learned friend's
19 questions on exacerbation of the distrust to the police
20 force -- distrust of the family in relation to
21 the police force, I want to ask you about a specific
22 issue in relation to the post mortem. Now, you attended
23 at the family home and in evidence you gave evidence
24 yesterday about knowing that the head of the family,
25 Mrs Bayoh, was coming up from somewhere down south.

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- 1 A. Yes.
- 2 Q. Do you recall the family saying to you that they wanted
3 to wait until she had come up before they identified
4 Sheku Bayoh's body and before the post mortem?
- 5 A. No, I don't specifically remember that. It was more
6 general than that, bearing in mind that was you know
7 quite a frantic discussion, it was more before any
8 further activity took place, the family were wanting the
9 mum to travel up, so it was a bit more general than
10 that.
- 11 Q. When you went there to the family home, was there
12 discussion about the identification of the body of
13 Sheku Bayoh?
- 14 A. There was certainly discussion in general terms about
15 the post mortem, because they were asking, you know,
16 when would that likely be et cetera and I had explained
17 well, look it's a PIRC investigation, you know, the PIRC
18 will talk you through the chronology around that. The
19 identification specifically, I can't say yes, but it
20 would be feasible that they would ask that question.
21 That is one of the questions I would ask if I was in
22 a similar situation, I would imagine.
- 23 Q. Would it be feasible that you would have asked questions
24 of them about coming to identify the body?
- 25 A. No, because that was not my role there. That is more

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1 a FLO role to be honest with you. But, no, I was --
2 there was discussions around post mortems but it was --
3 I was very general myself because I didn't have
4 oversight or involvement in that, so it was a general
5 discussion.

6 Q. Now, you say that was a FLO role but you were there, as
7 it were, in place of the FLO; is that not correct?

8 A. No, I was there as the commander of Fife Division to try
9 and bear some accurate facts to the family around what
10 had happened, around the death of Sheku.

11 Q. But you considered at that time at least you were better
12 placed to go and speak to them in place of FLO?

13 A. There was no FLOs available at that time, so that is why
14 I went but not as a FLO, I am not a trained FLO, so that
15 is not why I was there.

16 Q. Pat Campbell gave evidence to this Inquiry on Day 49
17 about the Gold meeting post you having gone to see the
18 family, so the meeting in the evening. He was asked
19 a question by my learned friend, counsel to the Inquiry:

20 "Question: From your memory of that meeting, was
21 there -- what was the impression that you had about the
22 family's perception or attitude towards the post mortem
23 and about formal identification taking place with their
24 involvement?"

25 He said:

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1 "Answer: So my understanding from that forum that
2 I can recall was that there was still resistance from
3 the family about attending to identify Mr Bayoh prior to
4 the post mortem actually taking place the following
5 day."

6 He was questioned:

7 "Question: When you say resistance, can you help us
8 understand what your --"

9 He responds:

10 "Answer: Yeah --"

11 And then continues question:

12 "Question: -- impression was of the level of that
13 resistance?"

14 The answer is:

15 "Answer: It really came from Garry McEwan, to be
16 honest with you, and it was really about the fact that
17 they had made it clear that they would not attend for
18 the post mortem examination for the identification
19 aspect."

20 A question is asked:

21 "Question: We've heard evidence that they wished to
22 give time for the deceased's mother to arrive from
23 London before they would formally identify Mr Bayoh
24 prior to the post mortem. Do you have any recollection
25 of that being expressed at this Gold meeting?"

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1 "Answer: No. As I say, the whole aspect of the
2 post mortem identification -- liaison with the family
3 passed straight over to PIRC in respect of any
4 involvement. I had no involvement at all after this
5 forum."

6 So his recollection is that you've responded that
7 there was resistance from the family about attending to
8 identify Mr Bayoh prior to the post mortem actually
9 taking place the following day, and that they had made
10 it clear that they would not attend for the post mortem
11 examination for the identification aspect.

12 Now, does that trigger any memory in your mind about
13 conversations that were had?

14 A. No, I definitely did not have a discussion with the
15 family around whether they should or should not go to
16 a post mortem. That was --

17 Q. It is not about whether or not they should or should not
18 go to a post mortem, it was about whether or not first
19 of all in relation to identification they would identify
20 the body of Sheku Bayoh prior to the post mortem?

21 A. Again, I don't recall going into a discussion with the
22 family around -- you know, I don't recall saying to the
23 family: you'll have to identify the body before
24 a post mortem because that -- you know, I know that is
25 the procedure but that is not -- that was not the level

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1 of detail of the conversation with the family, you know
2 there was 20-odd people in that house with multiple
3 questions, that was not the level of discussion that we
4 had. There was a general discussion around post mortem
5 and I deferred that to say that is a PIRC responsibility
6 and when you meet with them they will explain the
7 chronology.

8 Q. Despite that, as you say, being the procedure, you say
9 you didn't speak to them about that?

10 A. No, we didn't get into that level of detailed
11 discussion.

12 Q. So it would be another coincidence if they understood
13 that to be the case?

14 A. I have no idea. I know they met later with other
15 members of staff, so genuinely I did not have that
16 discussion with them.

17 Q. We are talking about Pat Campbell's memory of the
18 meeting that you were at.

19 A. So I never had that discussion with the family in that
20 level of detail.

21 Q. So Pat Campbell's recollection that you had -- that you
22 came back from that meeting and that you said that:

23 "... Garry McEwan said that they had a level of
24 resistance and that they had made it clear they would
25 not attend for the post mortem examination for the

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1 identification aspect."

2 That is just wrong?

3 A. He is definitely mistaken. I never said that.

4 Q. If the family had spoken to you that they wished to wait
5 until the head of the family, Mrs Bayoh, came up the
6 next morning before identifying the body and before
7 the post mortem was carried out, they are also wrong
8 about that?

9 A. No, I think that would be a feasible question to ask.
10 I just don't recall that conversation with me and the
11 family. That is what I would expect.

12 Q. Do you see where the issue lies there? We've got the
13 family saying that they said: we don't want to talk
14 about post mortem and we don't want about to talk about
15 identifying the body until our mother comes up the next
16 morning, the head of the family. We want to wait until
17 that time. And then we have evidence in a meeting later
18 about one of your colleagues saying that you had
19 discussed the fact that -- that you had discussed in
20 that meeting that there was resistance to this very
21 thing and it came from yourself, and you are simply
22 saying that those two things are coincidence rather than
23 you perhaps not remembering that you did in fact have
24 a conversation about them?

25 A. So, I fear I am repeating myself now but I did have

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1 a conversation with the family, they raised the
2 post mortem and I explained to them that that was not
3 why I was here and that -- the chronology, the timeline
4 around identification and post mortem would come later,
5 that was not why I was there. I didn't have the detail,
6 I didn't know when these things would be happening in
7 the coming days and hours, so ...

8 Q. What appeared to have happened after that time is that
9 it was considered, at least by Pat Campbell, that the
10 family were resistant to identifying the body of
11 Sheku Bayoh and identifying -- and involvement in the
12 post mortem. But not for the reason that the family say
13 they gave. Can you see in those circumstances, again as
14 my learned friend said before, why it might be thought
15 that your involvement at that meeting with the family
16 did cause further exacerbation of the relationship
17 between Police Scotland and the family?

18 A. I don't actually, no.

19 MS MITCHELL: Thank you.

20 LORD BRACADALE: Thank you. We will have a very short
21 adjournment for administrative reasons at this point.

22 (11.09 am)

23 (A short break)

24 (11.15 am)

25 LORD BRACADALE: Mr Hamilton, do you have any application

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1 under Rule 9 too?

2 MR HAMILTON: Yes, sir.

3 LORD BRACADALE: Will you come to the table, please.

4 Rule 9 Application by MR HAMILTON

5 LORD BRACADALE: Mr Hamilton, should I ask the witness to
6 withdraw while you make the application?

7 MR HAMILTON: Yes.

8 LORD BRACADALE: Will you withdraw to the witness room,
9 please, Mr McEwan.

10 (The witness withdrew)

11 LORD BRACADALE: Yes, Mr Hamilton.

12 MR HAMILTON: Thank you, sir. There are two matters really
13 arising from the evidence we have just heard. The first
14 relates to the proper interpretation of the
15 Gold Group minutes at 14.40. It was put to the witness
16 that FLOs had been identified but the suggestion left
17 hanging that FLOs may in fact have been present and
18 I want to explore with the witness whether those
19 minutes, as he understands it, are properly understood
20 as being, if you like, prospective. It is for actions
21 to come.

22 I would be relying on the evidence of Mr Houlston,
23 which was a statement before the Inquiry.

24 LORD BRACADALE: Yes.

25 MR HAMILTON: The second matter arises from the line of

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1 questioning which is that Mr McEwan in attending or
2 answering the call from the family, becoming aware of
3 that at 4.45 whether his presence was reasonable or
4 otherwise. And in relation to that I simply wanted to
5 pick up on again, amongst other things, the statement of
6 Mr Houliston who is asked to give an opinion on this
7 matter as an expert FLO. Mr Houliston's statement was
8 referred to by my learned friend but not in this regard.

9 LORD BRACADALE: So in terms of documents that you may refer
10 to, Houliston's statement is in the system, is it?

11 MR HAMILTON: I checked this morning, sir, and both of
12 documents that I require are available.

13 LORD BRACADALE: Thank you. Very well, I shall allow you to
14 ask these questions. Can we have the witness back,
15 please.

16 (In the presence of the witness)

17 Questions from MR HAMILTON

18 LORD BRACADALE: Mr McEwan, your own counsel Mr Hamilton KC
19 has some questions for you.

20 Mr Hamilton.

21 MR HAMILTON: Thank you. Mr McEwan, I want to ask you about
22 two matters. The first is in relation to the Gold Group
23 meetings of 14.40 which were put to you earlier on and
24 we might have them become on screen. So that's PS07268
25 and you were taken down to the bullet point in relation

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1 to NOK strategy, next of kin strategy. And you will
2 remember that what was put to you in the second part of
3 that:

4 "[Next of kin] identified as sister and a FLO being
5 identified (2 x Police Scotland FLOs have been
6 identified 1 x DI as FLO to brief and co-ordinate)."

7 What was suggested at one stage was that perhaps
8 FLOs were present in the building at that point, and
9 what I want to ask you about is whether your
10 understanding of those minutes is that there were or
11 were not FLOs available at that time?

12 A. Most certainly not, they were not available at that time
13 is my understanding.

14 Q. All right. Okay. Perhaps then I can turn to the second
15 matter, which is what was put to you in relation to the
16 meeting -- your attendance at the family home which
17 arose from a phone conversation that you had had at 4.45
18 with -- who was that with?

19 A. DS Dursley.

20 Q. Yes. Am I right in saying that the evidence you have
21 given today is that the reason that you wanted to attend
22 the home is because you were asked for by name and also
23 because I think you said this morning you wanted to go?

24 A. Yes, there is two elements. One is that the family had
25 a -- a member of the family seemed to know me, and asked

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1 that I attend, I think the phrase was "within 24 hours".
2 But secondly and more importantly to me is that this
3 family had been sitting for eight hours by then and had
4 not been given any coherent explanation as to what -- or
5 how in the most basic sense Sheku had died following
6 police contact.

7 Q. When you then considered whether or not to attend, did
8 you check with PIRC in relation to whether FLOs were
9 available at that time?

10 A. Yes.

11 Q. Were you told that there were no FLOs?

12 A. Yes.

13 Q. Had you been told that FLOs were available, would you
14 have attended the house?

15 A. No.

16 Q. The reason you wouldn't have done that is ...?

17 A. Is that that is the role and the responsibility of
18 a FLO. They have -- they are trained and they are
19 experienced in undertaking the role of a FLO. I'm not
20 a FLO.

21 Q. To double-check that, I think your evidence this morning
22 was that you also spoke to a superior officer; is that
23 right?

24 A. Yes.

25 Q. And that was?

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1 A. ACC Nicholson.

2 Q. The purpose of speaking to him was precisely what?

3 A. To say that I intended to go up to the house to provide
4 the family with an explanation as to the circumstances,
5 as I understood it at that time, that led to Sheku dying
6 from police contact.

7 Q. And ACC Nicholson's response~...?

8 A. Was yes.

9 Q. He was in full support of that?

10 A. He was fully supportive, yes.

11 Q. And had he instructed you not to do so, presumably you
12 would not have attended?

13 A. Absolutely not.

14 Q. All right. I wonder if we could look at SBPI 00354.
15 I want to put this to you in the context of fullness.
16 You haven't had this statement put to you before today.
17 If we could go to paragraph 126 first and then 128, you
18 may remember that you were taken to various paragraphs
19 which I think were designed to show perhaps some unease
20 on the part of Mr Houlston, who is the family liaison
21 officer. For completeness I want to take you to
22 paragraph 126:

23 "Given that I can recall Garry McEwan visiting the
24 family, I have been asked my thoughts on Garry McEwan
25 visiting from the family from a family liaison

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1 perspective. I think I am fairly sure that I can recall
2 being told he had been asked for specifically by the
3 family. I do not know about previous contact or
4 knowledge or whether they knew each other or not.
5 I would assume that there would have been given the fact
6 that I think they asked for him, by name, I think. It
7 is unusual. It is certainly unusual, but in the
8 circumstances that were presented at that time,
9 understandable, I think, as to why that happened."

10 If we go forward to 128:

11 "I have been asked if a fair summary of my response
12 to the question regarding Garry McEwan would be that,
13 from my perspective, whilst it was unusual for someone
14 of Garry McEwan's position to go out to the family
15 before FLOs had been deployed, the circumstances
16 dictated that that actually might be quite reasonable to
17 do. Yes, absolutely."

18 Do you agree with that?

19 A. I absolutely agree with that statement.

20 MR HAMILTON: Thank you.

21 LORD BRACADALE: Thank you.

22 Mr McEwan, thank you very much for coming to give
23 evidence to the Inquiry. I am grateful to you for
24 taking the time to do that over the past days. I think
25 what we will do now is take the morning break slightly

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1 Chief Superintendent?

2 A. Yes.

3 Q. You had been in that role since July 2014 --

4 A. I had.

5 Q. -- as I understand it?

6 A. That is correct.

7 Q. So in May 2015, when the events we are involved in
8 here -- that was your rank at that date?

9 A. That is correct.

10 Q. You will see in front of you a blue folder and I want to
11 take a minute to explain to you what is in there because
12 this is for your use at any time. There are a number
13 of -- please open it. There are a number of documents
14 in there and you should have a couple of statements, we
15 will go through those in a moment. When I'm referring
16 to paragraphs and statements or documents, they will
17 also come up on the screen in front of you. Some people
18 prefer to have a hard copy and aren't comfortable
19 reading off the screen, so the hard copy is there for
20 your use if that is what you prefer. If not, I will put
21 paragraphs and things up on the screen.

22 A. Thank you.

23 Q. But if I'm asking you a question about a particular
24 document or a particular paragraph, and you think: oh,
25 there's something I would like to refer to in

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1 a different area, you just need to tell me and I can
2 make sure that comes up on the screen as well.

3 A. Okay, thank you.

4 Q. If you need any time to find it, we do have breaks, over
5 lunch we can do that, we can come back to things, or you
6 can ask me for a few minutes just to find what you
7 looking for.

8 A. Okay, thank you.

9 Q. So please take your time today. Let's start with the
10 first document that I think is in that folder. As we go
11 through documents I will give the document
12 identification number, that is really for the benefit of
13 the lawyers who are sitting behind me, and it's PS00669.
14 You will see that that has come up on the screen in
15 front of you, and you've got the hard copy.

16 This says:

17 "Witness statement."

18 It has your name on it, Lesley Boal, and the area,
19 the police station where you prepared this police
20 statement. If we move up you will see it starts:

21 "I am a Detective Chief Superintendent with
22 Police Scotland and have completed 28 years
23 Police Service."

24 So this is your statement, do you remember?

25 A. Yes.

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1 Q. I think in your Inquiry statement, which I will come on
2 to in a moment, you indicated you don't remember exactly
3 when you prepared this statement?

