



The Sheku Bayoh Public Inquiry

Witness Statement

William Little

Taken by [REDACTED]

on MS Teams

On 4 November and 20 December 2022

Witness Details

- 1. My name is William Little. I was born in 1959. My contact details are known to the Inquiry.
- 2. I am currently a Senior Investigator with the Police Investigations Review Commissioner (PIRC). I have worked for PIRC since March 2013, I was initially employed as a Deputy Senior Investigator and became a Senior Investigator on 1 March 2018

Previous statement

- 3. I have had sight of the my statement dated 28 July 2015¹. The statement was drafted around 12 weeks after many of the events recorded in it. I'm asked what sources I referred to when drafting the statement other than my own memory. I had access to my PIRC notebook and daybooks. Much of the statement is about items I seized and statements that I noted, that information

¹ PIRC-00370

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is recorded in our CLUE 2 management system. The statement was given to the best of my memory at the time and I did my best to be truthful and accurate in what I said. I've read over this PIRC statement and confirm the content is correct. I'm asked if there was any discrepancy between this statement and my PIRC statement, which statement I would prefer. I would say my PIRC statement because it was given at the time.

Career Summary

4. I joined Strathclyde Police in 1980 and remained with Strathclyde Police throughout my 29 years' service. I had various uniformed roles until 1989, when I went into the CID. I was a detective constable for a number of years in different areas of Glasgow, and then I was promoted in 1996 to a sergeant in the Paisley, Renfrewshire area and then shortly afterwards I became a detective sergeant again in that area.

5. Then in 1999 I moved into a more specialist role, I became a detective sergeant in the fraud squad, originally looking at major and complex frauds, and then I took over management of the Force Financial Investigation Unit. Whilst I was in there, I took part in significant critical investigations that were ongoing in the force. For example I was part of a small specialist team that investigated the company TransCo following death of four family members in a gas explosion.

6. I was also during this period seconded to the Channel Islands, States of Jersey Police, to do an evaluation of the offshore banking industry. I worked there for around six months, during which I was sworn in as a States of Jersey police officer. In May 2004 I was promoted to a Detective Inspector within the Glasgow Central and West Divisions. In this role I was responsible for investigation of serious crime, taking direct charge of incidents which included, homicide, rape, armed robberies I retired from Strathclyde Police in April 2009. Upon retirement from Strathclyde Police in April 2009, I didn't do anything for the best part of a year and then through an employment agency I was offered a position with the States of Jersey Police down in the Channel Islands. They

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were looking for an experienced Senior Investigating Officer (SIO) to assist with the investigation of a number of unresolved crimes that included missing persons, homicide and crimes of a sexual nature. I did that for about a year and I left due to the travelling involved. Between April 2011 and March 2013, I did a number of small wee jobs, before I successfully applied for the position of Deputy Senior Investigator with PIRC.

7. I have been asked whether, when I worked on the PIRC investigation into the death of Sheku Bayoh, did I know any of the officers personally, whether that be the 9 officers involved in the incident at Hayfield road or the wider team of police officers involved in the investigation. I wouldn't say I knew any of them personally. I had an awareness of who the SIO, Detective Superintendent Patrick Campbell, was. I think he was a detective sergeant in one of the Crime Policy Management Units when I retired from Strathclyde Police but I had never at any time in my service worked with him. DCI Keith Hardie and DI Stuart Wilson, I'd never met before, they were the main people I engaged with during the course of this investigation. In terms of the 9 officers involved in the incident at Hayfield Road, I never came across them before, as far as my recollection is.

8. I'd been in PIRC since 2013. In October 2014, I had undertaken an investigation, in relation to an incident at Kirkcaldy Hospital where police officers had discharged CS spray within the accident and emergency unit. The whole accident & emergency unit had to be shut down because of the use by police officers of CS spray. This matter was reported to PIRC as all incidences of the use of firearms including CS/Pava spray by Police Scotland must be reported to PIRC. My recollections are that none of the officers who were involved in that incident were involved in the incident with Mr Bayoh. So the only one I had previous knowledge of was Detective Superintendent Campbell.

9. When I joined PIRC in March 2013, I was employed as the deputy senior investigator which is basically a team leader, responsible for a team. It wasn't

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very big teams in those days. There were six deputy senior investigators at that time. At the point that Sheku Bayoh died on 3 May 2015, I have been asked how many deaths following police contact or deaths in police custody I had investigated. I think, we'd had about a total of 80 investigations at the time of this incident I am unsure how many such investigations related to either Death in Custody or Death following Police Contact but it was about 18. I had undertaken three investigations of Death in Custody or Death following Police contact .

10. I have been asked whether, in the deaths cases that I've dealt with either before or after 3 May 2015, have there been any occasions in which police officers didn't provide operational statements. No, never. I am aware of another incident in the organisation, where a member of police staff refused to give a statement. However, it wasn't one of my investigations and I am unaware of the reasons why this happened or exactly how this matter was resolved.

11. I have been asked what was my understanding of how the post incident management (PIM) process should have operated following Sheku Bayoh's death and whether I was expecting initial accounts from the officers followed by operational statements or some other process. Police Scotland deployed a PIM to this incident fairly early on, the PIM was Chief Inspector Conrad Trickett. Police Scotland had a process called Post-Incident Procedure (PIP). But it was only at that time deployed in the instance of a firearms incident or the use of a firearms. So it was contained within the firearms world. Other forces in the UK did deploy a PIM when there was a critical incident other than a firearms incident– but Police Scotland, at that time, didn't, The process is called Post Incident Process (PIP). Whereas now Police Scotland do deploy or utilise the PIP process and deploy a PIM for critical incidents like a Death in Custody .

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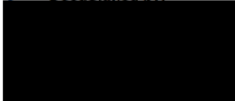
12. I have never been trained as a PIM. However, I've been to a number of PIP's in my time at PIRC, I've also lectured at the Police Scotland PIM course on the role of PIRC and what a PIM can expect when PIRC turn up at a PIP. My understanding is that the PIM would go, take control of the officers who had been identified as principal officers, this being the officers who had direct involvement in the incident. PIP is a welfare/investigation process, to manage a traumatic incident and the welfare of the officers involved as well as gathering information. So my understanding with a PIP would be: a PIM had been deployed to facilitate the investigation, manage and ensure the integrity of the PIP, explain the PIP process to the principal officers and ensure that their welfare needs are addressed and ensure that the no conferring warnings have been given and reminder is given if required.. The PIM would obtain, first of all, situational report, basic facts and personal initial accounts from the officers, and would have control of that situation, and these areas of information would be passed to PIRC timeously. In the circumstances, with a PIM deployed, I would have expected some form of statement from the officers that night or that day. Bearing in mind, it happened at seven o'clock in the morning, it's not like it happened nine o'clock at night.
13. Then what happens in the PIP process is, within 48 hours of the incident, the officers provide a full statement. That statement is either taken by PIRC staff or they provide their own statement. That's what happens during a normal PIP process. The challenge I think that the PIM (CI Trickett) would have in this incident, is general officers have no idea what a PIP process is and what was expected of them and what should have been done. But the PIMs deployed should have been telling them. So when there's a PIM deployed, I would have expected to get basic facts and initial accounts. The basic facts, a summary by the PIM, having just arrived, been briefed and been told about the incident. I would then have expected individual initial accounts from each of the officers which generally they'll all be writing themselves. Again, it's a short summary; it's not a full statement: "I went, I saw, I did, this happened,".

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- 14. So I would have expected some form of statement from the officers that night or that day. The we would have expected an operational statement to be provided thereafter. Then, later on in the investigation, as I then gather more facts from witness accounts from audio, from transcripts from the Airwave transmissions and such like, I would have deployed my staff back to these officers to get a much more detailed statement from them. And that's, generally, what would happen, but not in this instance.