4 A. I don't.

5 Q. I couldn't find a date on it. But you have said in your
6 Inquiry statement at paragraph 57 that you were sent
7 a request from PIRC, quite some time after and in
8 months, so was this some months after 3 May 2015 that
9 you prepared it?

10 A. My recollection it was many months.

11 Q. When you say "many months", can you help the Chair
12 understand what you mean by that? It doesn't have to be
13 an exact number.

14 A. I can't recall but about six months.

15 Q. And that was in response to a request from PIRC?

16 A. Yes.

17 Q. We've heard evidence they were leading the investigation
18 by that stage certainly?

19 A. That is correct.

20 Q. So they sent a request and you prepared a statement and
21 this -- the statement we see here is the one that you
22 prepared?

23 A. That is correct.

24 Q. You didn't prepare one at the time?

25 A. I didn't.

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1 Q. I think in your Inquiry statement you explain that --
2 maybe let's go to the Inquiry statement for a moment.
3 Paragraph 58. I will come back to this but just so you
4 have the paragraph on the screen. You say -- you were
5 talking there about PIRC:

6 "It was unusual to prepare a statement for
7 an on-call incident. There was nothing I had done that
8 was part of the evidence chain. I would provide
9 a statement if I had been involved in the evidence chain
10 in some way such as if I had taken a statement; attended
11 and a scene; witnessed anything or taken a production.
12 Or if I had recorded a person's status as
13 a suspect/accused; interviewed a suspected person;
14 arrested a person; charged a person; took samples,
15 physical data or intimate samples from a person,
16 et cetera."

17 So those examples of things that would be done in
18 this evidence chain that you --

19 A. Yes.

20 Q. -- use, you didn't do any of that. So it wouldn't be
21 normal to do a statement after 3 May 2015?

22 A. No, and having been on call in that role for a number of
23 years before and a number of years after, I haven't
24 prepared a statement either before or after, this is the
25 only incident I have prepared a statement for.

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- 1 Q. So it's not normal practice.
- 2 A. No.
- 3 Q. You are not in a similar position to constables or
4 detectives who are involved in an investigation?
- 5 A. No.
- 6 Q. We have heard that when people are on call it can be
7 a very busy role, and there's a lot happening, is that
8 a fair reflection?
- 9 A. Yes.
- 10 Q. As a result of that, when you are on call you are
11 brought into things, suddenly brought in to be involved,
12 but may not have a long commitment to the investigation
13 as such?
- 14 A. You have awareness of a whole range of issues that might
15 be happening. But it is usually for a specific period
16 of time out of hours and then the next day normal
17 business, whichever area is responsible for it would
18 take over. So, for example, if I was on call and there
19 was a homicide overnight, I would be aware of
20 the homicide. At 8 o'clock in the morning when the
21 Detective Chief Superintendent for Major Crime came on,
22 I would then update him or her, and they would then take
23 responsibility, that being their area of responsibility.
24 Does that make sense?
- 25 Q. So you would hand it over to that person who is going to

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1 be responsible long-term for it?

2 A. Yes.

3 Q. We've heard other evidence about how often people were
4 on call. How often were you on call as
5 Detective Chief Superintendent?

6 A. Every five weeks, but there could be because of annual
7 leave or sickness or whatever, it might be a bit more
8 than every five weeks but generally there was five
9 detective chief superintendents in Police Scotland and
10 we had a week each on the rota.

11 Q. I will come back to that. We were talking about
12 the blue folder, and let's go back to your original
13 statement which was an operational statement prepared at
14 the request of PIRC. Prepared within a number of
15 months, perhaps six, after these events.

16 When you prepared this statement, was it prepared by
17 you at the request or was it -- were you given questions
18 from PIRC? Or were you just asked to prepare
19 an operational statement?

20 A. Just prepare an operational statement.

21 Q. So this was your recollection of your involvement in
22 these events --

23 A. Yes.

24 Q. -- at that time?

25 A. Yes.

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- 1 Q. Not prompted by PIRC?
- 2 A. No.
- 3 Q. When you wrote that statement, were you doing your best
4 to be accurate and to tell the truth and give as much
5 detail as you could?
- 6 A. Yes.
- 7 Q. Thank you. You've mentioned this in your Inquiry
8 statement and we've heard evidence from a number of
9 officers that often the operational statements they
10 prepare are closest to the events, and there's a feeling
11 amongst the officers that perhaps they were the
12 better -- if there is a conflict or a dispute or any
13 disagreement between what you say now today and what you
14 said then, that that might be the -- the Chair should
15 perhaps prefer the operational statement. I think you
16 comment on this in your Inquiry statement. Is that
17 the way you feel about this statement?
- 18 A. Yes.
- 19 Q. It's just to help the Chair that if he is looking at
20 perhaps a distinction between the two, he should prefer
21 the operational statement version?
- 22 A. Yes.
- 23 Q. Thank you. Can we now turn to your Inquiry statement,
24 just briefly again. You will see this will come up on
25 the screen. That was taken by a member of the Inquiry

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- 1 team on 23 September, and 4 November last year.
- 2 A. That is correct.
- 3 Q. It is 75 pages long. You have signed it on every page.
- 4 Can we look at the final page, please. Usually we have
- 5 the signature redacted on the screen but you may have
- 6 an unredacted version in your blue folder.
- 7 A. Yes.
- 8 Q. We can see there on the last page your signature there
- 9 is redacted and it was signed on 6 January 2023.
- 10 A. That is correct.
- 11 Q. The final paragraph is 353 and it says:
- 12 "I believe the facts stated in this witness
- 13 statement are true. I understand that this statement
- 14 may form part of the evidence before the Inquiry and be
- 15 published on the Inquiry's website."
- 16 A. Yes.
- 17 Q. And you realised that that was the position when you
- 18 signed all the pages?
- 19 A. Yes.
- 20 Q. So it may be this will be published on the Inquiry
- 21 website after you have given evidence.
- 22 A. Yes. Can I just say that having read it over again,
- 23 there are some inaccuracies in it.
- 24 Q. Yes, and I want to go through those with you now. We
- 25 will get this out so that you can make it very clear to

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1 the Chair what you are happy with and what you are not.

2 I have been told that there is an issue in relation
3 to paragraph 26 of your Inquiry statement, if we can go
4 to that. This relates to a paragraph headed "Training",
5 is that the correct one?

6 A. Yes.

7 Q. It is about the training you had as a senior
8 investigating officer:

9 "... which is probably the most relevant to the
10 duties of the CID at that point which would have been
11 the investigation of the death. [You are] not trained
12 in post-incident management."

13 You say:

14 "There was training available for that."

15 Now, I know there is an issue about the way this
16 paragraph appears, about the training for post-incident
17 management. Would you like to explain to the Chair
18 exactly what the position is?

19 A. So when I was giving my statement, my recollection,
20 because it had been quite a number of years previously,
21 was that I was meant to attend post-incident management
22 training for firearms incidents. However, subsequent to
23 giving my statement I have found an email which I had
24 sent to my own personal email address because it had
25 joining instructions for this course, and what we had to

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1 take with us, and a map of where we were going. But it
2 was clear on the joining instructions that it wasn't
3 a post-incident management course, it was a pilot course
4 for investigators and how they would interact with
5 post-incident managers. So it was that training as to
6 bridge the gap between SIOs and PIMs, it was a pilot
7 course, it had never been run before, it was being run
8 by the National Police Improvement Agency, NPIA. And it
9 was a course that had been developed by
10 the Metropolitan Police and they were going to pilot
11 this course for other areas, and depending on our
12 feedback they may review it and then roll it out.

13 So part of that -- or the joining instructions, we
14 had pre-read material, and we also had to complete
15 an exercise, probably just a knowledge check that we had
16 read the material and understood it.

17 So the course was to start on the Monday,
18 Keith Hardie and I had been selected from Lothian and
19 Borders Police as SIOs to go on the course. And my
20 recollection was -- all the arrangements were in place
21 in terms of how we were going to get there, my
22 recollection was either late Friday night or even
23 Saturday morning we got a phone call to say the course
24 had been cancelled so we didn't actually go. But in
25 terms of the pre-read material and the exercise, I had

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- 1 completed it.
- 2 Q. This is -- I am interested in this. You say it was run
- 3 by the NPIA?
- 4 A. Yes, National Policing Improvement Agency.
- 5 Q. What date -- do you remember the year that you were
- 6 attending or due to attend this training?
- 7 A. I should have looked at the email. I think it was --
- 8 I think it was 2011.
- 9 Q. Do you still have that email?
- 10 A. I do.
- 11 Q. Would it be possible ...?
- 12 A. Yes.
- 13 Q. Lovely, thank you. You anticipate my question. It
- 14 would be helpful to see -- you say this was a pilot
- 15 course?
- 16 A. Yes.
- 17 Q. How many people were going to attend that course?
- 18 A. I don't know but on the original email there's a list of
- 19 people who it was sent out to. From recollection it is
- 20 not a large list. It was people who were going to
- 21 attend the course, so you will have some sort of idea of
- 22 what the course size might have been.
- 23 Q. You say that two were picked from Lothian and Borders?
- 24 A. Yes.
- 25 Q. This is pre-Police Scotland?

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- 1 A. Yes.
- 2 Q. It would be legacy forces at that time?
- 3 A. Yes.
- 4 Q. Were there others from other regions or areas,
5 divisions?
- 6 A. To my recollection not in Scotland. I think there was
7 maybe Greater Manchester Police or -- you know, it was
8 other forces in England and Wales.
- 9 Q. We've heard evidence previously in the Inquiry from
10 a Conrad Trickett, who we understand was appointed
11 post-incident manager on 3 May 2015. He gave evidence
12 about -- Pat Campbell hadn't been PIM trained,
13 Conrad Trickett had been and he talked about speaking
14 a different language. I am interested in you saying
15 this course was designed to bridge that gap. Had you
16 had any training at that stage about post-incident
17 management?
- 18 A. No.
- 19 Q. By May 2015 had you had any training?
- 20 A. No.
- 21 Q. Had you experienced, either before 2015 or after,
22 dealing with post-incident managers and maybe finding
23 you were speaking a different language or that there
24 were issues about communication?
- 25 A. No, I had no experience after this incident where

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1 post-incident managers were deployed.

2 Q. Did you have any experience prior to 2015.

3 A. No.

4 Q. Thank you. As well as that paragraph, I think there was
5 maybe just a typo in paragraph 197 that you wanted to
6 draw to the Chair's attention?

7 A. Yes.

8 Q. If we can look at 197 and let's just get that on the
9 screen. This relates to a later point in the day. We
10 will come through -- we will go through things in
11 chronological order but it relates to a forensic
12 strategy meeting at 4.45. This is on 3 May 2015 and
13 then you say:

14 "I can't recall if that is right. If PIRC were
15 there in that meeting then I wasn't there. I wasn't
16 aware about Stuart Houston being Crime Scene
17 Coordinator."

18 I understand you wish to change that?

19 A. Yes, I was aware.

20 Q. You were aware. So it shouldn't say "wasn't aware", it
21 should say "was aware"?

22 A. Mm-hm.

23 Q. Thank you very much. Were you -- otherwise, apart from
24 those two paragraphs, were there any other issues you
25 wanted to raise?

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- 1 A. No.
- 2 Q. Thank you. You have also I think a hard copy in there
3 and I won't bring this up on the screen. We have been
4 provided with SCOPE records from Police Scotland for
5 individual officers, do you have your SCOPE records
6 there?
- 7 A. Yes.
- 8 Q. I won't be asking you particular questions about that
9 but is the copy in your folder a copy, accurate copy of
10 your SCOPE records?
- 11 A. Yes.
- 12 Q. For the lawyers in the room that is PS18518. But
13 I won't bring that up at this stage. You've also
14 requested -- you requested a copy of your day book?
- 15 A. Yes.
- 16 Q. To make that available. We've heard other evidence
17 about day books, and the use that people would put them
18 to, and how important they were to people's
19 recollection. Is that -- is that the reason that you
20 wanted a copy of your day book?
- 21 A. Yes.
- 22 Q. Tell us about your practice with the day book.
- 23 A. I always kept comprehensive notes in my day book.
- 24 Q. We've been advised that despite extensive searches, for
25 retired officers, such as yourself, it has not been

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1 possible to trace those day books. But I understand
2 that you may feel that might put you at a slight
3 disadvantage in relation to giving help to the Chair in
4 the Inquiry. Is that fair to say?

5 A. It may, it may.

6 Q. If you feel you are at a disadvantage or you may have
7 had an answer in your day book -- I'm sure maybe one day
8 they will turn up -- could you point that out to us, so
9 that the Chair is aware of that, if you feel that there
10 would have been evidence available.

11 When you prepared your operational statement
12 six months after, would you have had access to your day
13 book at that stage?

14 A. Yes.

15 Q. Would you have used the entries in the day book to
16 refresh your memory?

17 A. Yes.

18 Q. Thank you.

19 A. But saying that, probably -- well, I would have had more
20 comprehensive notes in my day book as opposed to
21 preparing an operational statement.

22 Q. I see that. So we've taken evidence from some officers
23 who remain in service, and their day books have a lot of
24 notes and writing which doesn't -- it is not a mirror
25 reflection of what they have in their statements, so we

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1 will bear that in mind also.

2 A. Thank you.

3 Q. Are there any other documents that you would have liked
4 to have that we've not been able to provide you with?

5 A. I can't think at this moment.

6 Q. If anything springs to mind, just let us know.

7 A. Okay, thank you.

8 Q. I would like to begin by looking at your experience.
9 Can we go back to your Inquiry statement and first of
10 all, I think we don't need to go to this paragraph but
11 at paragraph 209 you said you never worked in
12 Fife Division. Is that correct?

13 A. No.

14 Q. So that -- you have mentioned Lothian and Borders, is
15 that where you were largely based?

16 A. Yes.

17 Q. Then if we can look at paragraph 26. We looked at this
18 a moment ago. You said you were a trained SIO?

19 A. Yes.

20 Q. Can I ask, how long -- as well as being trained, had you
21 experience of investigations in the role of SIO?

22 A. Yes.

23 Q. How many years did you act as an SIO?

24 A. Can I look at my training record, just to~...

25 Q. Please do. As I say, anything in the blue folder you

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1 should feel free to look at.

2 A. So the training record states I was trained in 1996 as
3 an SIO.

4 Q. Does that accord with your recollection?

5 A. No, it doesn't actually.

6 Q. What is your recollection?

7 A. So ... 1996 ... sorry (Pause).

8 So I would have had to have been promoted to
9 inspector rank to attend the SIO course and have been in
10 the CID, so when I was promoted to inspector I had
11 a year in uniform before going into the CID. My
12 recollection would have been round about 2002.

13 Q. That you were promoted?

14 A. I think I was promoted to uniform inspector 2002, so
15 I would say maybe 2003 I would have attended the SIO
16 course. Then from then as a DI, as
17 a Detective Inspector, you would be appointed SIO.
18 I was a Detective Chief Inspector not in division but in
19 what is now known as Counter Corruption, and in addition
20 to an SIO I was trained as a Counter Corruption senior
21 investigating officer. And then I have undertaken SIO
22 duties on a number of occasions, mainly as
23 Detective Inspector, but thereafter.

24 Q. Can you help the Chair understand how many years you
25 were appointed as senior investigating officer to

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1 investigations?

2 A. Probably the majority of time would have been as
3 a Detective Inspector operationally, so that would have
4 been maybe two years as a Detective Inspector and then
5 in Counter Corruption another two years, and then
6 depending -- I think as a Detective Superintendent you
7 don't normally take on SIO duties but you may in certain
8 circumstances.

9 Q. Did you in certain circumstances take on those duties
10 once you had reached that rank?

11 A. On one occasion as a Detective Chief Superintendent
12 I did.

13 Q. Thank you. Can you help us understand how many
14 investigations you have been involved in where you were
15 SIO? That might be a difficult question.

16 A. I don't know.

17 Q. Can I ask you to look at paragraph 14 of your Inquiry
18 statement. Maybe we can just look further up slightly.
19 We see here this is a paragraph headed up, "Experience
20 in cases in which race was a factor". I will read out
21 paragraph 14:

22 "Race was factor in one case I investigated. It was
23 a complaint against two South Asian officers by a male
24 of the same ethnicity. The allegation was related to
25 cultural practices. I would say I needed a level of

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1 cultural awareness to investigate that. We had the
2 assistance of an adviser, an expert. We would describe
3 the situation to the adviser and we would plan
4 a strategy. They would consider whether any of our
5 proposed actions would inflame a situation or cause
6 distress or alarm. It was more about cultural
7 appreciation and understanding."

8 I'm interested in the work you were doing with the
9 adviser. Can you tell us a little more about that?

10 A. Yes. So there were certain parts of the investigation
11 that were very sensitive and we were going to have to
12 speak to community ... what is the best way to describe
13 it, individuals who were community leaders or --

14 Q. We have heard about individuals called lay advisers, is
15 it not that?

16 A. No, this was individuals that we were going to have to
17 speak to as part of the investigation.

18 Q. I see. Sorry.

19 A. So it was an imam that we were going to have to speak
20 to, and it was going to be very sensitive. The issue
21 was what was the best way to do it, I had an idea,
22 however, I wasn't sure it was the best plan. So the
23 adviser and I had a meeting just to talk round how we
24 could or what was the best way to approach this very
25 sensitive subject and how to approach and obtain

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1 a statement from the individual.

2 Q. Was that of assistance to you in your strategy, that

3 meeting with the adviser?

4 A. Greatly, because my original plan, which I had thought

5 about quite carefully, actually having spoken to the

6 adviser, that was completely changed.

7 Q. Can you tell me roughly when was this investigation?

8 A. So it would have been 2006 perhaps.

9 Q. Can you explain to us how it was that an adviser was

10 brought in to the investigation to assist you? Was it

11 at your request or --

12 A. Yes, yes.

13 Q. Is that -- was that a facility that was open to you at

14 any stage if you felt it was necessary?

15 A. Absolutely.

16 Q. Had you had -- had there been awareness raising or

17 training that allowed you to understand how you could

18 perhaps benefit from the assistance of an adviser?

19 A. Not specific training, I suppose we had -- you know,

20 there was a cultural awareness thread through probably

21 all training or most training, but it was very high

22 level. But there was clear awareness within Lothian and

23 Borders Police that there were advisers available if

24 they were required for a whole range of subjects, not

25 just ethnicity or faith or belief; if you required their

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1 assistance then they were there for you and it was
2 really helpful.

3 Q. Thank you. Can I ask you to look at paragraph 12 of
4 your Inquiry statement. This is headed up, "Background
5 in Professional Standards". Perhaps we can look up
6 a little. Let's go back to paragraph 12. I want to ask
7 you about your background in Professional Standards,
8 certainly:

9 "... in 2006 I was appointed [Detective
10 Chief Inspector] in charge of Lothian and Borders
11 Counter Corruption Unit ..."

12 Is that what you were talking about a moment ago?

13 A. Yes, that is what it's now called. It was previously
14 called Professional Standards, and what was -- what is
15 now called Professional Standards used to be called ...
16 Complaints and Conduct.

17 Q. I had better get this noted down, because we have heard
18 evidence from people about the Professional Standards
19 department.

20 A. Yes.

21 Q. When you've referred here to saying something was
22 previously called Professional Standards, is that
23 a different department?

24 A. So what was previously -- in Lothian and Borders Police
25 what was previously called Professional Standards is now

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1 called Counter Corruption. What was previously called
2 Complaints and Conduct is now called Professional
3 Standards. So they are two different units, one name
4 has swapped and one has been given a new name.

5 Q. I am going to have to write that down to remember it.
6 Okay. So you were in, in any event, the current name is
7 Lothian and Borders Counter Corruption Unit?

8 A. Yes.

9 Q. Does that relate to complaints about the conduct of
10 police officers, or is more than that?

11 A. No, it is specifically what could be described as
12 corrupt practices. So it has to be criminal. It is not
13 misconduct. And it is not all criminal conduct, it is
14 corrupt or potentially alleged corrupt practices.

15 Q. Can you help the Chair by giving an example of the sort
16 of corruption that you are talking about.

17 A. I have given a couple in my statement because they are
18 probably in the public domain so that would be easy,
19 but -- so for example, a serving police officer being
20 involved in the supply of controlled drugs and being
21 linked to organised crime. It could be officers and
22 police staff providing police information to others,
23 including the media, sensitive information, personal
24 information. On another occasion it was police officer
25 involved in potential sexual crime and data protection

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- 1 breaches.
- 2 Q. You were in that unit for how long?
- 3 A. I think about --
- 4 Q. A couple of years?
- 5 A. A couple of years, yes.
- 6 Q. I understand that is the unit's role. Can I ask you
- 7 about matters involving the Police Service of Scotland
- 8 Conduct Regulations 2014, so that is the regulations we
- 9 are interested in, in relation to this. But generally
- 10 in relation to misconduct, complaints and conduct
- 11 regulations, from what you've said, would that always be
- 12 an aspect of the unit's work? If someone is involved in
- 13 corrupt practices then would there always be some sort
- 14 of potential misconduct aspect as well as the potential
- 15 criminal conduct?
- 16 A. Yes. However, in terms of Counter Corruption, we dealt
- 17 with the alleged criminality and what is now
- 18 Professional Standards, once we had finished our
- 19 investigation, they would then look at the conduct or
- 20 misconduct aspect of it. So in Counter Corruption we
- 21 didn't deal with the misconduct.
- 22 Q. So did you -- you didn't deal with that at all?
- 23 A. No.
- 24 Q. You dealt with the potential criminal allegations?
- 25 A. Yes.

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- 1 Q. The other department --
- 2 A. Yes.
- 3 Q. -- would they always wait until you had finished
4 considering criminal allegations?
- 5 A. In my experience, yes.
- 6 Q. Was that a policy, an arrangement between the two
7 departments that they would always hold off until you
8 had completed your investigation into the corruption?
- 9 A. From recollection the misconduct side of it would be
10 held -- put on hold until any decision that
11 Crown Office/Procurator Fiscal would wish to make.
- 12 Q. So your investigation is into possible criminal
13 allegations?
- 14 A. Yes.
- 15 Q. Would you prepare a report for the Fiscal at some point?
- 16 A. Yes.
- 17 Q. That would be considered. And the Fiscal would then
18 have the responsibility of deciding if there is to be
19 any criminal charges levelled against the officer?
- 20 A. Yes.
- 21 Q. So once that decision had been made, then the other
22 department, now called Professional Standards, could
23 take the misconduct -- possible misconduct proceedings
24 forward separately within that department?
- 25 A. Yes, in terms of a misconduct investigation. Yes.

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1 Q. Can you help me understand what would happen -- you've
2 carried out an investigation into possible corruption,
3 the Crown has said: we are not going to prosecute, it
4 would be at that stage that the matter would be handed
5 over to the other department?

6 A. The other department would be aware of it already.
7 I suppose the decision ultimately rests with the
8 Deputy Chief Constable, who would have been aware of
9 both the criminal aspect of it and the conduct or
10 potential conduct aspect of it. I think there is --
11 I think there is the ability to continue with misconduct
12 when there's a criminal investigation ongoing, but from
13 recollection I think -- well, my experience was it was
14 always -- Professional Standards were always aware of
15 it, already aware of it but, in actual fact, the
16 proceedings didn't start until after a criminal
17 investigation was completed, or there was a decision
18 from Procurator Fiscal.

19 Q. What would happen if the Crown reserved the right to
20 prosecute? So they don't say: we are prosecuting or
21 we're not prosecuting, but they say we're reserving the
22 right to think about this in the future, what would
23 happen in relation to the other department?

24 A. I can't say for certain. I don't think I have been
25 in that situation, but I would believe that the

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1 misconduct or the conduct investigation could still
2 progress. I'm not certain but just thinking about
3 the matter, I think it would.

4 Q. Perhaps you can help me with this, it wouldn't be the
5 situation, as far as you are aware, in your experience,
6 that it would simply defer misconduct proceedings
7 indefinitely for all time coming until the Crown will
8 maybe review matters?

9 A. I can't think of a case that I've experienced so I'm
10 just thinking ... logically, that actually if there is
11 misconduct there would be no reason -- I can't think of
12 a reason why that couldn't continue if a case was just
13 being held in abeyance by Crown Office.

14 Q. Thank you. Have you come across any situations in the
15 experience you had with the Counter Corruption Unit
16 where there have been proceedings running in parallel?

17 A. No.

18 Q. Could we look at paragraph 351 of your Inquiry
19 statement, please. You say here:

20 "I sat on a disciplinary hearing as
21 a Superintendent~..."

22 A. Yes.

23 Q. So this was before you were appointed as
24 Chief Superintendent?

25 A. Yes.

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1 Q. "... where the allegation against the officer was for
2 conduct which involved racial communications.
3 I remember it was totally inappropriate verbal and
4 electronic communications. If I remember correctly the
5 outcome of the hearing was the officer was dismissed
6 from Lothian and Borders police. Over the years I would
7 have been aware of others but can't give specific
8 examples."

9 Can you tell us about your experience of sitting on
10 disciplinary hearings; how did you become involved in
11 that as Superintendent?

12 A. This was going back to the previous conduct regulations,
13 so I know there is the 2014, 2013 this was the one
14 before, 1996 I think they might be.

15 Q. Oh, right.

16 A. So in those occasions -- the process has changed now, so
17 in those occasions the decision was -- the hearing was
18 Chief Superintendent as the Chair supported by two
19 Assessors who were of Superintendent rank. So the Chair
20 and the two Assessors would hear all the evidence, and
21 there was discussion between the Chair and the Assessors
22 as to outcomes.

23 So on this occasion the decision, if I remember
24 correctly, was that the officer was discharged from duty
25 or dismissed from duty and if I -- I think it is this

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1 case, my recollection is that the officer appealed and
2 from the old regulations the appeal went to the
3 Chief Constable initially and by the time it went to the
4 appeal, the Chief Super who had been the Chair of the
5 hearing had retired, and I then was able to evidence to
6 the Chief Constable why we took the decision and the
7 rationale for taking the decision to dismiss the
8 officer. If that is the right case.

9 Q. Did you remain a superintendent at that time?

10 A. I was a superintendent at that time.

11 Q. In terms of when this took place, can you help us
12 understand which year it was or roughly?

13 A. I think it would probably be about 2010/2011.

14 Q. You have said that:

15 "... over the years I would have been aware of
16 others but I can't give specific examples."

17 Is that because of a lack of memory or because
18 perhaps they were confidential as part of your role
19 involved in these types of hearings?

20 A. I'm not specifically sure in terms of whether this was
21 in relation to the type of cases that we were dealing
22 with or I was sitting as Chair, but within
23 Police Scotland as a Chief Superintendent under the new
24 regulations I was the Chair for misconduct hearings on
25 a few occasions, three or four occasions. The vast

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1 majority was in relation to misconduct relating to
2 inappropriate sexual conduct.

3 Q. Any in relation to race?

4 A. No.

5 Q. So your work with these hearings initially as
6 a superintendent rank?

7 A. Yes.

8 Q. Supporting a chief superintendent?

9 A. Yes.

10 Q. And then, when you were promoted yourself to
11 Chief Superintendent, you would be taking the role of
12 the Chair?

13 A. Yes.

14 Q. Thank you. In terms of your awareness of specific
15 examples regarding racial allegations of some sort, of
16 discriminatory behaviour, do you remember if you
17 personally dealt with others or just had an awareness of
18 them?

19 A. Yes, just an awareness.

20 Q. Can I ask you to look at paragraph 104, please. Again
21 I am just trying to understand Professional Standards
22 and their role at this stage.

23 A. Yes.

24 Q. You have said here:
25 "Craig Blackhall ..."

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1 We have heard his name mentioned by other witnesses.

2 A. Yes.

3 Q. "... was Superintendent in Professional Standards, based
4 in Aberdeen."

5 Just to be clear, this was in May 2015?

6 A. Yes.

7 Q. And by this stage you were Chief Superintendent?

8 A. Yes.

9 Q. So he is a rank below you?

10 A. Yes.

11 Q. And he is in Professional Standards. Is that the new
12 Professional Standards, if I can call it that?

13 A. Yes.

14 Q. You say he is based in Aberdeen. Are Professional
15 Standards based in Aberdeen, or is that just individual
16 superintendents?

17 A. That is where Craig Blackhall is based, there are
18 Professional Standards all over Scotland.

19 Q. So he was a superintendent and you've said:

20 "In terms of advice and investigation of police
21 officers Craig was senior in the role he's very
22 knowledgeable and approachable. I don't know the extent
23 of his involvement in this investigation."

24 A. That is correct.

25 Q. But you were aware of him. Was that from your previous

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1 work with Professional Standards, if I can call it that?

2 A. I dealt with Craig on a number of occasions, when I was
3 Detective Chief Superintendent Public Protection, when
4 my investigation teams were carrying out allegations of
5 criminal -- criminal conduct by police officers, so in
6 my -- I would call it Gold meeting, so whilst not
7 declared a critical incident, I used the Gold structure
8 all the time in terms of investigations that my national
9 investigative teams were carrying out, because it is
10 a good structure to have, and when we were carrying out
11 those investigations I was Gold, the
12 Detective Superintendent of the area of business, so if
13 it was a report of a police officer had committed
14 a rape, I would be Gold, the Detective Superintendent
15 Rape and Sexual Crime would be Silver and then
16 underneath that would be the Bronzes, and Craig or
17 a member of his staff would attend the meeting as Bronze
18 Professional Standards.

19 Q. Bronze Professional Standards?

20 A. Yes.

21 Q. I'm interested in your use of the Gold structure. So
22 you have said for example an allegation an officer has
23 carried out a rape, this related to your Counter
24 Corruption work?

25 A. No, no this was when I was Chief Superintendent for

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1 Police Scotland for Public Protection.

2 Q. Right.

3 A. Just to give some context, part of my responsibilities
4 were I had a number of national investigation teams, so
5 I had the National Rape Taskforce, so each local
6 division has their own rape investigation team but
7 sitting above that is the National Rape Taskforce, which
8 normally takes on rape investigations where they are
9 either complex, they cross divisional boundaries, they
10 may involve a person of public prominence, or on
11 occasions we would investigate police officers, to take
12 it away from the divisions, to have that level of
13 independence or as far as possible independence.

14 So we would use the -- I would use the Gold
15 structure because it is a good structure to use. In
16 terms of everybody being there, so Craig or somebody
17 from Professional Standards would come as Bronze
18 Professional Standards so that they would be aware of
19 what was happening on the criminal investigation and be
20 aware of what potential conduct could come out of that
21 investigation.

22 Q. Right. How many Bronze commanders would you have at
23 these --

24 A. So it depends, each -- each investigation or incident is
25 unique, so you could have a number. For doing

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1 investigations like this, you would have Bronze
2 Investigation, so that would be the SIO; you would have
3 Bronze Professional Standards, for the conduct side; you
4 would have a Bronze from the division that the officer
5 was based in, and that would be around the officer
6 himself, his welfare but also sort of community impact
7 and policing because there might be issues in the
8 station or the division that that officer was working in
9 depending on what was the alleged criminality. You
10 would have Bronze Media. But, you know, it -- it
11 depends what the situation is and what you would want.

12 Q. So you would tailor your selection of Bronze commanders
13 to the particular circumstances?

14 A. To the incident, yes. And on occasions you could invite
15 people in, who didn't -- who weren't part of that
16 hierarchical structure of Bronze, Silver and Gold.
17 I can give an example if you want.

18 Q. Please do.

19 A. So our response to the revelations in child abuse in
20 football was significant and as part of that we invited
21 in external representatives, so we had an external
22 representative from SFA, from the Professional
23 Footballers Association, and I had spoken with Gold and
24 said we needed somebody from the children's side of
25 things, so a CEO of a children's advocacy and support --

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1 children's rights group was brought in, in terms of
2 giving Gold advice and assistance in terms of, it might
3 be media messages or to try and get some community
4 impact from children as to how this investigation could
5 interact or could affect them. Maybe children and
6 families.