- 15. I have been asked whether PIRC had the powers to force those statements to be given? No, we can't force that. The officers, they were classified and deemed as witnesses. The information that I had was that they were witnesses. The law provides the same rights to police officers as is it does to general members of the public who are witnesses. I can't force somebody to give me a statement, I can't force somebody to speak to me, even as a suspect. I have control over them, if they were deemed a suspect, I am able to invoke powers. At that time, it would have been section 14 powers, if that was what I was going to utilise. So there's no mechanism for me to force somebody to provide information or provide a statement.

- 16. I have been asked whether the PIM manager within the PIP process has the power to demand the initial accounts. The PIM can request them. So you have a senior officer giving an instruction to officers, "Tell me what happened here. I want you to write down or, if you're not writing it down, I will write it down. Tell me what's happening". I am unaware of any other circumstances of this occurring (initial accounts), whether that has been in my police career, when I worked as a consultant with another force or I worked in PIRC. Police Scotland is a disciplined service organisation, I had an expectation that these officers would provide that information. I do not know what exactly power the PIM has to demand the initial accounts that is a matter from C.I Trickett to answer.

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17. I have been asked whether Conrad Trickett ever made a request for those initial accounts? And if he didn't, do I have any understanding of why that was. I think the challenge being is Conrad Trickett was deployed from a welfare point of view. Conrad adapted the post-incident management procedures from the firearms post-incident management SOP. At that time, Police Scotland didn't deploy PIP unless it was a firearms incident. So this was then adapting a policy and a role to meet this situation. He would need to clarify if he asked for initial accounts.
18. I've had sight of the Post-incident Manager's log (PS00387). The first page outlines with terms of reference: *"To facilitate the application of the post-shooting procedures policy and the IPCC investigation [in Scotland - the PIRC investigation] balancing the welfare needs of officers within current legal requirements, protecting the rights of both individuals and the force."* On page 2, the log includes generic information under the heading of "Advice to the principal officers on the new ACPO guidelines around conferring". I have been asked about the section that states: *"As a matter of general practice officers should not confer with others before making their accounts (whether initial or subsequent accounts). The important issue is to individually record what their honestly held belief of the situation was at the time force was used."* I'm asked whether it would be reasonable to assume that warnings against conferral, and having initial accounts and operational statements would form part of the PIP process. I'm not PIM-trained myself – but yes, the role of a PIM is to manage the process, if we're taking it purely as a PIP process. An overriding factor of that process is about welfare and management of the officers, yes, but it's also about obtaining information relative to the incident that's occurred. My understanding is CI Trickett was deployed as a PIM, not deployed as another senior officer to go down there to help manage the situation. From the outside looking in, I think the challenge that CI Trickett had going down is he arrived some hours after this incident occurred. According to the log, he arrived at Kirkcaldy Police Station at 11am and the principal officers had already decided not to provide statements etc.

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19. I have been asked how the PIRC on call system works. As a rule, we have to provide 24-hour cover for incidents that we get instructed to attend or investigate. We're the only organisation that are in power to investigate deaths in custody in Scotland and all firearms incidents must be reported to us. Most incidents happen out of hours. So we have an on-call team and we take a turn a week as being an on-call team. At that time, there were six teams so myself, as a team leader, I would be on-call with my team one week in six. My team consisted, at that time, of two other people. There were teams of three. So there was 18 of us performing an on-call role.
20. Our gateway into Police Scotland is through the Professional Standards Departments (PSD); they have an on-call person/people. So where an incident occurs in Police Scotland, there's an onus on the people at the incident and you're relying on the SIO, the duty DI, or somebody in a position of authority and responsibility. They should be saying, "Can you contact Professional Standards?" PIRC was very much in its infancy, in 2015. Sometimes police officers don't know what PIRC was. Even now, we can find this to be the case, even though we lecture at all the SIO's courses. This can be the case with Procurator fiscals also.
21. Generally whilst on-call, I could get a phone call from the on-call chief inspector at Professional Standards Department, and it normally begins with the phrase, "I just want to give you the heads up, there's an incident ongoing at such and such. I don't really have much information. But the inference, what I'm getting told is it will definitely be a referral to PIRC". And I'll then ask for the name and contact number of the person managing the incident. And if it's a case of a death, ask if they have contacted the Crown. It's amazing how many times they haven't actually contacted Crown. I need Crown to instruct me to carry out an investigation. PIRC's quite a strange organisation, you get instructed to go and do things. When you're in the police, you become aware of something and you just automatically investigate. In PIRC we are

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instructed, and in the case of a death, we need Crown to instruct us, whether that's a verbal instruction, which is fairly common out-of-hours. Then we'll get a letter of instruction later telling us exactly what the terms of reference are for the investigation

22. On 3 May 2015, it was Keith Harrower and his team's turn to be on call. In an incident of this magnitude, I expect he would have realised right away, "I don't have enough people here. Three of us are not enough to deal with this incident,". And you're also looking for specific skillsets to come with you as well, when you're going to that incident. In particular, you're looking for scene manager particularly as this happened in a public street. I've had a number of deaths in custody I've dealt with, and the person's died in a cell so you can seal the cell up. You can instruct Police Scotland, "Seal that cell up; create a sterile area as a locus guarded by an officer with a MI – Major Incident book – and log everything" So the cell would be sealed until we get there because we've been instructed by Crown, we're the investigating officers. The ambulance have attended and pronounced life extinct; they will not remove the body, the body will get left in situ. And it's up to ourselves to then do all the scene examination, do the scene exams around the body and then arrange for the forensic removal of the body to the mortuary. That wasn't possible in the circumstances of this case. So, you'd be looking for scene managers to manage this particular situation.
23. Now, because of the limited numbers we had then, each team didn't have a scene manager on with it. So, if you do not have a scene manager on then you would try to get a scene manager, so you would need to phone PIRC staff round. Now, people are not just sitting waiting for the phone to go, they're out on the golf course, they're away for the weekend or otherwise unavailable. So you try to scramble some resources to best manage the incident and provide a response. That's what Keith did. He would have his own on-call team. I would suggest for an incident like this, if it was me that was on call, get as

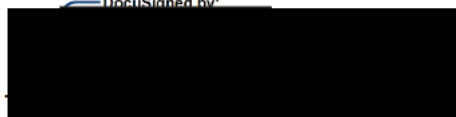
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many people out: "Anybody who'll respond, can you ask them to come into the office."

24. My usual procedure, when I get called about an incident, is to ask "Who's the senior investigating officer on the site?" I want to know who it actually is, the SIO on the site because they'll know more information because I want to know information like , "Have you deployed scene managers? Who's your scene manager?" Because as soon as my scene manager comes in, he is going to say, "Who's the scene manager? Have you got his phone number?" so I can speak to him directly and say, "What have you done? What have we got here? What are we trying to manage?" Because we can't ask Police Scotland not to do anything until we get there because then forensic opportunities could be lost. Additionally, in this one, this investigation was unusual as well because we got a bit of the investigation, and the police got a bit of it. I'm not aware if that had happened previously either. But you want to say to them, "This part of it is our investigation. You tell me what you've done? How have you put major incident protocol procedures in place." So I would be expecting to be told, "The area has been cordoned off; we've got people controlling the scene." Now, it wasn't in this instance, but I'm talking generally here – if the body was still in situ, I would ask "Has it been protected? Has it been tented?" "Is there areas that needed tented? Is there areas of blood?", depending on what the weather's like - the weather wasn't very nice, in my recollection, that day. You're looking to protect the scene but you're having to do this from afar and you're doing this by phone call. That's why it's no use speaking to somebody who is sitting in the management, or an office. You need to be speaking to the officers on the ground. That'd be my process in trying to bring control from afar to it, and make them understand, "We're coming up and the expectation is I want that in place and if you've not done it, get it done and record when you've done it."