7 Q. Thank you. You have talked about having Professional
8 Standards as a Bronze commander.

9 A. Yes.

10 Q. What were the benefits of having Professional Standards
11 brought in to the Gold Group?

12 A. It wasn't -- it wasn't so much as in terms of the
13 investigation itself, it was more an awareness for
14 Professional Standards and knowing that there was -- you
15 know, the two procedures, albeit they weren't running in
16 parallel at that time but there was an awareness of what
17 was happening with the individual. And there might have
18 been other conduct issues that might have fallen out of
19 the criminal investigation. So there might have been
20 conduct issues in relation to other officers not
21 involved in the criminal investigation but had been
22 highlighted through the criminal investigation.

23 Q. So Professional Standards could be made aware by their
24 presence of what is happening, but also could contribute
25 to the Gold Group?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. Thank you. And Superintendent Blackhall took on that
3 role a number of times, did you say?
- 4 A. Yes.
- 5 Q. As Bronze commander for Professional Standards?
- 6 A. Bronze Professional Standards, yes.
- 7 Q. Was that in relation to situations where officers were
8 accused of criminal offending?
- 9 A. Yes.
- 10 Q. So was that something you did as a matter of course when
11 you were Chief Superintendent --
- 12 A. Yes.
- 13 Q. -- if you were involved in an investigation and using
14 the Gold structure?
- 15 A. If it was an investigation that one of my teams were
16 undertaking, I was Gold. If it was in relation to
17 a police officer, then there would be a Bronze
18 Professional Standards. They may not attend every
19 single meeting, but they were definitely on the
20 structure.
- 21 Q. Thank you. From your own experience using that
22 structure, and using Professional Standards as a Bronze
23 commander, did you see any benefits of that, including
24 them into that structure, and if so could you give us
25 an example?

Transcript of the Sheku Bayoh Inquiry

1 A. So not specifically benefits to the investigation or to
2 me as Gold, I think it was more -- I think you would
3 probably have to ask Craig Blackhall or Professional
4 Standards what the benefits were in terms of considering
5 maybe other misconduct or when conduct proceedings
6 started in relation to the officer.

7 Q. I think we are intending or maybe have spoken to Craig
8 Blackhall and hope to find out more about this. We've
9 heard evidence that some contact had been made with
10 Craig Blackhall in relation to this incident?

11 A. Yes.

12 Q. Did you have any involvement with Craig Blackhall as
13 part of --

14 A. No, I didn't.

15 Q. No. In relation to your involvement with the Gold Group
16 structure in relation to this incident --

17 A. Yes.

18 Q. -- do you remember having discussions about involving
19 Professional Standards or Craig Blackhall in particular?

20 A. No. That is not to say it didn't happen, I just can't
21 remember.

22 Q. You weren't part of that?

23 A. I don't recall that.

24 Q. Were you ever asked for advice -- having had experience
25 of corruption, Professional Standards, were you ever

Transcript of the Sheku Bayoh Inquiry

1 asked to give any input or advice in relation to that?

2 A. No, because I -- I couldn't in terms of conduct or
3 misconduct because it's something that I was -- you
4 know, wasn't part of my role in terms of either the
5 investigation side.

6 Q. So it wasn't part of your role in relation to this
7 incident?

8 A. No.

9 Q. Let's turn to your involvement that day. We know you
10 were Detective Chief Superintendent. I think your
11 responsibilities on call at that day included Kirkcaldy.
12 Can we look at your Inquiry statement, paragraph 85,
13 please. I think you say you appointed the SIO, so it
14 was your task to appoint -- we have heard it was
15 Pat Campbell you appointed?

16 A. Yes.

17 Q. And:

18 "The policy on deaths at that time was if there was
19 an unexplained death then the on-call DSU would
20 attend~..."

21 So that is a Detective Superintendent?

22 A. Yes.

23 Q. "I think the policy was eventually changed because it
24 was unworkable. It was without question that
25 Pat Campbell would be attending Fife after the death.

Transcript of the Sheku Bayoh Inquiry

1 In the circumstances there was no alternative other than
2 for him to take the role of SIO."

3 I'm interested in this paragraph. So you appoint
4 Pat Campbell as SIO. I think we have heard that he was
5 on call that day. He was the on-call
6 Detective Superintendent?

7 A. Yes.

8 Q. You say that at that stage it was without question that
9 he would be attending Fife after Mr Bayoh died. As
10 I understand it, that was his -- part of his role as
11 on-call Detective Superintendent?

12 A. Yes.

13 Q. You say that the policy was eventually changed because
14 it was unworkable. Can you tell us a little bit more
15 about that?

16 A. I think it was. I think it was the fact that the
17 expectation for the detective superintendent to attend
18 every unexplained death on call -- whilst that sounds
19 okay in the central belt of Scotland, there was
20 difficulties the expectation that the
21 detective superintendent for, say, the north of the
22 country could attend every unexplained death,
23 for example if they were based in Dundee and the
24 expectation that they would attend Fort William or
25 somewhere else in the Highlands and Islands on every

Transcript of the Sheku Bayoh Inquiry

1 occasion when there was an unexplained death, when there
2 was already an SIO there. So there would have been
3 a detective inspector or above, so it could be
4 a detective inspector or a detective chief inspector who
5 was on call in the local division, they would absolutely
6 attend because they would be SIO but the expectation
7 that the detective super would have to go there as well
8 and provide that support out of hours on every occasion
9 there was an unexplained death, I think -- I believe it
10 was just seen as to be unworkable. That is not to
11 say -- probably detective superintendents will go out
12 but I think the "must" go out, I think that was relaxed
13 a bit.

14 Q. Did that policy or any other policy require you as
15 Detective Chief Super to attend an unexplained death?

16 A. No. I could maybe go into it a bit more about my
17 appointment of Pat Campbell because it's probably not --

18 Q. Please do, yes. That was literally the next section
19 I was going to ask you about, so please do. I am very
20 interested -- we have heard some evidence that there was
21 a call, and you appointed him?

22 A. I suppose just in terms of my appointment, I wouldn't
23 normally appoint the SIO because if there was,
24 for example, a homicide the on-call -- if it was out of
25 hours the on-call detective inspector or detective

Transcript of the Sheku Bayoh Inquiry

1 chief inspector would automatically become SIO, initial
2 SIO for the homicide and the detective superintendent
3 would support, either remotely or by attendance.

4 So, having been informed of this circumstance, the
5 issue was could a detective inspector from Fife be
6 appointed the SIO? Which was, no. That is not
7 happening.

8 Q. For people who are listening, can you explain why you
9 are saying no?

10 A. Well, the grave nature of our initial information that
11 a male was gravely ill, unresponsive following police
12 contact and restraint, so a detective inspector from the
13 local area would be completely inappropriate. Another
14 reason was the grave nature of it. I wanted an SIO of
15 sufficient rank and a detective superintendent is not
16 normally appointed SIO. It's out of the ordinary. But
17 in these circumstances I believed it needed
18 a detective superintendent as SIO. I wanted
19 a detective superintendent who had had no footprint on
20 Fife Division and I knew Pat Campbell hadn't. He was
21 a legacy Strathclyde officer who had, the year before,
22 taken over my previous job as Detective Superintendent
23 Lothians and Scottish borders, so there was no history
24 with Fife Division. So -- and he would be attending
25 anyway to a certain extent so that was the decision, to

Transcript of the Sheku Bayoh Inquiry

1 appoint him SIO.

2 Q. How was it you -- this incident was brought to your
3 attention?

4 A. My recollection is a phone call from -- the
5 Chief Superintendent of Fife Division, Garry McEwan,
6 phoned me.

7 Q. What steps did you take at that stage? So you have
8 heard of the incident from Garry McEwan, you have taken
9 the decision to appoint a senior rank, Pat Campbell, as
10 the SIO, what did you -- what steps did you take at that
11 stage in relation to your involvement?

12 A. So I think I asked Pat Campbell to get in contact with
13 the division to see if we can get some further
14 information. And at that point we were shortly going
15 into the -- well, executive meeting in the morning, so
16 at that point Pat was appointed and it was waiting to
17 hear back from Pat what the situation was.

18 Q. We've heard evidence that the events took place after
19 7.20 in the morning.

20 A. Yes.

21 Q. That Mr Bayoh was taken by ambulance to
22 Victoria Hospital, and then shortly after 9 o'clock in
23 the morning life was pronounced extinct?

24 A. Yes.

25 Q. And Garry McEwan declared a critical incident at

Transcript of the Sheku Bayoh Inquiry

1 0910 hours in the morning, shortly after he was informed
2 that Mr Bayoh had died. Now, you've talked about
3 appointing the SIO because at that stage it was a grave
4 situation. When you appointed Pat Campbell, was
5 Mr Bayoh still alive at that stage?

6 A. Yes.

7 Q. Was he in the hospital in a grave situation?

8 A. Yes.

9 Q. When did you find out that he had passed away?

10 A. From recollection I think it was just before -- I'm not
11 100% sure. It was the 9.30 executive meeting.

12 Q. We've heard there was a 9.30 teleconference meeting,
13 a sort of -- it wasn't particular to these events, that
14 it was a meeting that was held --

15 A. Yes.

16 Q. And the ACC Nicholson would host that?

17 A. If I can refer to my statement, my initial statement,
18 I have put:

19 "At 0930hrs same date I took part in the routine
20 executive conference~..."

21 Q. Sorry, can I pause you there. Which statement are you
22 looking at?

23 A. So it's my statement to --

24 Q. Is it the Inquiry?

25 A. No.

Transcript of the Sheku Bayoh Inquiry

1 Q. Is it the operational --

2 A. Operational statement, page 2.

3 Q. We will just get that back up on the screen so we can
4 see where we are. I think we have four pages of this
5 statement, which page are you on?

6 A. Page 2.

7 Q. Which paragraph? Roughly where in the page can we find
8 what you are reading from?

9 A. Paragraph 4.

10 Q. Paragraph 4 so that is paragraph 4 starts:
11 "At 0930hrs same date ..."
12 That is on our screen.

13 A. "... I took part the routine executive conference which
14 reviews significant events over the preceding 24 hours
15 and plans for known events taking place in the
16 succeeding 24 hours. During this time I was informed
17 that the male ..."

18 That is wrong. I think that should be "who I now
19 know to be Mr Bayoh~..."

20 Q. Right. You didn't know who it was at this moment in
21 time?

22 A. No, no:
23 "... had died at 0910."
24 So I don't have a recollection of being informed
25 before but I was definitely informed at 9.30.

Transcript of the Sheku Bayoh Inquiry

1 Q. You say there:

2 "Chief Superintendent McEwan had declared a critical

3 incident. I was informed that Crown Office and

4 Procurator Fiscal Service was instructing the Police

5 Investigations and Review Commissioner (PIRC) to take

6 over and lead the investigation and I was informed there

7 would be a Gold meeting at Kirkcaldy at 11.30 and agreed

8 to attend."

9 A. Yes.

10 Q. So it was before the 9.30 meeting that you found out

11 that Mr Bayoh had died, the male had died?

12 A. I think it was during the 9.30 meeting.

13 Q. During. Sorry. Was it during the meeting that you were

14 told that PIRC were going to be leading the

15 investigation?

16 A. Yes.

17 MS GRAHAME: I am conscious of the time.

18 LORD BRACADALE: Is that a convenient point to stop for

19 lunch?

20 MS GRAHAME: Thank you.

21 LORD BRACADALE: We will sit at 2 o'clock.

22 (12.58 pm)

23 (The short adjournment)

24 (2.00 pm)

25 (Delay in proceedings)

Transcript of the Sheku Bayoh Inquiry

1 (2.05 pm)

2 LORD BRACADALE: Ms Grahame.

3 MS GRAHAME: Hello again. We are talking about

4 Garry McEwan, he as I understand it was the Silver

5 commander in relation to this incident.

6 A. Yes.

7 Q. He was also a Detective Chief Superintendent, same rank

8 as you, as I understand it. Is that correct?

9 A. No, he was the divisional commander in Fife and he would

10 be a Police Chief Superintendent, not

11 Detective Chief Superintendent.

12 Q. Right. So we have heard that he was the local police

13 commander for Fife?

14 A. Yes.

15 Q. Is that a more senior position than the one you were in

16 at the time?

17 A. We are the same rank, just different roles.

18 Q. So you were the same rank anyway, at that time?

19 A. Yes.

20 Q. You've explained to us before lunch that you were

21 contacted by Garry McEwan and asked to appoint the SIO

22 and you selected Pat Cambell. You have given us the

23 explanation for that, he didn't have any contact with

24 Fife which was a factor. You've explained to us earlier

25 today that you didn't have contact with Fife. Can you

Transcript of the Sheku Bayoh Inquiry

1 help me understand why was Garry McEwan the Silver
2 commander when he had a connection with Fife instead of
3 you?

4 A. So first of all Garry didn't ask me to appoint an SIO,
5 he informed me of the circumstances and then that is my
6 role to determine what investigative resource is
7 required. In terms of Silver command, it is normally
8 the divisional Chief Superintendent who would take
9 Silver command. My role actually doesn't fall within
10 the Gold, Silver Bronze structure, I am off somewhere to
11 the left or to the right. But that is the normal
12 course, so it would be a chief officer is Gold the
13 divisional commander is Silver and then the Bronzes
14 underneath.

15 Q. So it was a sort of normal standard appoint for
16 Garry McEwan, in his particular role, to take the role
17 of Silver commander?

18 A. Yes, I would not take the role of Silver commander.

19 Q. So even though he had a connection to Fife --

20 A. Yes.

21 Q. -- and it was an incident involving Fife officers, and
22 you didn't have a connection to Fife, you wouldn't slot
23 into that role?

24 A. Absolutely not.

25 Q. Thank you. Can I ask you about PIRC.

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes.
- 2 Q. You have told us that at the 9.30 meeting you had heard
3 about the death of Mr Bayoh, did you also hear at that
4 time that Garry McEwan had declared a critical incident?
- 5 A. I did.
- 6 Q. You heard that PIRC were going to be taking over and
7 leading the investigation?
- 8 A. Yes.
- 9 Q. I think in your Inquiry statement you say that you had
10 no previous experience of dealing with PIRC when they
11 were leading an investigation or coming into
12 an investigation. We've heard people say that this was
13 their first investigation into a death after police
14 contact.
- 15 A. Yes.
- 16 Q. I'm interested in, if you can think back to that time,
17 what the impact was on you, in your role, of knowing
18 that PIRC were taking over the investigation. We've
19 heard evidence that they didn't immediately attend
20 Kirkcaldy Police Office, but people were aware that they
21 were going to be taking the lead.
- 22 A. I -- around about this time, I don't know if it was just
23 before this, I think it must have been, that I had been
24 in liaison with PIRC and the Commissioner at the time,
25 in terms of her desire to take over investigations

Transcript of the Sheku Bayoh Inquiry

1 involving sexual crime involving police officers. And
2 there had been quite a bit of discussion, both with
3 Crown Office, Procurator Fiscal Service, PIRC, myself,
4 in terms of whether PIRC had the exposure to those sort
5 of investigations before, and how their officers were
6 trained in dealing with rape and sexual crimes and
7 specifically victims.

8 So there was a lot of work done in terms of getting
9 PIRC officers to attend -- sexual offences liaison
10 officers and I think a PIRC officer came into the
11 National Rape Taskforce, one of my units, and shadowed
12 sexual offences liaison officers. I can only say
13 I think that must have just been before this because
14 I can't remember having any great surprise that PIRC
15 were going to come in to take over and lead the
16 investigation.

17 Q. They had certainly come into existence at the time --

18 A. 2013, yes.

19 Q. -- at the time of Police Scotland coming into existence?

20 A. Yes, so I can't recall being apprehensive or having any
21 emotion in relation to PIRC coming in. I can only
22 presume that those discussions might have already
23 started with PIRC about other aspects that they were
24 looking to investigate around that time.