25. In terms of the phone calls to PIRC staff, the problem is everybody's in their houses and they then have to get into the office. We need to go up with our

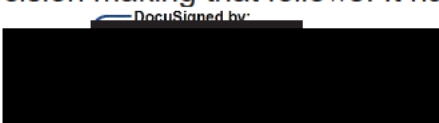
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own equipment particularly for recovery of material from the scenes. So they have to come to the office and pack up their kit bags. By that time – and again I’m talking about myself in general—I’d be constantly making phone calls – “What’s happening? Who’s this?” People phoned, notes of phone numbers, gathering as much information as I can, so that when we get to the office and I understand how many people we’ve got, then I can give them some briefing in respect of what we’re going to expect and what their roles are. Now, that’s my viewpoint as what Keith would be doing that day.

26. I’m asked generally where in those initial phone calls with the Police and the Crown, whether the information that I tend to get in those initial phone calls with the Crown, is generally accurate or is it common to find that there are inaccuracies. Generally, it’s just what they know at that time but that may be found later to be inaccurate. It’s a bit like Chinese whispers; they’re getting told something by somebody who has been told something by somebody, who’s been told something by somebody. So getting actually accurate information, that takes quite a long time because it’s coming in from different areas. For this incident, you’ve got all these members of the public phoning in. That’s getting recorded. You’ve got police officers getting deployed. They’re being passed information from control room about information that’s coming in from members of the public. So if you take Scott Maxwell, he’s been passed this information from the control room, so he’s relying on the accuracy of what they’re telling him in relation to what members of the public are telling the control room, and all the times it comes into the control room, it comes into a call handler and then the call handler notes up that information, and then that gets passed on to a controller to pass out to the officers so there are different stages. So, to be able to say it’s accurate, it’s as accurate as you know at that time.

27. I have been asked how important is it for that information provided by the police to be accurate in that initial hour or two of a PIRC investigation and how much this impacts the decision making that follows. It has a lot of importance

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as that's what you're basing your decisions on. So it needs to be accurate. One of the things I ask for early on is the Police Scotland STORM incidents. When somebody phones in, the STORM is created, and information is then passed into the STORM incidents, and recorded into the STORM incidents. So you're relying on that having fairly high degree of accuracy. It may turn out what the person's passed to the police is inaccurate once you delve into it, once you start properly going back and seeing these people, also comparing them against other information you know. But one of the things I ask for is the STORM incident. So I can say of information, it can only be as accurate as what they know at that time. And in this instance, I can only base my decisions on the accuracy of that information that I'm getting.

28. I am asked who makes the decision as to whether officers are witnesses or suspects, particularly in a death following police contact or death in police custody investigation. That's a PIRC decision. However, in really critical incidents like this investigation – this was the biggest investigation we've undertaken – PIRC make that decision and you might seek qualification by the Crown that they agree with that decision but, in the main, it's a PIRC decision. I have had other investigations where I have said to the Crown that, I consider these officers to be suspects not witnesses. In this example, it was a fairly lengthy criminal investigation and the officers were now all suspects, and the Crown agreed they absolutely were suspects. So their opinion is canvassed but it's our decision. As investigating officer, it's basically a decision that you make based on the information you have.

29. I'm asked how early into an investigation would a decision be made regarding the status of police officers – what information is required to make the decision. You need information, and you base it on the information you've got. You may decide an officer is now a suspect. But as soon as you place somebody into the suspect position then they are afforded certain protections in law. So if I want to speak to them, I have to afford that protection, under law, to them. At that time, if I was wanting to speak to an officer who was a

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suspect, they would need to know what their status is i.e. that they're a suspect, and I would interview them on a formal footing. So they would either be interviewed as a suspect who has attended as a voluntary attendee, or I would be detaining them and I'd be interviewing them. Because we don't have our own interview facilities, we would be asking them to come to a police office to be interviewed as a suspect under full caution, and afforded that right, and their right is they're not obliged to say anything. It may well be that we treat somebody as a witness and we take a witness statement from them as a witness, and then as we find other evidence that comes in that actually suggests that, they're a suspect. Then the challenge becomes is that information we've elicited as a witness, is that admissible in any criminal proceedings.

- 30. I'm asked whether it a default position that a person is considered a witness until PIRC has information that suggests they're a suspect. Yes, that would be the case because that'd be the case for everybody. People are all witnesses unless you've got credible evidence that they are responsible or they had some part of taking part in criminal activity. It's possibly that a person is not a suspect but you might be suspicious of their involvement. But you need to have reasonable cause to suspect that they've committed a criminal act before you can place them into that suspect field.

- 31. I have been asked about Keith Harrower's statement (PIRC-00007), in which he notes *"About 1022 hours that morning I contacted Detective Superintendent Patrick CAMPBELL by telephone and he provided me with a summary of the incident from the Police Scotland perspective. At this time he stated that he believed there were seven police officers involved in the incident and the officer safety equipment worn by them was being taken possession of. He also stated that Police Scotland Federation Representatives were in attendance at the office. I confirmed at this time that the status of the police officers was witnesses."* I have been asked if there was anything unusual about that, that this decision was made so early on prior

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to attending at Kirkcaldy Police Station. I don't think so, no. At that time, Keith's not on site at Kirkcaldy Police Station; So that there must have been something in the details of the conversation with Pat Campbell or Superintendent Craig Blackhall, with whom he spoke prior to Pat Campbell, that made Keith say that.

32. In general terms, police officers are unique in society as they're allowed to use force, even lethal force if it's justified, proportionate and necessary. Now for Keith to say, "you're witnesses," based on very limited information. There's nothing to say that they're not witnesses. There wasn't any information to say that these officers' actions were untoward at that time. That's still to be determined by an investigation. To be placed in the suspect character, you've got to have reasonable cause. You've got to have credible information that gives you reasonable cause to suspect that they committed an offence.
33. I have had sight of Keith Harrower's operational notes (PIRC-01468). I can see on page 3 that a telephone call is noted at 09.35 from David Green. It is recorded *"there was a call in regarding a death in custody in the Kirkcaldy area. He has received a report from Police Scotland that they attended an incident at 07.00 this morning somewhere in Kirkcaldy town centre. Report was of a black male with a knife **above his head**, causing a serious disturbance. Full location unknown at present. Male and female uniformed officers attend locus; challenge male; fight takes place, during which CS and baton used; **eventually placed in police vehicle, and he subsequently collapses.**"* With hindsight, we know that the information in bold type here is inaccurate. There's a call to Superintendent Craig Blackhall from Professional Standards Department (PSD) at 1001. The notes state *"Gold Group meeting taking place shortly. About 0700 hrs a number of calls to Police Scotland regarding African male armed with a knife in town centre of Kirkcaldy; suspect makes run at female police officer and assaults her; suspect is CS'd but this has little effect and he laughs; suspect struck with baton at least once; a number of police officers attended the locus. Suspect was unconscious on the ground;*

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CPR done by police and then by paramedics short time later.” Here the information provided is not inaccurate as such; however the order of events is incorrect which suggests that Mr Bayoh assaulted a police officer before CS spray was deployed.

34. Keith’s operational notes, at page 4, contains a heading “summary of the circumstances”. This states: *“Reporter states male with knife, Hayfield Road; 3 marked police vehicles and 1 unmarked car responded; **male appears in front of them; he runs towards them with knife; batons pulled and CS displayed; initial reports that CS does not take effect; officers strike man with batons; the male punches female on the side of the head; he is subdued and taken to the ground, handcuffed and leg restraints used.”*** Again, with hindsight, we know that the information in bold type here is inaccurate.
35. I have been asked, in my experience as an investigator, how much these early inaccuracies cause detrimental effect to the investigation. I would say you’re aware you’re getting the same kind of information. You’re receiving, over the telephone from different people, briefings of what they know at that time and what they’re aware has happened. I use the phrase at PIRC, and I’ve used it since we started here in PIRC. We’re the hindsight brigade; we come in after everything’s happened and then try to piece together what actually did happen. Depending what we’ve been asked to do, we consider is it procedurally correct; is it accurate; could there have been recommendations made about certain circumstances; what police did; report findings for the Crown etc. You base your initial decisions on what we’re going to do and what we’ve got, based on the information that’s been passed to us at that time. At that time that Keith was getting these phone calls, I believe that he was not aware that the police officers were refusing to provide statements. A month after that initial account that Keith got, we knew that it contained inaccurate information. The inaccuracies only come to light when we start piecing everything together and we get the officers accounts. I have been asked whether I feel that the early hours of the PIRC investigation were

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hampered by the failure of the officers to give those initial accounts.

Absolutely, yes. I would be more wary now after what happened, but up to that point, I would be making an assumption – which was wrong – that this information is coming from the people who were actually at the incident. If I’m passed some information, I would have it in the back of my mind, “Is this actually coming from the people or is this just all this mishmash of what’s happened flying about, rather than the people who were actually there telling us what happened?” I’d go back to basic facts, initial accounts.

36. I had sight of my statement dated 28 July 2015 (PIRC-00370). My first involvement in this case, was when I commenced duty at about 07.30 hours on Monday 4 May 2015, at the PIRC office in Hamilton. If my memory serves me right, I think I’d been on holiday before the holiday weekend. I was oblivious to the incident that happened. I do constantly read the news but I hadn’t for whatever reason, prior to coming in. I remember coming in thinking, “What’s been happening?” Because, in the office there was lots of people and activity, and I’m realise that something must have happened. At that time, I was given a briefing by Irene Scullion and Keith Harrower on the circumstances surrounding the death of Sheku Bayoh. I have been asked if I remember the details of that briefing. My recollection is that Keith prepared the briefing paper. Certainly, normally, you’d prepare a briefing paper for an out of hours incident for the mangers in the morning. I had sight of a briefing paper - Keith Harrower is the author and it is dated 3 May 2015. It’s a briefing note for the director of investigation (PIRC-03694). This is familiar and I believe I would have access to that at the briefing on 4 May.
37. My recollection’s that I’d basically been told that there was a death in custody of a male up in Kirkcaldy, that it’s really high profile; there’s already lots of media attention surrounding it; and I was to be the lead investigator. John McSporran was on holiday, and John Michell Director of Investigations, who is retired now, saying, “John will provide oversight on it, Billy, but John’s on holiday.” I can’t remember if John McSporran came in the Tuesday or

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Wednesday of that week. Irene Scullion had been aware of it on the Sunday. Now, I can't remember if Irene Scullion had been in the office on the Sunday or if she was aware of it because she was dealing with the matter over the phone. Ricky Casey, who was one of the senior investigators, he was in the office that Sunday while Keith was up in Kirkaldy dealing with all the incidents. I remember, being told "We've been instructed by Crown, we've been instructed under the legislation, and we've been asked to look at the incident that occurred when the police engaged with the man on Hayfield Road, and events thereafter,". I remember finding that a bit strange because obviously somebody just doesn't appear in a street; there's a lead up to something happening. We'd been told the police are dealing with the precursor events, right. I remember that and speaking to Keith.

38. So I've said in my statement Irene and Keith were at the briefing. I think the reason I've said Irene, is I knew Irene had more knowledge of it than John Mitchell because John was, like me, just back in work that day. I can't remember if the briefing paper was finished prior to the briefing or afterwards, However, he gave me a verbal briefing based on the information that's in the briefing note. The main thing from the briefing was that the post-mortem's was that day. They gave me an update in respect of it, and the family did not want to wish to engagement with the post-mortem. Right away, that made alarms bell ring with me because I'm like, "Who's going to identify the body? You can't have a post-mortem without identifying the body." Now, the post-mortem is a Crown Office process, the Crown Office direct it, but we have a big part to play in it. I was like, "Oh, right." Soon as you get told you're doing that, your head's starting to say, "What do we need to do, what do we need to put in place, what do we need?" Right away, from the briefing that Keith and Irene gave to me, I realised this was of a magnitude that we have not had yet. I immediately thought we need to put a structure in place that we've never done before in the organisation to deal with this. John Mitchell previously was the head of the CID, Strathclyde Police. I recall John said something like, "You're going to be the lead investigator, do whatever you need to do with it."

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I would obviously have discussed with John and Irene what was happening. I considered that we needed to get control and structure; there's loads of people here; some have been involved, some haven't been involved; people need to know their roles; are they continuing the same role or not continuing the same role.

39. I am asked about the following paragraph in the briefing paper, on page 2: *"It was reported that as the officers drove into Hayfield Road, they saw the now-deceased coming towards them as the vehicles came to a halt. They could clearly see he was in possession of a knife and was making his way towards them. Some of the officers, unknown how many at this stage, drew their police-issue batons, at least one of the officers also drew their PAVA spray and issued a warning to the now-deceased who was continuing to come forward."* At the bottom of page two, the briefing paper states: *"All the police officers directly involved in the incident, nine in number, attended at Kirkcaldy Police Office where an officer was appointed to deal with all related welfare issues. Representatives from the Scottish Police Federation also attended the office to support them and provide advice. The federation representatives advised that at this time not to provide operational statements. They were subsequently updated that their status as far as PIRC was concerned were 'witnesses, however their position remains the same at present."* I have been asked whether Keith Harrower gave out any explanation as to where this information came from, or did anyone question it on the basis that it was known the officers were refusing to provide statements. No, I didn't question it. Keith had been up there for many, many hours. He was obviously trying to gather information when he was up there as well. He was attending meetings, he was having individual meetings with people. So that's to me, a combination of all that information he's getting, trying to put it into a structured and timely form. That's his assessment of the information. I would take that as his assessment of the information he was made aware of at that time. But I wouldn't question "Where did you get that from, where did you get that?"

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I wouldn't go into that or query "Where did we get that from? Who's told us this? Where's that recorded?".

40. I am asked about the section of my statement which states "*I was further advised that during the events on 3 May 2015, the immediate family had intimated to DSI Harrower that they did not wish the post mortem process to proceed at this stage and asked that it be deferred until relatives and elders attended from England. The family could not give a date or time of arrival of such persons. This had been passed to COPFS but instructions had been given that that the post mortem would be taking place. The family intimated that they would not be engaging in this process.*" I have been asked whether I have ever dealt with a request from a family regarding the timing of a post mortem for religious or other reasons. My recollection is no, I haven't. I have been asked what I did with this request. I did have a discussion with Crown (David Green) about it in this instance. Keith had had some interaction with the family the night before, although I was appointing two family liaison officers to deal with family. But Keith had met the family, so I asked Keith to phone the family again and ask them again to engage with us in the post-mortem process. So although Keith had told me they didn't want to be involved in the process, I asked Keith to contact the family because they knew who he was. While FLOs had been appointed they had never met the families. What I got back from Keith was, "No, they're not engaging. They don't want the post-mortem to go ahead." I phoned David Green at Crown about that, and David told me that the post-mortem was going ahead. I haven't recorded it anywhere, but my recollection is his words were, "We need to know how this man died." So I can only ask Crown, I can only impart to Crown the information. It's Crown's decision to hold a post-mortem, and when that post-mortem takes place, and who undertakes the post-mortem, it is not my decision. David Green wasn't willing to delay it, the post mortem. I had no further information as to his reasoning. on that. I passed on to Mr Green the position of the family because it presents a challenge if family are not attending because you need a family member, or somebody very close to the

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deceased because there is an identification process that needs to take place before the post-mortem is undertaken. So that becomes a hurdle for us right away.