25 Q. Thank you. When you attended the 9.30 meeting, was

Transcript of the Sheku Bayoh Inquiry

1 there any discussion or explanation given at that
2 meeting why it was not possible for PIRC to be in
3 Kirkcaldy Police Office by that stage, at that time in
4 the day?

5 A. No, not at all.

6 Q. I think in your operational statement at page 2 which we
7 looked at earlier, that is the PS00669, and we will get
8 that up on the screen, if we look at page 2,
9 paragraph 8, I think this paragraph says:

10 "At 11.30hrs same date I attended a Gold Meeting,
11 which was chaired by ACC Nicholson, at Kirkcaldy~...
12 where, after an initial briefing of the circumstances
13 known at that time, it was confirmed that this would be
14 a PIRC-led investigation and Mr Keith Harrower had been
15 appointed Investigating Officer."

16 As I understand it, however, you knew about PIRC
17 coming in by 9.30?

18 A. Yes.

19 Q. And this was also discussed at 11.30?

20 A. Yes.

21 Q. We've heard that PIRC weren't at that 11.30
22 Gold meeting.

23 A. No.

24 Q. Was there any explanation given at that meeting why PIRC
25 weren't in attendance --

Transcript of the Sheku Bayoh Inquiry

- 1 A. No.
- 2 Q. -- either in person or remotely?
- 3 A. No. Or not that I can remember.
- 4 Q. You then go on to say:
- 5 "I was informed that Mr Harrower ..."
- 6 Still on the same paragraph:
- 7 "... and PIRC investigators were expected to arrive
- 8 at Kirkcaldy Police Station imminently for the purposes
- 9 of briefing and taking over the investigation."
- 10 When you say "imminently", can you give us a clearer
- 11 indication of when you understood they would be
- 12 arriving?
- 13 A. I ... I suppose in the next -- I would only be
- 14 surmising. That is eight years ago and I have said
- 15 "imminently", so probably at the time I thought they
- 16 were going to be there in the next half an hour or so
- 17 but I can't recall.
- 18 Q. Thank you. In terms of your expectations at that time,
- 19 what had you expected to happen when PIRC did arrive,
- 20 whenever that was?
- 21 A. So my expectations were that there would be a number of
- 22 investigators. I didn't have high expectations that
- 23 they would be able to take on the investigation
- 24 completely at that time, with no or little support from
- 25 Police Scotland. But I thought there would be a number

Transcript of the Sheku Bayoh Inquiry

1 of PIRC investigators. I thought that there would be
2 a suitably quick handover between Pat Cambell and PIRC
3 and that I was aware of our legal responsibilities in
4 terms of supporting PIRC in any way that they so
5 required.

6 And I think I put earlier on in my statement when
7 I spoke to Pat Cambell before leaving Fettes about
8 a number of key posts that we should be thinking about:
9 crime scene manager, house-to-house co-ordinator, all
10 these other -- interview adviser, diversity and equality
11 adviser. So, you know, an SIO is responsible for the
12 investigation and responsible for his and her decisions
13 but everybody has to understand that they are not
14 expected to be an expert in every type of investigation,
15 and it's that bit where you work as a team, so you bring
16 in your expert crime scene co-ordinator or crime scene
17 manager to develop the strategy around that, or develop
18 a strategy around CCTV, scoping or an interview adviser.

19 So my thought was -- my thought process was we
20 should be thinking about these specialists and if PIRC
21 came it would be good for them to be there in case PIRC
22 wanted their support in specialist areas.

23 Q. If we look at paragraph 135 of your Inquiry statement
24 please, is this the list of roles that you were
25 referring to a moment ago when you talked about your

Transcript of the Sheku Bayoh Inquiry

1 statement?

2 A. Yes, so those would have been -- not all of them, but
3 some of them would have been advantageous to Pat Cambell
4 during that initial fast-track stage, but thinking that
5 PIRC were going to lead the investigation at some point
6 that day, it would be helpful if they were available if
7 they were so required by PIRC.

8 Q. Thank you. That is the role that you were fulfilling,
9 assisting the SIO with obtaining the resources that he
10 needed?

11 A. Yes. Although it did get difficult when I arrived at
12 Kirkcaldy. But yes, that was part of my role. Or even
13 to give Pat permission if he required to call out people
14 from off duty or perhaps look at moving resources from
15 other parts of the country.

16 Q. Tell us how it got difficult when you got to Kirkcaldy?

17 A. Just personally for me, not for others. But at that
18 stage of Police Scotland you could only log on to
19 a computer, the force internet, intranet, from your old
20 legacy division. I had never worked in Fife, so
21 I couldn't log on to any computers, so I had at that
22 point a BlackBerry which had email and a phone.

23 Q. And no access to the Police Scotland intranet?

24 A. No.

25 Q. What sort of difficulties did that cause to you in your

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1 role?

2 A. Well, I suppose the bit about even getting contact
3 details for somebody to try and call them out, I had to
4 go through the force control room for them to look up
5 personal details, telephone numbers et cetera, when
6 I could have just logged on and gone into the force
7 intranet.

8 Q. Did it cause some delays for you carrying out your
9 tasks?

10 A. Some. Even just things like if I had had to refer to
11 a SOP or something I had no access to anything. So ...

12 Q. Thank you. I was asking you a moment ago about what
13 your expectations were when PIRC came in. You said that
14 you had expected a number of PIRC investigators to
15 arrive. Did you have any expectations about the numbers
16 that would arrive from PIRC to take over the
17 investigation?

18 A. Probably at the time I thought about six. In hindsight
19 I have thought about this and you know, in terms of the
20 specific roles I would probably have said about eight,
21 with significant support from Police Scotland. For that
22 initial first day.

23 Q. Right. You then talk about -- you mentioned a moment
24 ago a suitably quick handover from Pat Cambell to PIRC.

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. What were your expectations in terms of when that
2 handover would take place?

3 A. So in serious crime, I mean it's never great for an SIO
4 to hand over to another SIO, everybody appreciates that
5 but it happens. And the expectation for serious crime
6 or a serious incident would be there would be a full
7 verbal briefing to the new SIO, outlining actions that
8 had been taken, had not yet been complete, so they are
9 still ongoing, and what was intended actions so that the
10 new SIO could either review and either agree the actions
11 that were intended to be complete or decide that that
12 wasn't part of their strategy.

13 So it would be quite a comprehensive briefing but
14 saying that, you know, Pat Cambell had been there for
15 a few hours, three or four hours, so it would be
16 manageable. And then the handover should be recorded,
17 and passed on to the other -- well, in this case the
18 independent investigator.

19 I think that has been a problem, if I'm -- it has
20 been a problem from this enquiry, that Pat Cambell was
21 still referred to as "SIO" and I think later on it
22 was -- I was made aware of it or reminded of it
23 when I was giving my statement, that quite late on at
24 night Keith Hardie was given the title SIO, and I think
25 that confuses people, who is leading the -- there can

Transcript of the Sheku Bayoh Inquiry

1 only ever be one SIO, and from that handover period
2 Pat Cambell relinquishes that title and PIRC are now the
3 independent investigators. That is my understanding of
4 how it should have been and how perhaps there was some
5 confusion, even later on, by people giving -- being
6 given titles -- there should never have been a police
7 SIO allocated at 8 o'clock at night when the PIRC were
8 there.

9 Q. We have certainly heard evidence from DI Colin Robson,
10 who was an on duty SIO and Pat Cambell, he was SIO, and
11 we have heard other -- as you say, other officers who at
12 some point have been referred to as SIOs.

13 A. Yes, so I would say -- my opinion -- that Colin Robson
14 was the duty Detective Inspector.

15 Q. Right.

16 A. He informed his Detective Superintendent of an emerging
17 traumatic incident, Pat Cambell was appointed SIO.

18 Q. Is there only ever one SIO?

19 A. There is only ever one SIO.

20 Q. You can't have multiple people in that role?

21 A. No, absolutely not. Because in terms of accountability,
22 one person makes the decision and one person is then
23 responsible for the decision.

24 Q. So from what you are saying, am I to understand that
25 Pat Cambell was the appointed SIO?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. And he remained in that role and was accountable for it
3 until the official handover to PIRC?

4 A. Yes.

5 Q. Then, from that point of handover, there would be
6 someone in PIRC appointed as SIO or the equivalent of
7 an SIO?

8 A. Yes. And my understanding was that on the arrival of
9 Keith Harrower, that handover would take place, and he
10 is now leading that investigation.

11 Q. In terms of leading an investigation, are there benefits
12 in being physically present in the police office in
13 order to take over an investigation? Is it necessary to
14 be present?

15 A. Yes, in my opinion.

16 Q. Yes.

17 A. I am sure others ... but part of an SIO's duties is not
18 only in terms of responsibility of the conduct of the
19 investigation, they are also responsible for the
20 resources, that would be very difficult to do if you are
21 remote.

22 Q. You've said at paragraph 103 of your Inquiry
23 statement -- I am interested in the final sentence in
24 paragraph 103:

25 "The first time I saw PIRC was when they arrived

Transcript of the Sheku Bayoh Inquiry

1 later on in the afternoon."

2 You say that is the first time you saw them. Had
3 you had contact with PIRC prior to that?

4 A. No.

5 Q. Were you aware that there had been telephone contact --

6 A. Yes.

7 Q. -- with Pat Cambell?

8 A. Yes.

9 Q. So in terms of a direct communication between the
10 investigation side of things and PIRC, was that done
11 through Pat Cambell?

12 A. Yes.

13 Q. Do you remember when they arrived later that day?

14 A. So there was a -- I think it was called a PIRC briefing.
15 I think if not immediately on their arrival, shortly
16 after their arrival on the Sunday.

17 Q. We've heard that the first Gold Group meeting was at
18 11.30 --

19 A. Yes.

20 Q. -- and they weren't present at that, but PIRC were
21 present at the second Gold Group meeting which was at
22 2.40?

23 A. Yes.

24 Q. Was the PIRC briefing prior to that second Gold Group
25 meeting? Sorry, was the PIRC briefing prior to --

Transcript of the Sheku Bayoh Inquiry

- 1 A. No, maybe that was the -- maybe that was the 14.30
2 meeting. I can't recall. Actually will it be in my
3 initial statement?
- 4 Q. If you look at the original statement, page 2.
- 5 A. No, sorry --
- 6 Q. Paragraph -- you've got a paragraph in relation to
7 13.30, which is the final paragraph on page 2.
- 8 A. 13.30.
- 9 Q. And you say:
- 10 "About 1330hrs Mr Harrower and other PIRC
11 investigators attended."
- 12 And there was a briefing. Were you at the PIRC
13 briefing?
- 14 A. Yes.
- 15 Q. You say:
- 16 "A briefing, which provided the same information as
17 provided at the Gold meeting was provided."
- 18 Was that the first Gold Group meeting?
- 19 A. Yes.
- 20 Q. And that was shared with PIRC when they arrived?
- 21 A. Yes.
- 22 Q. And the second Gold Group meeting was at, we have heard,
23 14.40?
- 24 A. Yes.
- 25 Q. Thank you. Thinking about that now, the event involving

Transcript of the Sheku Bayoh Inquiry

1 Mr Bayoh at Hayfield Road had taken place between about
2 7.20 and 7.30 in the morning, and there has been contact
3 with PIRC and Pat Cambell the SIO during that day. They
4 arrived at 13.30, did you have any concerns about the
5 period -- the period that had taken place between the
6 events actually at Hayfield Road and the arrival of PIRC
7 in the afternoon?

8 A. I thought there was a time delay. Although it was maybe
9 not significant, I would have expected them to arrive
10 some time sooner than they did, given the circumstances
11 and their appointment by Crown Office at 9 o'clock or
12 around about then.

13 Q. We have heard that after Mr Bayoh died a critical
14 incident was declared by Garry McEwan at 9.10
15 within minutes of him being told about the death. We
16 have not heard from the Crown yet but we have heard that
17 shortly after that there was a decision taken by the
18 Crown that PIRC should be involved.

19 A. Yes.

20 Q. You say there was a time delay. Did you have concerns
21 about that at the time, about this period that had
22 elapsed before they arrived?

23 A. Yes. I suppose my concerns were the reason and
24 rationale for PIRC being appointed. Independent
25 investigators was absolutely crucial, and their speedy

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1 response to that for me was important for that
2 independence. Both in terms of Pat Cambell's role, and
3 importantly that message to the public that the Crown
4 had asked for independent investigators and that they
5 were now leading the investigation.

6 Q. Talking about the independence of PIRC, we heard
7 evidence from Pat Cambell some time ago, Day 49 of the
8 Inquiry, that at that stage he had 20 or 22 detectives
9 involved with the investigation. And that -- on
10 day one. He expressed some concerns about the fact that
11 PIRC brought along four or five investigators. I'm
12 interested in the comparison between the two. You've
13 talked about maybe they would bring six people from PIRC
14 but there seems to be a -- there is a difference between
15 the Police Scotland detectives who were involved, the
16 20/22 and the number of investigators coming from PIRC.

17 A. Yes.

18 Q. Did you have concerns about that?

19 A. When I realised the number of members of PIRC staff who
20 arrived, I did have concerns about it.

21 Q. Can you explain about those concerns.

22 A. That in terms of key roles that I thought PIRC would
23 immediately assume, there wasn't any, and -- I have
24 worked with other agencies in joint investigations,
25 Health and Safety Executive is one --

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1 Q. I am going to ask you about that actually.

2 A. -- all right, okay -- where there is an acknowledgement
3 that there is little resource or, you know, the
4 resources aren't significant. They are fantastic
5 investigators, I would have to say, but you know there
6 is not that pool of staff.

7 I didn't expect PIRC to come with 20 investigators,
8 what I did probably expect is there would be enough to
9 be able to take on key roles and to be there to monitor
10 other fast-tracked actions that were required that first
11 day that they were requesting Police Scotland to
12 undertake. So I expected, you know, in terms of
13 a family liaison officer, I expected crime scene
14 managers, and -- or a number of investigators which, you
15 know, may have to be -- they would take the statement,
16 they may be supported in terms of corroboration by
17 a Police Scotland officer, if that was appropriate, but
18 as long as they were there to monitor or supervise the
19 activities, for example, the forensic recovery of
20 Mr Bayoh's body, they could have sent one PIRC officer
21 and Police Scotland could have undertaken that duty on
22 their instruction but there was somebody there to
23 supervise it from PIRC to say, you know, we are certain
24 that it was done to the requirements of PIRC.

25 Q. Thank you. So exploring that in a little more detail,

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1 how many FLOs would you have -- in terms of expectation
2 from PIRC would you have expected to arrive?

3 A. Probably on that first day, two.

4 Q. Two. Would that be in relation to the next of kin?

5 A. Yes, until we had established family dynamics.

6 Q. Then we've heard evidence that there were five loci
7 identified, that included Victoria Hospital where
8 Mr Bayoh's body was, and Hayfield Road. And then three
9 other addresses were identified as being of interest.
10 Collette Bell's address, Martyn Dick, a friend's
11 address, and the family home of Mr Saeed. When you said
12 crime scene managers would be brought by -- you expected
13 to be available from PIRC, would that have been one for
14 each of those locations or less than that?

15 A. Or maybe a crime scene co-ordinator may have been the
16 more appropriate term to use then, somebody who could
17 co-ordinate between the different crime scenes if there
18 was a Police Scotland crime scene manager in each of the
19 locations.

20 Q. So it could have been one person or it could have been
21 more than one?

22 A. Yes.

23 Q. Did you have any expectations in relation to the numbers
24 of investigators that PIRC would be bring?

25 A. I didn't expect that many but I expected maybe four.

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1 Q. Thank you. As I said, we have heard evidence from
2 Pat Cambell that he had about 20 or 22 detectives
3 involved with the investigation. Do you have any
4 concerns about the numbers he had acting on that day?