41. Now I'm saying "for us" because, in my experience, what would happen is that the family liaison officers would either bring the selected family members who were coming to identify the deceased with them to the mortuary, and provide some form of support and awareness, explaining to them what's going to happen. It's a very select sector of the community who have been in a mortuary. My experience is the FLOs would go, get them, bring them there, explain to them what's going to happen, introduce them to the pathologist, and then the identification process would take place, and that would be recorded, and then the FLOs would support the family after the viewing, which can be traumatic. I also have to supply staff to be in attendance at the post-mortem because there's a part to play in the recovery of samples in the evidential chain in respect of that. So if the post-mortem is taking place, almost immediately within a matter of hours. I'll need staff there. I've got to get the staff through to be where it is. I may have to get staff to go in Kirkcaldy and pick up the family and take them through so there's a number of considerations. I've got to pass on their views; I'm communicating their wishes and their requests to Crown. The Crown do the decision-making, they decide when a post-mortem takes place.

Arran Crescent as a Crime Scene

42. In my statement at page 4, I discuss a meeting which took place on 4 May 2015 and state *"During this meeting, it transpires that the partner of the deceased required access to the house situated at Arran Crescent which had been seized by the police. The events within this house at that time did not fall under the terms of reference of the PIRC. However, I was involved in the discussion that led to this house being returned to the family following visual examination by a Police Scotland scene manager and the obtaining of general still photographs."* I have been asked if I have any understanding why Arran

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crescent was treated as a Police Scotland crime scene. I am aware of the circumstances because we ended up taking over all the incidents later, that there had been an altercation with the deceased and his friend in the vicinity of that house. My understanding, the house was in a bit of a state of disrepair within, and I think that's clear from the telephone call that his partner made to the police. I can understand why it would have been examined by a scene manager and photographs taken.

43. I'm asked whether it is usual in these circumstances for a warrant to be obtained or the consent of the householder sought. I don't know if they searched the house. If they were carrying out a search of the house, you would need a warrant to search the house, yes or seek the permission of Collette Bell, householder, but just taking control of the house, and having a scene manager do a walk through the house, to assess it and also have scene photographs taken all without a warrant then I understand that. I'm asked if there is a distinction between taking control of the house and preserving it in a certain state and actually searching the house. Yes, absolutely. A search of the house is to go through everything. It's just to preserve the scene. Obviously, the photographs record the scene as it was before it was handed back to the householder. I am asked if certain material was taken from the house, say medication, tablets or other times, what process requires to be followed for this. In such circumstances in my opinion then the permission of the householder should have been sought, or a discussion taken place with Crown office to determine if they would grant a search warrant. The decision thereafter would be dependent on the outcome of that conversation.

Communication between Police Scotland and PIRC on 3 and 4 May

44. I'm asked about Garry McEwan's statement (PS03136) page 3, in which he speaks of his first visit to the family home and states that the family *"requested that they be afforded the opportunity to lay flowers on Hayfield Road and that an explanation as to why they (PIRC) still had control of the*

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house and why access to the deceased home address had been prevented by the PIRC the previous evening. I re-iterated my role, advised that I would pass on their queries to the PIRC.” I recall that whilst I was still at the mortuary, I received a call from Investigator Alasdair Lewis on this matter. I cannot recall the exact conversation but generally, Police Scotland wanted to know if Collette Bell could get or the family could get permission to go into Collette Bell’s house as she needed items out of the house for her young baby. I remember saying to Alistair Lewis, “But that’s their decision (i.e. Police Scotland’s decision), that’s not for me” and he said, “Oh I know” Ultimately, I did proffer an opinion to Alistair Lewis saying, “Well if the police have recovered what they wanted to recover out of that house, what is the danger of letting Collette into the house?” If they that they feel there is a danger letting Collette or whoever into the house, then find out what is needed and go and in and get it for her. But that was Police Scotland’s responsibility. I briefly mention a discussion of this with Detective Superintendent Campbell in my statement at page 4, which took place during our meeting on 4 May 2015. I can recall that they involved me in that discussion because they were just wanting to clarify that I was not in any way adverse to them handing the house back. There was obviously a young child, there was items that they needed access to. I think that was the first part they needed access to the house for, for the clothing or whatever for the child.


45. I’m also asked about Garry McEwan’s statement, at page 2, where he states that Ade Johnson knew him and asked to speak to him at the family home. In his statement, he records: *“The underlining suggestion that I perceived at this point was the real potential for heightened community tension, anger, upset and dissatisfaction by the family and ultimately escalation beyond that should I not speak with the family direct. At this point, I confirmed that the PIRC had no family liaison officers in place and that they would not be available until the following day. This, in my mind, was not acceptable, and I felt that it was important to speak with the family and give them the details surrounding Sheku’s death as I knew them at the time. I spoke with the ACC who agreed*

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with my thoughts.” I’m asked to comment on this. I don’t know how much involvement Mr McEwan had with PIRC prior to this incident and has any understand of how the deployment of Police Scotland FLOs and PIC FLOs generally works.. However, It’s clear from the Gold Group Minutes of 3 May 2015 that Police Scotland had agreed to deploy FLOs, identified trained FLOs and had advised Keith Harrower that trained Police Scotland FLOs were being deployed. Keith Harrower’s briefing note records, at page 3, that *“Police Scotland intimated at an early stage that they were placing family liaison officers, namely DS Kevin Houlison, and PC Sarah Jane Bell. One of the actions allocated to them is to identify relevant and willing family members to carry out their identification at the post-mortem. However, this did not take place.”* I’m asked whether Police Scotland’s decision not to deploy FLOs impeded PIRC’s relationship with the family? I don’t think it would help because right away my FLOs are going into a situation where the family have not had the benefit of the experienced officers trained in to deal with families in these circumstances. I don’t have any training as a family liaison officer. However, in relation to Keith Harrower going and meeting the family on that night of 3 May, that’s something I would have done as well even though I’m not a FLO. Police Scotland then didn’t deploy FLOs and informed the PIRC later that evening. Keith Harrower had no means to deploy FLOs at that time. Mr McEwan’s opinion is his opinion. It’s not one I agree with.

PIRC Family Liaison Officers

- 46. A FLO is quite a specialist skill. It’s quite a demanding role, dealing with a lot of emotions, a lot of grief, a lot of challenges. Obviously in any circumstances people want to know what’s happened. Part of the role in a PIRC investigation is explaining who we are as an organisation This is because it’s important for the family to know who we are, what we do, what our role is. People don’t know who we are unless they or their family have been involved in a similar circumstances. Nobody knows who PIRC are. We’ve got an unfortunate name as well, Police Investigation Review Commissioner. We sound as if we’re the police. The IPCC is better – the first word is independent -

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something that right away grabs people's attention. In general, we go to people's houses and say the name of our organisation and all they hear is "Police." I've had doors shut on me as a consequence of that.

47. There have been a number of occasions that there isn't a PIRC FLO on call when there has been a request to attend, say over a weekend, and so we don't have the skill set there from that day to deploy FLOs immediately. The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 Regulation 5, states that the police provide such other assistance as the Commissioner may reasonably require, but that is in respect of a Section 33A (c) or (d) investigation, However this was in my understanding a Section 33 A (b) (ii) investigation so that did not apply, but in similar circumstances the Police have never failed, in my experience, to provide that assistance. We might be in a situation that we don't have any FLOs on. Police Scotland is a huge organisation with tens of thousands of people, so we would ask for assistance and for them to deploy FLOs. So say, there has been an incident that happens on Friday night, we might request that Police Scotland deploy their FLOs and that our FLOs will take over from Monday. This is standard practice.