5 A. I can recall Pat asking for more resources. I would
6 probably say that is quite a lot of officers. I know
7 there was a bit to do. Sometimes there is a bit about
8 if you have too many officers involved you sometimes can
9 lose control of what is happening to a certain extent.
10 So there was a bit about things have to be done quickly,
11 but there is also a bit about, as the SIO, of knowing
12 that bigger picture, and -- but it depends on the 22
13 that we are talking about, some might have been involved
14 in specific duties, you know, for example taking
15 a witness statement or something like that, so you know
16 that takes two out of equation.

17 So 22 seems to me quite a significant number and
18 I think in terms of the support for Pat Cambell, which
19 is probably unique in this case, there was more senior
20 officers, so there was Stuart Houston as DCI,
21 Keith Hardie came out as DI, there was
22 a DI Colin Robson, and another DI was called out later
23 on, so to have a detective superintendent
24 a detective chief inspector and two, potentially three
25 detective inspectors, that was quite some support for

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1 Pat.

2 Q. Thank you. Can I ask you at that time on that day did
3 you have a clear understanding of what PIRC's remit was
4 going to be? We've heard people say they knew that
5 PIRC's remit expanded over time but did you have a clear
6 understanding of what PIRC were coming in to lead on in
7 terms of the investigation?

8 A. My expectation was they were leading on all aspects of
9 the death of Mr Bayoh.

10 Q. When you say "all aspects", can you explain what you
11 understood; what would "all aspects" cover?

12 A. All the circumstances surrounding his death.

13 Q. So you didn't understand there were to be any
14 limitations on the remit of PIRC at that time?

15 A. No.

16 Q. Thank you?

17 A. I know that there was -- obviously I was informed
18 earlier on in terms of the eyewitnesses to the
19 restraint, that PIRC were going to obtain those
20 statements, so there was clear focus for PIRC on
21 eyewitnesses to the restraint. But in terms of that
22 overall investigative responsibility, that would be
23 handed over to PIRC.

24 Q. Thank you. We were talking about independence a moment
25 ago, the independence of PIRC, did you have any concerns

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1 on that day about the independence of PIRC? You've
2 mentioned appointing Pat Cambell because he didn't have
3 any connection with Fife. Did you have any concerns in
4 relation to PIRC about that?

5 A. No. Well, I suppose my point -- my view was
6 Crown Office and Procurator Fiscal, it's their
7 responsibility in terms of the investigation of death in
8 Scotland, they had appointed PIRC. I don't think
9 I would have considered any concerns for PIRC's
10 independence. I don't know if you mean independence in
11 terms of any footprint they had on Fife particularly?

12 Q. Yes, as former members of Police Scotland or legacy
13 forces within Police Scotland?

14 A. To be honest, I didn't know anybody from PIRC. I know
15 there must have been some -- I think Keith Harrower had
16 been a retired police officer because he seemed to know
17 Ruairaidh Nicholson, the ACC, and there was a bit of, you
18 know, chat at the beginning when he first arrived. But
19 apart from the other PIRC investigators, I didn't know
20 who they were.

21 Q. Looking back now, concerns have been expressed in
22 certain quarters about former police officers joining
23 PIRC and then investigating incidents involving police
24 officers. Do you have any concerns about that?

25 A. To be honest, I think it depends on public opinion. If

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1 I was asked I don't think I would have any hesitation in
2 terms of, you know, being a previous police officer and
3 investigating police conduct. But that is not -- you
4 know, I am an ex-police officer and for me that is just
5 because I think that certain people could do that
6 objectively, impartially but it is not for
7 an individual, I think that is a public decision to be
8 made, whether it is appropriate or not. So ... sorry if
9 that is a ramble.

10 Q. Not at all. Thank you. We've heard evidence from
11 Pat Cambell that he had a number of reservations about
12 PIRC and giving a handover to PIRC. Can I tell you what
13 he said and ask you for your comments.

14 A. Yes.

15 Q. This was on Day 47, 9 March he said he was reluctant or
16 he:

17 "Answer: ... had a reluctance to relinquish
18 control."

19 Control to PIRC:

20 "Answer: It was moving at a pace in the right
21 direction but [he] had trepidation that it would set
22 back the investigation. What could they actually do
23 with the numbers they had when we had so many different
24 priorities?"

25 Can you comment on that or his concerns? Do you

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1 agree with that?

2 A. First of all that not Pat's decision, the Crown Office
3 has appointed PIRC, and whether Pat Cambell thinks he
4 can do a better job than PIRC, then unfortunately that
5 is not his decision. That is -- the decision has been
6 made by Crown Office and Procurator Fiscal Service. In
7 terms of what he thought was happening and continued to
8 happen, Pat Cambell could have been there and would have
9 been there in terms of supporting the independent
10 investigating officer from PIRC once he had taken over
11 the investigation, so it wasn't as if Pat Cambell would
12 just be passing over and then walking out the door.

13 And yes, I agree about the number of resources and
14 the pace of the investigation. In terms of the pace of
15 the investigation, it was fast-tracked actions that they
16 were completing in those 24/48 hours, and whatever
17 resource PIRC arrived with, there was still going to be
18 a need for Police Scotland support and it was I think
19 Pat's responsibility to assist PIRC, not to keep hold of
20 what was happening. So I can see his frustrations,
21 I agree with his frustrations, but in terms of not
22 wanting to hand over, that is not his decision or
23 shouldn't have been his decision.

24 Q. Did Pat Cambell have any discussions with you about
25 these concerns which he had?

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1 A. No. I think to be honest I think we were all a bit ...
2 disappointed in the time it had taken and the level of
3 resource. But Pat never expressed to me that he had --
4 he wasn't wanting to hand over the investigation because
5 it was moving at pace and he felt that he could possibly
6 do a better job than the PIRC investigators.

7 Q. Can I ask you to look at your Inquiry statement again
8 please, paragraphs 132 and 133. 132:

9 "I think Kirkcaldy officers may have undertaken some
10 tasks before other officers arrived. I would have
11 wanted no staff from Kirkcaldy involved in the
12 investigation. That would have been my ideal. In a way
13 it puts those Kirkcaldy officers in quite a difficult
14 position as well."

15 Can you explain that paragraph?

16 A. Yes. It is just the bit about impartiality and
17 objectiveness, their own personal feelings and being
18 removed from the individuals. I think what I was trying
19 to do was, as far as possible, make sure that the
20 officers or the support that Pat had in terms of
21 a detective resource as far as possible were not from
22 Fife, and not from Kirkcaldy. That would have been the
23 ideal for me. But sometimes that doesn't happen.

24 Q. So it wasn't 100% possible on that day?

25 A. No, no.

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- 1 Q. You say Kirkcaldy officers may have undertaken some
2 tasks before other officers arrived. Do you remember
3 any of the tasks that were being carried out by
4 Kirkcaldy officers?
- 5 A. Well, I think the ... his name escapes me, the
6 Detective Inspector, the first SIO.
- 7 Q. Colin Robson?
- 8 A. Colin Robson, he had undertaken and caused for a number
9 of tasks to be undertaken, I can't remember specifically
10 which. Which you would have expected at that, you know,
11 initial action, the golden hour as they probably call
12 it. There would have been no opportunity for others to
13 undertake those tasks.
- 14 Q. We have heard from a DS Dursley that other officers were
15 brought in from the wider Fife area outwith Kirkcaldy to
16 assist with matters?
- 17 A. Yes.
- 18 Q. From hearing Garry McEwan's evidence yesterday,
19 I understand P Division was Fife, effectively?
- 20 A. Yes.
- 21 Q. Would you, if you had been running this, ideally been
22 able to avoid any officers from Fife being involved or
23 was it only officers from Kirkcaldy that you were
24 concerned about?
- 25 A. Ideally it would be no officers from Fife but that is in

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1 an ideal world, and it's a Sunday morning and resources
2 across the country unfortunately are limited. I think,
3 you know, you could probably look at duty sheets to say
4 that there was so many officers/detectives on duty but
5 some of them will be involved in an arrest, some will be
6 interviewing suspects, some will be interviewing
7 witnesses for their own -- you know, that business
8 continuity. So in an ideal world that would have been
9 perfect but as far as possible I think this is what we
10 got.

11 Q. Would you draw a distinction between officers from Fife
12 or from Kirkcaldy being involved in the investigation or
13 being involved only with things like locus protection?
14 Do you see that as separate from the investigation?

15 A. I suppose I would -- I would probably ... no. It would
16 be the investigation. So there would have been some
17 Fife officers involved in those initial fast-track
18 actions.

19 Q. A short time ago you talked about other organisations,
20 and I would like to ask you about the Health and Safety
21 Executive. We've not heard any evidence yet from the
22 HSE. Hopefully next year that position will change.
23 But I did ask Garry McEwan about this yesterday, and
24 you've mentioned the HSE today. What had your
25 involvement been with the HSE?

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1 A. So I have had a couple of involvements with the Health
2 and Safety Executive but probably the main one was
3 following the tragic death of a Lothian and Borders fire
4 officer in 2009 in Gorgie in Edinburgh, so there was
5 a joint investigation into the death and the
6 circumstances surrounding it. And there was
7 obviously -- at that time it was Lothian and Borders
8 Police officers and Health and Safety Executive, there
9 was -- we had arranged a couple of outside specialists
10 from legacy Strathclyde Fire and Rescue Service who came
11 as well to give that sort of expert fire advice. But
12 that investigation continued for, oh, probably
13 six months, it was a long investigation. And I would
14 have to say the Health and Safety Executive
15 investigators, there was only three of them, but they
16 were very good.

17 Q. That sounds like it was a positive experience working
18 with the HSE?

19 A. Yes, it was. But resources are limited in HSE, you
20 know, so I think there was a bit about organisations,
21 the expectation that they would be able to -- or they've
22 got lots of staff to come in and parachute in and solve
23 all the problems, but they struggle for -- well, I can't
24 speak on their behalf but my experience was that they
25 sometimes struggle for resources as well.

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1 Q. I am interested in, you know, against the background of
2 questions regarding independence and hopefully trying to
3 avoid Kirkcaldy or possibly Fife officers investigating
4 this incident, issues with resources and whether there
5 were any discussions at the Gold Group meetings or
6 discussions with PIRC about perhaps involving HSE to
7 provide support in relation to this investigation?

8 A. No, there wasn't.

9 Q. Is that the sort of thing that could be raised at
10 a Gold Group meeting?

11 A. I think that is probably -- well, it could have been
12 raised at the Gold meeting, I think that is probably
13 a discussion initially between, you know, PIRC and
14 Crown Office and Procurator Fiscal Service for them to
15 say: actually we're struggling to provide the resource
16 required for this, and for Crown Office and
17 Procurator Fiscal Service to initiate that. It could
18 have been for -- I don't think it would be for
19 Pat Cambell, for example, to make contact with Health
20 and Safety Executive to say, you know: PIRC have arrived
21 and there is not enough people, what about supporting?

22 Q. Were there any routes or any mechanism whereby, if
23 an officer did have concerns, an officer such as an SIO
24 had concerns, that he could, either through contact with
25 the Crown or PIRC direct, raise questions about

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1 involving another body in a joint investigation?

2 A. Of course, the -- in terms of my experience with
3 Crown Office and Procurator Fiscal Service that would
4 be -- there wouldn't have to be formality in that, you
5 know, contact. I just think nobody thought about --
6 from a police perspective I never thought about HSE,
7 not ... not thought about them at all. So maybe it was
8 something that we were unaware that HSE could be asked
9 to support PIRC.

10 Q. It may be that we will hear more from PIRC in the
11 future. Thank you. Can I ask you about paragraphs 115
12 to 118 of your Inquiry statement please. You say:

13 "I have been asked, against that background
14 I provided, what I did consider was the nature of the
15 enquiry at that time."

16 Just for completeness let's look at the previous
17 paragraph. So this is where you are actually being
18 asked to talk about the nature of the investigation and
19 the events at Hayfield Road.

20 So if we look at paragraph 114. Sorry 115. You are
21 being asked:

22 "... what did I consider was the nature of the
23 enquiry~... I considered the nature of the investigation
24 to be a death in police custody investigation. The
25 investigation should include the whole circumstances but

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1 the bottom line was the person had been in police
2 custody at the time of his death in a hospital setting.
3 The police involvement may have had a significant role
4 in the cause of death. It was a death in police custody
5 but was being investigated at that time with the cause
6 of death being unascertained."

7 A. Yes.

8 Q. Is that because there had been no post mortem on 3 May
9 or are you talking longer term than just the first day?

10 A. No I was only involved in the first day, so the cause of
11 death was unascertained on that first day.

12 Q. Right. Thank you. You say it's the whole
13 circumstances:

14 "... but the bottom line was the person had been in
15 police custody at the time of his death ... The police
16 involvement may have had a significant role in the cause
17 of death.

18 So was that a -- was that an understanding by you on
19 the first day that one of the possibilities was that
20 the police involvement may have had a significant role
21 in his death?

22 A. Yes.

23 Q. Then at 116 you talk about:

24 "Potentially there may be criminality on the part of
25 the police officers, however like other unascertained

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1 deaths there would be a number of hypotheses and each
2 one would be investigated."

3 So one of the possibilities is that there was some
4 criminality on the part of the police officers.

5 A. Yes.

6 Q. At 117 you talk about investigative hypotheses:

7 "As SIO you have to consider what these hypotheses
8 are and rule them in on out. Criminality of the police
9 officers is a hypothesis. It is for the SIO to decide
10 other hypotheses and what should be done to investigate
11 them. A number might be investigated together."

12 So you obviously have experience as SIO. Is this
13 the sort of thing that you would note in your day book,
14 hypotheses that you were working on or developing?

15 A. So I want to counter this by saying each SIO runs
16 investigations differently. And there is no -- one is
17 not right and one is not wrong. It's just an individual
18 thing. I would -- but it's just me, I record everything
19 in my day book. And we'd have the list of hypotheses
20 I was thinking about in my day book when I -- you know,
21 when I was thinking about what would have to be done
22 before raising actions, et cetera. I suppose the other
23 bit which is probably not quite clear, I have mentioned
24 of it being investigated this time is the cause of death
25 being unascertained. I think it is quite important, and

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1 I'm sure I am just repeating what other people have
2 said, the different -- the three stages of
3 an investigation.

4 Q. No, I have not heard this, what are the three stages?

5 A. So there is normally three stages in an investigation.
6 So the first stage is your initial response, which is
7 sometimes called this golden hour, which is usually
8 a bit longer than an hour but in any case, so it's
9 golden hour and fast-track actions. So that is
10 the first stage of your investigation. Normally your
11 fast-track actions will take 24/48 hours.

12 Then it goes on to the investigation strategy, so
13 that is really when you are starting to think about your
14 objectives of the investigation and all your different
15 hypotheses in terms of if there's information that is
16 missing to try and fill that gap and make more sense of
17 what you've got in the fast-track actions.

18 Then the last part of it is your -- I don't know,
19 reporting, case management, disclosure, or revelation to
20 the Procurator Fiscal. It is at the completion of the
21 investigation, and next step, so it could be a report to
22 Crown Office and Procurator Fiscal Service.

23 So those are the three stages normally in
24 an investigation. But at the first day what you've also
25 got to understand has to take place is you've got to

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1 report a death to the Procurator Fiscal for the
2 Procurator Fiscal the next day and then a copy is
3 provided to the pathologist.

4 So you've got your initial actions but you are also
5 looking at the death and my training, and having, you
6 know, worked with some fantastic pathologists is your
7 death report should be as full and comprehensive as
8 possible, so that it provides some -- may provide some
9 context during the post mortem examination.

10 So there is the initial actions and the death report
11 that has to be completed within those -- well, 24 hours
12 for the death report, 48 hours for the fast actions. So
13 I suppose what I am trying to say is probably some of
14 these hypotheses that I mentioned were for initial
15 fast-track actions, and to complete the death report as
16 fully as possible. Does that make sense?

17 Q. That is very helpful. We heard from Pat Cambell that as
18 he was travelling to Kirkcaldy, that he was thinking
19 about his own hypotheses, he was driving at the time, so
20 he -- but was already starting to formulate possible
21 hypotheses in his head. So -- and from what you have
22 said about the report that would be sent to the Fiscal,
23 it wouldn't -- am I right in thinking that wouldn't be
24 unusual, it is not like he would have to wait until
25 later to start doing that in terms of these three

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1 stages?