48. Ideally, you'd want somebody who's been in contact with the family to introduce the PIRC FLOs and to go with the FLOs. So in a normal circumstance, Police Scotland could initially deploy FLOs and PIRC FLOs take over the next day or two days later. The usual situation is that PIRC FLOs would meet with Police Scotland FLOs. There is a handover of information, discussions, identify who do we actually speak to in the family? We might have the phone number for six family members, so who's the lead family member? In this case it was Ade Johnson. Then my FLOs would go with the Police Scotland FLOs. My expectation there is that the police FLOs would have advised the family, "There's an organization called the PIRC, they're taking over the investigation and their FLOs will take over from us." So

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it's about consistency, continuity and who's dealing with who. However, in this case no Police Scotland FLOs had been deployed, so how were we going to introduce our FLOs to the family? As Keith had met the family, I asked Keith to speak to them about the post-mortem and to give them the details of who our FLOs were, and then we would work out how we actually introduce our FLOs to the family.

49. My normal approach would be to ask the Police Scotland FLOs, "Can you take me along to the family?" So the FLO would then introduce me, I would then go in and explain what I've been asked to do, and tell them about the organization. We would explain to them, "Police Scotland have put FLOs. These two officers here are family liaison officers. My FLOs would take over on Monday, and this is the names of my FLOs and they will come and see me and they will be your route to me as the lead investigator. If you want to speak to me, let the PIRC FLOs know." Primarily because I want the family to be dealing with the FLOs and the FLOs updating me with any communication. I don't want the family phoning constantly due to my responsibilities to manage the whole investigation. The FLOs are my route to the family to pass information to them and get information from the family because there's loads of information we need from the family. That's what I ask of my team leaders now to do, to do that early communication with the family because you want the family working with you. We have to have the family engaged with us in an investigation. It's not just we're going to do our investigation. We engage with family, we speak to them, we talk to them, we keep them as updated as we can with what's happening. They will have requests of us that we will do our best to meet them within circumstances.

50. To be clear, the delivery of a death message is the responsibility of Police Scotland, this does not have to be a FLO as it should be done sooner rather than later and Police Scotland may not have a FLO in place timeously so it may be another officer who delivers this message. PIRC staff will not deliver a death message. Even though we have a death in custody, we're the

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investigating body. Police Scotland will deliver a death message because families need to know sooner rather than later. Police Scotland are best placed to do so. If the responsibility lay with PIRC there would a delay in the death message getting to the family. There's often lengthy traveling distances from the PIRC offices to the town or city we need travel to. Families can't wait to be told a loved ones died. So Police Scotland have to do it.

Visit by Garry McEwan to family on 4 May 2015

- 51. I've had sight of the Gold Group meeting minutes of 20.15 hours on 3 May 2015 (PS03139). In this it states, page 3, "*Chief Superintendent discusses initial decision to have Police Scotland FLOs, but now hand over to PIRC FLOs for arrangement to gain entry to the house of the deceased, re-collecting belongings for the child.*" Page 4 states "*Liaise with PIRC re deployment of their FLO's, not deploying FLO's of Police Scotland.*" From the reading of these minutes it's my understanding that the family liaison aspect was now being handed over from Police Scotland to PIRC on the evening of 3 May 2015, this would not appear to be contrary to what had been agreed previously but Keith Harrower would be able to explain this aspect as he was in attendance at this and the previous meetings.

Once an investigation is underway, and in particular once PIRC FLOs are deployed, I wouldn't generally go see a family as the lead investigator unless I was accompanied by my FLOs, My reasons for this is that I wish to ensure that there is a consistent approach to the message or information that's being passed to families and as the lead investigator I would be responsible for that.

- 52. As I understand it Garry McEwan visits the family for a second time on the morning of 4 May 2015. Bearing in mind, that's the day of the post-mortem. That's the day we've asked the family to engage with us in the post-mortem, that they said no and made it clear that they're consulting a solicitor. I would

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expect, and I think within the policing world, any lead investigator would expect that they be contacted to have such a visit discussed in advance. My concern would be what information is Mr McEwan passing on to that family and the accuracy of that information. In particular, as by that time I was aware that there appeared to have been a number of conflicting messages passed to the family previously in their interactions with members of Police Scotland. I'm not aware of any of the PIRC investigations that I've undertaken or been involved in, that a senior officer has gone to meet the family during an active investigation that PIRC are undertaking.

53. I have been asked about my telephone call to David Green, advising him of the family's position regarding the post mortem. I explained "that the family did not wish to engage with the PIRC". I cannot recall exactly what was said but he told me that the post-mortem would continue with identification to be confirmed via fingerprints and a visual ID from the police and PIRC staff involved in the recovery of the body. It was a Crown decision to identify Mr Bayoh in that way, as I have said previously the holding of a post mortem and the timing of the post mortem is a Crown decision. The family were not consulted as such; however, the family are made aware of that decision and of the timings. There was no information communicated to me regarding family's wishes regarding any religious requirements in relation to the post-mortem or concerns about the post-mortem on the grounds of the religion.

I did not speak personally with the family that morning as I said previously I had asked Keith Harrower to initially engage with them on this matter. The exact details of that telephone conversation would be best answered by him.

Post Mortem

54. As a lead investigator or as an SIO, I wouldn't normally attend a post-mortem. I have staff there at the post-mortem. I'd been given the briefing by Keith that suggested that Sheku Bayoh had been batoned. Investigator John Ferguson who had been involved in the recovery of the deceased body to the mortuary,

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had advised me that there appeared to be substantial blood in the deceased's ears. So I was worried that a head trauma injury was what had caused him to die, and I needed to know whether there was any indication of that from the post mortem as soon as possible. I had a discussion with John Mitchell, explaining I was going to go to the post-mortem and why. It was because I needed to know right away if blunt force trauma has killed this man. We go back to the status of the officers as witnesses – if blunt force trauma had been the cause of death then the investigation would absolutely be, whether the actions of the police officers were justified, proportionate and necessary. So I went to the post-mortem. It's not something I would normally do but I felt I needed to go there. I was reassured over that because, when I went there, DCI Keith Hardie was there. Keith was there for the same reason I was there, due to that point. I'm asked whether I discussed my concerns about the potential head injury with Keith. I can't recall if I did or I didn't, but in my experience, blood from the ear is indicative of a head injury, of bleeding within inside the head. I have no recollection of discussing my concerns with Keith. I discussed it with John Mitchell in respect of going to it. The impression I got was that Keith Hardie was concerned because he wouldn't normally go to a post-mortem either. I know that from working in the police in that area, that's not something you would do.

55. When you go to the post-mortem, there would be a briefing with the pathologist(s) prior to the post-mortem. There will always be a fiscal there, on this occasion it was Bernie Ablett, and in these circumstances it would be a two-doctor post-mortem because it's an unexplained death. The principal briefing was given to the pathologist by John Ferguson for continuity. John had been there since the beginning of PIRC's involvement; John had been through for the quasar along with Police Scotland Crime Scene Manager. There should have been a sudden death report; however, it wasn't available before the post mortem. It was Police Scotland responsibility to produce this. Ideally you also want the deceased's medical records from the GP and the hospital so that they can be examined by the pathologist. The police tried to

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obtain the hospital records without success and we also tried to find the hospital records to cover the treatment the deceased had in hospital. It transpires that Sheku Bayoh's name was not on the records as the staff didn't know his name, so we actually had to search through all the medical records, it was days later before we found the hospital medical records. Further, because no FLOs had been appointed, I had no information as to who Sheku Bayoh's family doctors were, because ideally you would go and get the medical records and you would take them to the post-mortem. So we're at the post-mortem with no sudden death report, no hospital records, no general practice records. The thing we can do something about is the Police Scotland's sudden death report. Keith Hardie chased this up. I imagine he's delegated somebody to do the report and was surprised it wasn't there. So John Ferguson provided a verbal briefing. I'm asked if I remember whether the pathologist was given a paper briefing in advance of the post mortem. No, I'm not aware of that. Certainly, I don't recall that we prepared a briefing to give to the pathologist but John Ferguson may have done this. In my experience, it's not something you prepare to give to the pathologist; you give them a verbal briefing.

56. When the post-mortem took place, John Ferguson and the Police Scotland scene manager were in with the pathologist. The pathologist has recovered certain samples and John assisted the pathologist in the securing of these samples. So he and the Police Scotland scene manager were forensically suited and present in the room with the pathologist. I'm outside with Keith Hardie and Stuart Taylor and we're in the viewing room. There is glass screens. There is a line of communication open in the sense that there is an intercom. However, you can't hear everything that is being discussed. The pathologist may have voice recorded the post mortem or only taken notes, I cannot recall what occurred and the SPA photographer was present taking the photographs. Generally at a post mortem there is at times something that would appear to be of interest, and you may have the pathologist press the intercom and tell you what it is they're doing, or it may well be I would press

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the intercom and ask a question. I can't remember if that happened in this instance. At the end you get a verbal briefing off the pathologist of what's happened and this happened in this case. During this briefing I made notes within my daybook, I also later typed up a officers note on the initial findings of the post mortem, this was for the attention of Mr Mitchell and also so there was a record of what had transpired at this post mortem pending the pathologist report.

57. In terms of the family and awareness of any cultural and religious issues, we knew he was Muslim but what we didn't know was whether he was a practising Muslim. So what considerations were needed to be taken in respect of a person's belief in post-mortem because a post-mortem is so invasive in respect of that, and it was about some of the samples. The sample I remember was around about the hair and the removal of hair, because you need hair samples. There was a discussion around about that and we weren't helped that we didn't have the sudden death report as well because that was the sort of thing that would be put on that report. I also contacted Detective Superintendent Campbell and made arrangements for this document to be faxed directly to Edinburgh City Mortuary. My recollection is the faxed copy was received during the course of the post-mortem.

58. [REDACTED]
[REDACTED]
[REDACTED] I'm asked if I was present at the briefing prior to the post-mortem, I'm unsure if I was present for the full briefing as this was I recall provided by Investigator John Ferguson. I do recollect that we had a general discussion with the fiscal and pathologist's about what samples needed to be taken. I specifically asked for nasal and mouth swabs to be taken and my rationale behind that was I'd been briefed that PAVA and CS Spray had been used and I was concerned as what effect both sprays may have had on the deceased. There was no suggestion of any requirement to take sexual swabbing. In relation to the batoning to the head, the pathologist was made

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aware that Sheku was batoned. Obviously with the blood in the ears, I was concerned there could be a head injury. I have been made aware that John Ferguson's statement (PIRC-00363), at page 11, speaks of an update being given to the pathologist and he mentions the tapings that were taken prior to the removal of the body from the hospital. Further, that "Kerryanne Shearer was briefed potential blunt force trauma on the deceased," And "Information provided the previous day that he had been struck with police batons." I have said previously that I cannot recall if I was present for the full briefing, but I had asked prior to any attendance at the mortuary that John Ferguson deliver this briefing. He had been heavily involved in this incident from the start and he had overseen the recovery of the deceased body from the hospital to the mortuary and the events prior to the post mortem. I cannot after this period of time recall exactly what words John used in this briefing but he would have covered this area.

59. I'm asked about a call I received from ACC Ruaraidh Nicolson at 12.35 hours. I know ACC Nicolson and have worked with him on quite a number of investigations when I was in the police. He said, "I understand you're the lead for this." I told him I was and that I was in the car travelling through to the post-mortem. I wasn't driving, somebody else was driving. The purpose of this phone call I recall was twofold, he was just making sure that there was no issue with the handover of documents, because the police had obviously gathered a lot of information before PIRC had taken control of the investigation, he was also concerned regarding the perception to the public that the police were still investigating the death because the police had a bit to play and the PIRC had a bit to play, as they (Police) had been instructed to investigate the preceding events and we had to investigate the event itself and the events thereafter. I agreed with him and said, "yes, this does look messy. The public would be saying, 'what do you mean this is an independent investigation?' Police officers are doing door-to-door because they're doing door-to-door in their bit, whereas I've got a door-to-door team now taking over from the police in areas that we have been asked to investigate."

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60. I remember I asked him to contact Irene Scullion because that would need some discussion with Crown, and at that moment in time I wasn't in a position to do that. Irene had been aware the day before and was in discussion with John Logue at Crown Office regarding matters. What surprised me, was that Ruaraidh said, "I've spoke to her and she says I should speak to you. I told him that I needed to direct him back to Irene because that's an area that Irene needs to resolve with Crown." That to me is a strategic matter out with what I've been asked to do in is investigation.
61. I'm asked whether there was some confusion on the part of Police Scotland as to where their responsibilities lay. I don't think Pat Campbell or Keith Hardie's were confused about their responsibilities. I think they were aware they had to look at the events prior to the incident at Hayfield Road and we'd look at the incident at Hayfield Road and everything afterwards. What I will say is, it wasn't tidy because they were doing things, we were doing things. There was some of the aspects which were overlapping. Because I needed to know, what was being said until this engagement. How did we come to the point of Sheku Bayoh walking down the street and members of the public phoning in reporting about him? How did that occur? It wasn't as if Sheku Bayoh had just arrived in Hayfield Road and then the incident took place; there were events leading up to that point.
62. I am asked about the meeting on 4 May 2015, referred to in my statement at 20.05 hours, in which I meet with Patrick Campbell, DCI Hardie and DI Stuart Wilson at Kirkcaldy Police Station. Ricky Casey's was also with me at that time because he'd driven me to the post-mortem. Specifically at page 4. *"During the course of the meeting, I confirmed the status of the nine officers who had attended the incident as witnesses, I intimated to Detective Superintendent Campbell that I was happy for the nine officers to be updated with the interim result from the post-mortem."* I had the verbal update on the post mortem at that stage. The information I was provided by Kerryanne

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Shearer and Ralph BouHaider was, firstly, blunt force trauma was not the cause of this man's demise, the cause of death was unascertained, pending toxicology and neurology, further examination. So I'm absolutely clear at that time, and at that stage, and the information I have, that they're witnesses. I'm at that stage not expecting a 30–40-page statement off the police officers, that'll come in due course, but that we're getting some statement in which they're telling us what's happened and in what sequence.

63. At this stage, I don't even know the sequence of who's arrived first and who's engaged first, who's arrived second, because they've all arrived at different stages, so I'm not aware of that, We're trying to piece that together from the STORM incident, from the airwave. We wouldn't have had the airwave by that time, but I think we had the STORM logs by that time. It's really important that I get information from these officers about what happened. So, yes, they're witnesses. I'm quite clear in my mind at that stage that they're witnesses, and I'm asking them to advise the officers that they're witnesses. What they've said there is that the nine officers would be personally contacted. What I was actually told was: the divisional commander's in the office; following our meeting, he will contact each of the officers personally and update them on what we've just discussed. Keith Hardie knew the interim result, he was with me when we got briefed by Drs Kerryanne Shearer and Ralph BouHaider about the post mortem. I was happy for that interim result to be disclosed to the officers. I recall that they said to me, "You'll have your statements by tomorrow." So, I was fairly confident we were going to have these statements. This situation can't continue was the way I felt about it.

64. You may ask me why did I not just speak to the officers. First of all they're not there; if they'd been there, I would have spoken to them. But previously in all the investigations we've had, we've asked for statements in a communication – verbal and followed up normally by a letter. An example of it would be, "Can I have operational statements from the following officers, or all the officers involved in the incident?" Police Scotland do that and relay that information to

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us. So what I was doing in that meeting with Detective Superintendent Campbell, that was practice at the time, that was accepted, and had never been an issue. Essentially, I'm not anticipating that they'll refuse to give statements because this has never happened before. Why would police officers refuse to give statements for an incident they're involved in and they've been told they're witnesses? If they were suspects they'd be told, there'd be no ambiguity about what their position is. And that's before that incident, during that incident, and since that incident . There is no ambiguity of what their position is, they're quite clearly told what their position is, it is quite clearly documented to Police Scotland what their position is, because we would document in a letter to them what their position is. I can't recall when the family were advised of the result of the post-mortem. However, the information may have been delivered via the FLOs and if so would be recorded in the FLO Log.