2 A. So Pat Cambell was only involved in stage one. The
3 investigative strategy would follow and would naturally
4 follow to PIRC. But if we were saying -- I suppose I am
5 not really explaining myself very clearly. In terms of,
6 you know, the potential that Mr Bayoh's ethnicity had
7 caused officers to respond in a different way on
8 initially having contact with Mr Bayoh and then
9 restraining him, so in terms of that situation, the
10 initial fast-track actions and trying to find out
11 what -- the motive, if there was a motive, for those
12 officers, in terms of if they had stereotypical views or
13 if they were discriminatory or did they want to carry
14 out a malicious act against Mr Bayoh.

15 So in terms of the fast-track actions, the
16 hypotheses that the officers were -- had acted
17 criminally or could have acted criminally towards
18 Mr Bayoh, the fast-tracked actions, the majority of them
19 would not take that into account. So in terms of the
20 forensic recovery of Mr Bayoh's body would have not
21 provided any information or in terms of how the officers
22 had acted at the scene. Does that make sense? No?

23 Q. No, it's very helpful. So at that stage can I summarise
24 this as the actions you are taking initially, none of
25 them will have themselves permit you to exclude

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1 a hypothesis as a possibility?

2 A. Yes, yes. Sorry.

3 Q. Is it fair to say. If I am wrong in what I have just
4 said, please say. But you're not -- at an early stage
5 you can't be simply excluding hypotheses?

6 A. Absolutely not and at the very early stage you are
7 carrying out tasks that are trying to provide
8 information for later on during the investigative
9 strategy, what support to any hypotheses are. But those
10 initial fast-track actions are about securing, managing,
11 obtaining the information that allows then the
12 investigative strategy to develop better.

13 MS GRAHAME: Excellent. Thank you very much. That is
14 clear. I understand that.

15 LORD BRACADALE: I wonder if this might be a point to take
16 the break. We will take a 15-minute break.

17 (3.05 pm)

18 (A short break)

19 (3.27 pm)

20 LORD BRACADALE: Ms Grahame.

21 MS GRAHAME: Thank you. We were looking at your Inquiry
22 statement. If we could have that back on the screen,
23 please. I think we had talked about paragraph 116:

24 "Potentially there may be criminality on the part of
25 the police officers, however like other unascertained

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1 deaths there would be a number of hypotheses and each
2 one would be investigated."

3 So I was about to move on to the investigative
4 hypotheses.

5 I would like to go through some of these paragraphs
6 with you, if that is all right with you. Let's look at
7 paragraph 117:

8 "As SIO you have to consider what these hypotheses
9 are and rule them in or out. Criminality of the police
10 officers is a hypothesis. It is for the SIO to decide
11 other hypotheses and what should be done to investigate
12 them. A number might be investigated together."

13 So there could be a number of different
14 possibilities considered as hypotheses in relation to
15 any unascertained death?

16 A. Yes.

17 Q. And we heard from Pat Cambell that he formed and
18 developed a number of hypotheses separate.

19 Then at 118, you say:

20 "I think it is good to list what they are."

21 You've told us that you would have had these things
22 noted in a day book if it had been your investigation.
23 And the paragraph goes on to say:

24 "I think the hypotheses approach is mentioned in
25 training. In terms of the murder manual, which is

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1 a guide for how to investigate homicides, there is
2 a section on hypotheses in that document. For me, and
3 I can't say this for everybody, it allows me to think
4 about every possibility to make sure you're either
5 eliminating a possibility or finding the evidence and
6 following that evidence to see how far it takes you."

7 So if you're developing different hypotheses, will
8 you develop strategies to investigate each of those
9 hypotheses?

10 A. Not necessarily. So in terms of a hypothesis,
11 and I suppose I was -- this relates to both the
12 investigation and, as I said, the death report, so one
13 hypothesis might have been there was an underlying
14 medical condition that maybe caused or contributed to
15 Mr Bayoh's death. So you wouldn't need a strategy for
16 that, that would be -- hopefully you would get details
17 of the GP from the next of kin but in any case the
18 pathologist would want GP's notes before the post mortem
19 examination. So you wouldn't need a strategy around
20 that.

21 Q. So you may have a strategy, depending on the hypotheses,
22 or you may not?

23 A. Yes.

24 Q. You may have a clear way of progressing --

25 A. Yes, I suppose it is a bit where -- you know, in many

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1 investigations the SIO is trying to answer questions and
2 on many investigations the answers will be readily
3 available and in other investigations they may not -- it
4 might not be available and it is probably that
5 hypothesis to try and work out a way, how to gather that
6 evidence or information to exclude or have the
7 hypotheses remaining. Does that make sense?

8 Q. Yes, it does, thank you. So you are talking here about
9 you are either eliminating a possibility or finding
10 evidence, presumably supportive evidence, following that
11 supportive evidence, gathering that in, and seeing how
12 far that takes you?

13 A. Yes, and I think that is -- sorry, referring to what
14 Pat Cambell is talking about in terms of following the
15 evidence.

16 Q. So there may be some hypotheses that are very quickly
17 resolved?

18 A. Yes.

19 Q. And quickly excluded, perhaps?

20 A. Yes. And in other -- I don't know -- I don't think it
21 was a hypothesis, that is -- it was a request from the
22 ACC to get Counter Terrorist checks done. So that is
23 quickly eliminated in terms of was this a possibility to
24 be Counter Terrorism a factor in this.

25 Q. Presumably -- I think we heard from Pat Cambell that in

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1 terms of the Gold Group they were to be checking
2 intelligence --

3 A. -- yes.

4 Q. -- with the National Bureau and seeing if there was
5 anything at all.

6 A. Absolutely. So it's a quick elimination, I would say.
7 Quickly eliminated.

8 Q. But other hypotheses may require a strategy, and may
9 require further investigation?

10 A. Absolutely.

11 Q. Thank you. Then at paragraph 119:

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

21 Tell us a little bit about how you would investigate
22 that as a hypothesis?

23 A. So I suppose it's the bit about -- I think there was ...

24 Q. We've heard evidence and the Chair has witness
25 statements available, to suggest that there had been

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- 1 a physical altercation in Arran Crescent prior to
2 Mr Bayoh ending up in Hayfield Road?
- 3 A. Yes, so I suppose the hypothesis is that had Mr Bayoh
4 been injured during that interaction? And if he was
5 injured, were any of those injuries -- did they cause or
6 contribute to the cause of death? And if it's the case
7 that they weren't, then that line of investigation could
8 be complete.
- 9 Q. What sort of things would an SIO or police officers do
10 to investigate that as a hypothesis?
- 11 A. So there could be witness statements from the other
12 person involved, there might be forensic evidence
13 available. There could be CCTV evidence too. If it was
14 in a dwelling it is unlikely, but if it hadn't been
15 within a dwelling, CCTV evidence to show the extent of
16 the interaction between the two individuals involved.
- 17 Q. Could perhaps a post mortem be part of the evidence that
18 is gathered in on that?
- 19 A. So I think this is the hypothesis to allow that
20 information to be provided to the pathologist in the
21 death report so that the pathologist would have that
22 information and may be able -- may be able to take that
23 into account during the post mortem and any injuries.
24 So if the individual had said -- and this is just
25 hypothetical --

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- 1 Q. Hypothetically, yes.
- 2 A. -- you know: I punched the ... I punched the deceased
3 once to the temple and there was a bruise on the temple
4 which had no indication or no contributing factors in
5 the death, we can rule out that incident had any
6 relation to -- so I suppose what I am trying to say is
7 for these parts I was talking more about providing
8 information as well to the pathologist and the
9 Procurator Fiscal to see if that would assist them
10 during post mortem examination.
- 11 Q. So the hypothesis is formulated, perhaps that the
12 subject, the deceased, was assaulted prior to arriving
13 at the scene. A strategy is then developed and
14 eyewitness statements will be obtained and evidence
15 gathered. And then that will be explained to the
16 pathologist in the report, and then the pathologist can
17 consider the likelihood of that assault having taken
18 place, as part of the post mortem?
- 19 A. Yes.
- 20 Q. As you say, if there is eyewitness evidence, a statement
21 saying a blow to the temple and that has no bearing, the
22 pathologist rules that out, does that then allow for
23 that hypothesis to be brought to a close, brought to an
24 end?
- 25 A. Yes.

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1 Q. Thank you. Let's look at paragraph 120. This is the
2 one that you have already mentioned:

3 "Another hypothesis would be, was his death due to
4 an underlying medical condition, information would be
5 obtained from his GP and/or specialist and statement
6 from family members. If I was SIO I would normally list
7 my hypotheses or anything that may be relevant in terms
8 of a potential cause of death. I would note down the
9 hypotheses and then allocate out priority actions, the
10 most likely hypotheses initially. Where there is no
11 evidence to support a hypothesis, it can be eliminated.
12 That is not to say every SIO is the same, some will and
13 some won't. Also hypotheses ensure you don't exclude
14 anything. Some things could be overlooked otherwise."

15 So you mentioned the possibility of an underlying
16 medical condition?

17 A. Yes, I probably said "caused" but I suppose it could be
18 caused or contributed to the death.

19 Q. Sorry, which line are you talking about; is that line 4?

20 A. Yes:

21 "... terms of a potential cause of death."

22 That should be a potential:

23 "... potentially causing or contributing to the
24 death."

25 Q. All right. Thank you. I think earlier you said that

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1 wouldn't need a particular strategy, it is quite easily
2 ruled out if there is no underlying medical condition.
3 Is this something that would also be given --
4 information that also would be given to the pathologist
5 if you had confirmation perhaps, a statement from
6 a family member there was no underlying medical
7 problems?

8 A. I think I mentioned that normally you would obtain --
9 well, you would be asking the family initially, in that
10 initial stage, you know, did -- was there a -- in terms
11 of his health, did he have an underlying health
12 condition, and even apart from that, how was he feeling
13 on the day? So the GP might not have known but he may
14 be being -- or he or she may have been complaining to
15 their family about feeling unwell or had chest pains or
16 something like that. So it is trying to get that
17 information to allow the pathologist to consider. It
18 might be irrelevant but at least it is -- my experience
19 is you try and prepare as comprehensive a death report
20 as possible which may assist during the post mortem
21 examination.

22 Q. We heard from the pathologist in this -- in relation to
23 Mr Bayoh's death that she looked for things like a chest
24 infection or an infection in other area of the body?

25 A. Yes, absolutely. Absolutely.

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- 1 Q. So evidence that you have gathered in about something
2 like an infection or an underlying health condition
3 could be of assistance to the pathologist?
- 4 A. So I suppose a known condition and if somebody has been
5 unwell but has not been to the GP about it.
- 6 Q. Thank you. And you say:
- 7 "Where there is no evidence to support a hypothesis,
8 it can be eliminated."
- 9 In terms of something like an underlying health
10 condition, although you have maybe recovered the GP
11 records and maybe have statements from the family would
12 you wait to rule out that as a possibility until you
13 have heard from the pathologist, or would you feel
14 comfortable as an SIO ruling it out if the family say
15 there was nothing wrong with him?
- 16 A. No, I would put on the death report that there would
17 be -- there is nothing from the family to suggest that
18 the individual had been feeling unwell in the preceding
19 days or weeks. However, probably the post mortem
20 examination would determine if there was any further
21 investigation. If the post mortem is suggesting that
22 there was nothing untoward found in relation to the
23 deceased being a healthy person, then you would keep
24 that in abeyance until the final post mortem was
25 provided.

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1 Q. The final post mortem would be of some significance
2 because presumably there could be underlying health
3 conditions that were not known to the GP or not known to
4 the family?

5 A. Yes.

6 Q. Paragraph 121:

7 "Ch Supt McEwan and I didn't discuss the nature of
8 the investigation. Race as a possibility was not
9 discussed with Ch Supt McEwan. However, it is in the
10 back of your mind when you're thinking about all
11 possibilities. In terms of hypotheses, one would have
12 been that the male had been treated differently because
13 he was a black male."

14 You have already mentioned this today:

15 "I can't remember having a conversation with anybody
16 else about it, but the feeling I got was that everybody
17 was thinking along the same lines as me that it was
18 a possibility that the actions of the police officers or
19 a police officer was because Mr Bayoh was black."

20 I think you have already mentioned this as
21 a hypothesis, can you explain a little more about what
22 you mean by this hypothesis?

23 A. I think I mentioned it earlier, the possibility that
24 Mr Bayoh's ethnicity had impacted or caused officers to
25 react differently at their initial attendance. So when

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1 they first had contact with Mr Bayoh and thereafter
2 during the restraint of Mr Bayoh. Now, whether that is
3 stereotyping, discrimination or whether they wanted to
4 undertake a sort of malicious act, intent or
5 recklessness in terms of his care. So that was -- you
6 know, that is a hypothesis.

7 Q. In terms of your own personal experience and the work
8 you have done, is that what gave rise to you thinking
9 about this hypothesis or was it something else? You
10 have talked about the murder manual, you have talked
11 about awareness generally of what is going on.

12 A. No, I think the circumstances on that day were clear to
13 everybody, that this was a black male who had been
14 restrained and had become unresponsive during restraint
15 and what has happened -- this is not a unique case, you
16 know, this has happened before elsewhere in the UK, so
17 of course that is a hypothesis.

18 Q. Thank you. Moving on to paragraph 122 you said:

19 "I have been asked how we would investigate this
20 hypothesis. On day 1 the focus was more on managing and
21 securing those vital bits of physical or other evidence.
22 The longer investigation strategy would have developed
23 the following days and weeks. We were dealing with the
24 critical incident at the time. I'm not saying it wasn't
25 on Pat Cambell's radar in those first few hours, he will

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1 have to answer that himself~..."

2 We have heard evidence from Pat Cambell:

3 "... or the PIRC's radar ..."

4 We have not yet heard from them:

5 "... but at that early stage the focus was on making
6 sure the loci were secured and evidence was recovered.
7 These are the main actions that you have to consider."

8 Certainly we have heard evidence from Garry McEwan
9 over the past couple of days, and he has spoken about
10 a race hypothesis, if I can call it that. Looking at
11 that paragraph, if we can perhaps move down the page.
12 It is perhaps clear to you, are you suggesting that this
13 is one of the hypotheses but it is not something that
14 can be ruled out on day one? Is that a fair summary of
15 what is said here?

16 A. Absolutely not. I suppose what -- I have probably not
17 explained myself very well but in terms of the three
18 strands of an Inquiry, the first strand being the
19 initial actions, and fast -- initial priorities,
20 fast-track actions, it is really the second -- so
21 I think when I have said it's at the back of your mind
22 that is probably not the best terminology, but you know
23 what could have happened here, could have happened here,
24 but those fast-track actions are there which will allow
25 those hypotheses to develop further and the whole bit

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1 about whether Mr Bayoh's race was a feature in terms of
2 how the officers acted, that is always there. But the
3 fast-track actions are not going to -- they may secure
4 and protect and obtain information as to the motivation
5 of officers, but it's highly unlikely that any of those
6 fast-track actions on day one will provide you any
7 intelligence or information or evidence about
8 motivation.

9 Q. That is very clear. And in the absence of that, you
10 can't exclude this as a possibility?

11 A. No, no. You are not -- you are not even at the stage
12 when you are getting to the stage of broadening out your
13 investigative strategy around that possible hypothesis
14 in the first 24/48 hours.

15 Q. Thank you. Can I ask you to help us understand, if
16 you're developing this hypothesis, and as an SIO you
17 want to investigate that hypothesis, what are the types
18 of evidence that you might want to seek out that will
19 allow you to develop your ideas on that hypothesis? Can
20 you give me some examples of the types of evidence that
21 you would want to see before you start analysing that
22 hypothesis, if I can put it that way?

23 A. It's quite difficult to investigate motive to a certain
24 extent. So the types of things, I suppose on the first
25 24 hours, that you would hope to obtain, so there was

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1 significant eyewitnesses to the restraint, they would be
2 really important.

3 Q. Would that be -- sorry.

4 A. And probably -- when I say really important, those
5 24/48 hours, at least their initial statement, and
6 I think there was a bit about initial statement and then
7 the full comprehensive statement, because if it was
8 really wanting to try and delve down into the officers'
9 actions, you would hope you could get initial statement
10 and then have an interview adviser sit down and come up
11 with an interview plan for those witnesses, to make sure
12 that everything is covered, that would either support or
13 not support your hypotheses. Initial statement from the
14 officers themselves, which I am sure you will come on to
15 later on; to get their initial statement there would be
16 good, so that an interview adviser would definitely want
17 to sit down and draw up a plan in terms of
18 a comprehensive interview of the officers concerned.

19 Erm, I am trying to think ... CCTV, obviously,
20 without any shadow of a document. Safeguarding the
21 Airwaves traffic during that incident. So not only to
22 listen to it but there might be suggestions of chatter
23 in the background that you might have to go and get a
24 specialist, an audio forensic specialist to take away --
25 to listen to the background noise to make sure there

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1 wasn't any derogatory comments or whatever.

2 But none of these would happen on your first
3 24/48 -- well 24 hours anyway, it would be in the few
4 days afterwards, once you had developed your
5 strategy: how are you going to investigate motivation of
6 those officers? So you would be investigating what they
7 did and the dynamics of the restraint to see whether it
8 came within training and reasonable force, and all the
9 other issues. But if you are specifically looking at
10 Mr Bayoh's ethnicity as being a factor in this, then
11 those 24/48 hours I don't think would provide -- it
12 might. It might very clear from an eyewitness account
13 but, you know, there's -- it's a longer term, more
14 complex strategy to draw out.

15 Q. You've given me a lot there.

16 A. Sorry.

17 Q. No, I have taken notes. You've talked about initial
18 statements and then a full statement. We heard some
19 evidence a while ago from Conrad Trickett, he was
20 appointed post-incident manager, and he gave some
21 helpful evidence about the sort of initial statements
22 that are envisaged in that procedure, and then a more
23 detailed statement being taken later, once the officers
24 had perhaps recovered some of their composure I think,
25 if I can put it that way. Is that the type of scenario

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1 you are talking about here when you talk about initial
2 statements and then a full statement?

3 A. I think it's appropriate in certain circumstances.

4 I think there's two parts to this. There is a bit of --
5 if somebody has gone through a traumatic event, it is
6 not best practice to take a full and comprehensive
7 statement from them at the time and what you want to do
8 is absolutely drill in on the key important points and
9 get an initial statement, or I think sometimes it's
10 called an initial account, but I would say initial
11 statement of those facts. So you know what they are
12 saying, but then the importance of then coming up with
13 a full interview plan, drawn up by an interview adviser,
14 so that you can drill into each of those points.

15 So there is probably two benefits, there is one
16 benefit in terms of it's not good to take a full
17 comprehensive statement off of somebody who has trauma
18 and the other benefit for the investigation is you can
19 plan it really well. And we do that -- we do this
20 routinely in other areas, so I can give you an example
21 if you want.

22 Q. Please do.

23 A. It sounds like I only talk about rape and sexual crime
24 but in rape investigations the initial officer will take
25 what we call, or what Police Scotland -- I keep saying

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1 "we", what Police Scotland calls an initial briefing
2 document. So that is very succinct in terms of the
3 immediate information you have to know, and enough
4 detail then for a sexual offences liaison officer to
5 receive that, draw up an interview plan, and then
6 interview the victim.

7 It's the same with child abuse investigation units,
8 it's the same process, so -- and the vast majority of
9 homicides will be the same, an initial statement will be
10 taken, if they are what would you call a significant
11 witness, which the officers are, and the eyewitnesses to
12 the restraint would be, then the use of an interview
13 adviser is crucial.

14 Q. Is an interview adviser a specially trained police
15 officer?

16 A. Yes, and I think ... I think that was one of the things
17 listed that I asked Pat Cambell to think about. Not
18 because there was going to be any comprehensive
19 interviews taking place that day but it's a bit about
20 once you start getting the initial statements, as soon
21 as you get the initial statements the interview adviser
22 has sight of everybody's statement, so they know then
23 how to draw up an interview plan for an individual.

24 Q. You have talked about different elements of evidence.
25 Can I just ask you some other things. You have talked

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1 about CCTV, would that include things like mobile phone
2 footage as well as fixed cameras, CCTV?

3 A. If that was obviously available on the day then that
4 should have been seized so you've got it. Probably part
5 of the next -- or, you know, part of your building
6 strategy would be then to deploy a CCTV co-ordinator to
7 go around and then -- for example, if it was a whole
8 range of houses in Hayfield Road, identify the areas or
9 locations that would have best view of where the
10 restraint scene was. They would be prioritised to
11 basically see if there was obvious CCTV and if not, go
12 into businesses, chap on people's doors, to ask them if
13 they had CCTV available.

14 Q. You have mentioned the Airwaves, we have heard evidence
15 that they are between officers on their police radios --

16 A. Yes.

17 Q. -- conversations that are taking place between members
18 of Police Scotland?

19 A. Yes. So it's conversations between the officers and the
20 control room, and that will be recorded. That will be
21 retained so you would ensure in those fast-track actions
22 that that is available for listening to, and then maybe
23 part of your investigative strategy, as I said, might be
24 to get some specialist individual to come and listen to
25 what is behind the sort of obvious speech.

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- 1 Q. How quickly are things like Airwaves available to
2 investigators? We are talking about the sort of first
3 day. Are they available on that day?
- 4 A. Yes. I know definitely phone calls into the police are
5 available immediately because I have been either
6 superintendent or whatever, you will get an audio
7 message. So they are instantaneous, they send them in
8 an audio file to you -- for an SIO to review calls,
9 et cetera. In terms of Airwaves, it's all recorded, so
10 it's not -- you know, it's not difficult to obtain.
- 11 Q. Would call cards be of interest to an investigator
12 investigating a hypothesis of this sort?
- 13 A. Call cards? Well, it depends -- if we are specifically
14 dealing with the restraint aspect and the officers'
15 actions and their motivations, which I think that is
16 what we are focusing on, absolutely, that would be
17 identifying individuals who witnessed the incident,
18 which I think I mentioned before, PIRC were going to
19 specifically speak to those members of the public.
- 20 Q. And --
- 21 A. Can I just say I am a wee bit sceptical of -- what you
22 are calling "call cards", I would call a STORM incident.
- 23 Q. Sorry, that will be my mistake. We have also heard them
24 called STORM cards or STORM records?
- 25 A. I would call them a STORM incident and I am always a wee

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- 1 bit wary because sometimes they are not quite accurate.
- 2 Q. Right. All right.
- 3 A. For a number of reasons. People will say things and
4 they are typed up, so sometimes it's misunderstanding
5 communication, perception or whatever. So they are
6 a good hint in terms of a direction but I would
7 always -- I think what they say for SIOs is assume
8 nothing, believe -- I know this sounds terrible: assume
9 nothing, believe nothing, and check everything. So it's
10 the bit about actually checking that the controller has
11 typed in exactly what has been said. Sometimes there's
12 errors.
- 13 Q. Then we have talked about the importance of
14 a post mortem in relation -- would that also be
15 something that would be presumably helpful evidence if
16 you are analysing or developing a hypothesis of this
17 sort?
- 18 A. Extremely helpful evidence.
- 19 Q. You say "extremely". Why do you say that?
- 20 A. Sorry, in terms of motivation? Maybe not extremely,
21 sorry I will take that back.
- 22 Q. But still helpful?
- 23 A. Yes.
- 24 Q. Possibly?
- 25 A. Yes.

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1 Q. Can I ask you about the development of this hypothesis
2 about possible race motivation/discrimination. You've
3 talked about the possibility that Mr Bayoh was treated
4 differently because he was a black man. To what extent
5 would the development of this hypothesis be assisted by
6 an interim post mortem?

7 We know in this particular situation we heard from
8 the pathologist, Dr Shearer, that the initial
9 post mortem was signed on -- the post mortem took place
10 on 4 May and the initial post mortem report was dated
11 6 May. And the cause of death in that initial
12 post mortem was "unascertained, pending investigation".
13 She gave evidence that she had asked for investigations
14 about possible infections and toxicology and things of
15 that sort.

16 I think I know what you are going to say but would
17 that type of post mortem report, an initial post mortem
18 saying, "unascertained, pending investigations", permit
19 you to draw a line under that hypothesis that we are
20 talking about and exclude it completely?

21 A. Absolutely not.

22 Q. We have heard about Airwaves messages, we've had the
23 benefit of listening to many of these Airwaves messages.
24 From those Airwaves messages alone, we've heard evidence
25 that the officers arrived at 7.20 in the morning on

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1 3 May; that in terms of timescale, within 75 seconds of
2 their arrival, the van stopping at Hayfield Road, that
3 Mr Bayoh had been hit to the head with a baton two or
4 three times, he had been hit to the arms or body two or
5 three times, PAVA spray had been discharged, CS spray
6 had been discharged and that he had been brought to the
7 ground and brought into a restraint on the ground by
8 multiple officers.

9 The words used were:

10 "Several officers involved in a big restraint. Leg
11 restraints had been used and he may have been batoned to
12 the head."

13 From that evidence, just purely from the Airwaves
14 messages, would that permit an investigator to rule out
15 the hypothesis we are talking about?

16 A. That race was a factor in their actions?

17 Q. Yes.

18 A. To rule ... no, I would be putting that potentially
19 supporting -- potentially supporting the suggestion.
20 There's also a bit about you would have to know what
21 danger Mr Bayoh presented at that time, but it
22 absolutely doesn't -- you couldn't rule that out, race
23 being a factor, with that type of information.

24 Q. I don't want to mislead. There's many Airwaves messages
25 and a lot of information in there, I am obviously

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1 extracting certain elements to see if that would permit
2 you to exclude that race hypothesis?

3 A. No.

4 Q. We have heard evidence that statements were given by
5 police officers to PIRC on 4 June, so just over a month
6 after Mr Bayoh died. And again we've -- there were many
7 statements given and the Chair has heard a lot of
8 detailed evidence about those statements that were given
9 to PIRC. But again, there appears to be evidence that
10 Mr Bayoh was hit over the head with a baton on a number
11 of occasions, was hit on the arms on a number of
12 occasions, that there had been six discharges of both CS
13 and PAVA spray by officers initially at the scene, that
14 he had been shoulder-charged to the ground and brought
15 into a restraint, that there had been multiple officers
16 in that restraint.

17 Again, just taking that as a snapshot, if we can,
18 would that permit an investigator to exclude the race
19 hypothesis, any of that information?

20 A. No.

21 Q. We've also heard evidence of a final post mortem report
22 from Dr Shearer, the pathologist, that this was
23 completed after the investigations which she had
24 instructed had been carried out, and in relation to
25 that -- that was dated 18 June, so after the statements.

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1 We have heard evidence that that gave the medical
2 cause of death:

3 "1a. Sudden death in a man intoxicated by MDMA,
4 ecstasy and alpha-PVP whilst being restrained."

5 I appreciate you don't have the full post mortem
6 report in front of you, but with a final post mortem
7 report with that as a cause of death, would that in
8 itself permit an investigator to draw a line under this
9 hypothesis and exclude it completely?

10 A. No.

11 Q. Thank you.

12 I would like to move on, if I may, to the accounts
13 from the officers. We have touched on this to some
14 extent. Could we look at paragraphs 122 and 123,
15 please. We've dealt with 122. 123:

16 "I would say that I wasn't sure at all exactly what
17 the officers had done at this initial stage. We were
18 trying to work out what the officers had done in terms
19 of restraint, never mind why they did it. On that first
20 day I don't think we even got a good understanding of
21 the police interaction with Mr Bayoh in any detail such
22 as the use of batons or police restraint on him. Maybe
23 others were aware, I certainly wasn't."

24 We've heard evidence that there were -- notebooks
25 weren't completed, operational statements weren't

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1 prepared by the officers -- the statements to PIRC
2 weren't given until 4 June -- and use of force forms
3 weren't completed and use of spray forms weren't
4 completed. In light of that, you've said:

5 "On that first day I don't think we even got a good
6 understanding of the police interaction~..."

7 Did you feel on that day that you had access to
8 enough information from the police about what had
9 actually happened at Hayfield Road?

10 A. No, I certainly didn't have a good understanding of the
11 action of an officer or officers. And I suppose it's --
12 this is in hindsight. (Pause).

13 That I am aware that the PIM process that was put
14 in place -- now, I would have to say at the time my
15 understanding of the PIM process following the course
16 I was meant to go on was for firearms officers, so in
17 terms of how that was going to be developed for this
18 incident, which wasn't a firearms incident, and for me
19 was more a welfare support role, I suppose, the PIM,
20 so -- and this is after the incident, so now I am
21 reminded myself about that process and the PIM's role in
22 terms of basic facts, I think that would have been
23 really helpful.

24 Q. Why do you say that?

25 A. Because if it's a firearms officer, and it's -- and the

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1 PIM's role is to get basic facts in terms of what
2 officers were there, what was their position, and what
3 was the manner of how they -- how they acted. And for
4 me, we didn't have an understanding of who had done
5 what, so we might have known that there was restraint --
6 and I'm only speaking for myself and I suppose maybe
7 Pat Cambell was, maybe other people were, but I can't
8 recall any discussions in terms of individual officers,
9 what their role was in that restraint. There might have
10 been officers who didn't play a part in that restraint,
11 or played a -- I know this sound terrible but a lesser
12 part in that restraint, or who had arrived later on
13 during the restraint.

14 It was -- it's a bit about -- actually it is not
15 talking about a group of officers, it is talking about
16 each individual officer and their individual actions,
17 which I think in terms of basic facts, if a PIM in
18 a firearms incident, one of his main parts is to
19 identify the principal officer who shot the individual,
20 then, if they were applying the same PIM rules here,
21 then the PIM would have got basic details as to the
22 positioning of each of the officers, and what part they
23 played in that restraint process. And was there any
24 there that didn't play a part in the process as opposed
25 to having them all in the same room and the advice being

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1 to say nothing. Is that ...?

2 Q. Yes, that is helpful. We've heard some evidence that
3 some witnesses have said there was simply no evidence
4 that this was racially motivated. And there was nothing
5 from the outset to suggest that the actions of the
6 officers were because Mr Bayoh was black. Do you have
7 any comment about that approach, simply saying: we
8 didn't have any evidence that that was the --

9 A. Sorry, I go back to the three stages of
10 an investigation. So at the initial stage you are
11 identifying, seizing, controlling, taking possession of
12 potential evidence or information. So I can't see
13 anything that was done in that first 24 hours that
14 somebody could say, well, there was no evidence to
15 suggest that race was a factor. Because hardly anything
16 that they were doing was relating to the officers'
17 motivation and whether Mr Bayoh's ethnicity had anything
18 to do with it.

19 Q. Thank you. Would it surprise you to know that this
20 wasn't one of the hypotheses that was being
21 investigated?

22 A. On what day?

23 Q. On 3 May. On 4 May. 2015.

24 A. So in terms of -- on 3 May, in terms of that hypothesis,
25 those initial actions, the hypothesis wouldn't have

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1 anything -- wouldn't have much bearing on those initial
2 actions or fast-track actions. I would say by the
3 following day, 4 May, when the fast-track actions are
4 complete, that is when you start developing your
5 hypotheses and your enquiries around hypotheses.

6 Q. So you would have expected that this was a hypothesis
7 that would have developed as time moved on from 3 May?

8 A. Yes.

9 MS GRAHAME: I am conscious of the time. Would that perhaps
10 be an appropriate --

11 LORD BRACADALE: Would you come back tomorrow and continue
12 with your evidence please, Ms Boal. We will adjourn
13 until 10 o'clock tomorrow morning.

14 (4.15 pm)

15 (The Inquiry adjourned until 10.00 am on Friday,
16 1 September 2023)

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