65. I have been asked about the following from page 4 of my statement:
“Detective Superintendent Campbell intimated that each of the nine officers would be personally contacted that night and advised accordingly, and he believed that following this, the officers would submit operational statements, which up till then they had refused to provide.” I have been asked whether Detective Superintendent Campbell gave any indication of why there was a the delay in providing statements or what the issue was. The feedback I was getting was that the Federation had advised the officers not to provide statements, which I'd never come across before or since. However, I didn't foresee any difficulty after that meeting. After that meeting, I was fully expecting the statements to be provided. At that time it was standard practice that they would just provide a statement. We'd never had any difficulty with this. We had a working arrangement in respect of statements being provided at incidents. I have also been asked whether I received an update from Detective Superintendent Campbell, following the meeting, as to whether the officers were actually contacted that night. I was later advised that that hadn't taken place.

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66. I have an entry in my notebook in relation to this meeting: It's timed 20.05 on 4 May. It states: *"Written statements from all officers and staff. Nine officers. Advised Detective Superintendent Campbell that status following PM was witnesses and they could be advised of interim PM result. Chief Superintendent McEwan attended office and will personally contact each officer and asked for statements."* I did not have any contact with Mr McEwan on this matter then I left there at 20.55. John McSporrان, Alasdair Lewis and I had met with family on 5 May 2015. After we'd met with the family, John and I went up to Kirkcaldy and sat with Keith Hardie. My recollection is Pat Campbell wasn't there. We sat with Keith Hardie and that's when we became aware that we didn't have statements from the officers. My recollection is that actually they hadn't been contacted on the night that I was advised they would be contacted. So there wasn't statements, and that's when we said to Keith Hardie, that we needed all of the officers to be visited, but we'll send you confirmation so we've got it recorded." The email went that night or the next day asking for each of the officers to be visited, and advising their status and asked to provide a statement. But it was Keith Hardie and Stuart Wilson that did that.

67. I have been show PIRC Briefing minutes (PIRC-04156). I am asked about an entry for 5 May: *"Priorities for today: DSI Little to obtain operational statements from all officers involved."* Then on 6 May, at number 8, *"DSI Little confirmed that initial statements had been received from Police Scotland. Actions to re-interview these officers allocated to DSI Dodd to coordinate."* I have been asked what these initial statements were. We were in the process of ingathering from Police Scotland's statements that they'd been taking and such like. That's not referring to the principal officers, if we could call them that. That's in relation to numerous other statements that are coming in. It's maybe not quite clear in the minute, but again they're just brief minutes in respect of the statements being received. No, that's just about, the other initial statements all being received in. So that would be other police officers,

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not the 9 principal officers. Although it says “re-interview these officers,” but it’ll also be statements from witnesses that were received from Police Scotland.

68. I am asked about a further entry in the briefing minutes at 7 May, in which DOI Mitchell updates the team and it notes: *“Officers still haven’t submitted operational statements. This has been raised with ACC Nicolson.”* I’m asked whether I can provide any more details about John Mitchell’s discussions with ACC Nicolson. My recollection is, by that time we were aware there were challenges in receiving the statements from the police officers. John Mitchell took on board that aspect in dealing with this on a strategic level, and raised the matter directly with ACC Nicolson. John Mitchell, I think from correspondence, was in contact with the Federation legal team about this as well. So I wasn’t privy to the conversations. I can’t recall what John would have told me about that, but he was dealing with it more at a strategic level, and I was dealing with the investigation at a tactical level. It was basically trying to get things moved along, also the correspondence that John McSporran and I were having with Keith Hardie and Stuart Wilson around about that same issue. However, I was aware there was some kind of problem because by that day, 7 May, John McSporran sent the email in respect of “Please have all these officers spoken individually in respect of you know providing a statement.” It was Keith Hardie and Stuart Wilson took on that task.

69. I have sight of an email (PIRC-02671) from John McSporran to Keith Hardie, I can see that I’m copied into that email dated Thursday, 7 May at 12.19.44. John McSporran writes: *“I’m aware that the officers are represented by Professor Peter Watson and that he has been given to believe that instructions have been given by you or someone connected with the police inquiry that the officers are to be told that they are ‘compelled to provide statements.’ Mr Watson’s position is that these officers enjoy the same legal*

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rights as any member of the public and that they can be asked to provide statements, but his advice is that do not do so until their status is clarified.”

Then, in bold, he says “At this point in time, the status of the officers is that of witnesses to these events.” The email continues *“This email is to confirm that PIRC request that the officers involved in the detention/arrest of Sheku Bayoh on the morning of Sunday, 3 May 2015, or who gave medical care, be provided with the opportunity to submit operational statements. I request that each officer be contacted and that they be asked to outline their individual position in this regard. I also request that PIRC be provided with the identity of the officers who attended the initial incident or who provided Mr Bayoh with aftercare.”*

70. Within the chain, there is a response from Keith Hardie, giving times on Thursday, 7 May when they’ve spoken with various of the officers and that includes: PC Craig Walker, PC Daniel Gibson, PC James McDonough, PC Kayleigh Good, PC Alan Smith, PC Ashley Tomlinson; and then explains that Nicole Short, Alan Paton, and Scott Maxwell aren’t available, with Nicole Short and Alan Paton being off sick, and Scott Maxwell “WRD” i.e. is on a weekly rest day. John McSporran then replies and says: *“PIRC were informed that 11 officers in total attended the initial incident, 9 officers immediately attending followed by two CID officers, one of whom administered CPR to Mr Bayoh. Can I ask for clarification as to the position of these two officers? If they were not involved in the restraint of Mr Bayoh, can PIRC be supplied with the operational statements of these officers?”*. The two CID officers were DS Samantha Davidson and DC Derek Connell. These officers gave their statement promptly and without any difficulty.
71. I have had sight of the text of further emails, which appear to be pasted into a Word document (PIRC-02666). The email is from Stuart Wilson at Police Scotland on 14 May 2015 at 08.33. I am one of the recipients. Firstly, he’s talking about the identification of Mr Bayoh confirmed against fingerprints held on record: *“I presume your office will undertake the submission of the*

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requested 'death of persons' [REDACTED] subject sheet." This is a form to notifying [REDACTED] that this person has died. There were fingerprints held on record for Mr Bayoh. So there would be a need to let [REDACTED] know that this person has passed away. I can't recall whether we actually did that or whether we went back to Stuart Wilson and said "No, that's for you to do" because it's Police Scotland's responsibility to submit the death report in respect of the death of a person. It's not one of our roles. The email from Stuart Wilson continues and refers to the previous email (which is PIRC-02671 which I have been referred to) and confirms that "About 0920 hours on Tuesday 12th May 2015, DCI Hardie and DI Wilson spoke with T/PS Scott MAXWELL, P Division within Kirkcaldy Police Station. T/PS MAXWELL was asked if he was willing to provide a statement regarding his involvement in the arrest of Sheku Bayoh and the events leading up to his T/PS MAXWELL provided that he did not wish to provide a statement, at this time, on the advice of his solicitor." There is no mention of his status as a witness. However, the instruction in the original email from John McSporrان on 7 May was that they were all witnesses. I suppose it's a question of whether DCI Hardie and DI Wilson made that clear to him.


72. I have been ask for further detail about my meeting with the family at 12.00 hours on Wednesday, 6 May, along with John McSporrان and Alasdair Lewis. Page 4 of my statement states that we met with Mr Anwar and a number of the family representatives and that I provided an overview of the circumstances and the investigation to date. Further that: "During the course of the meeting it became apparent that the family and Mr Anwar had a number of concerns regarding the information that had initially been provided to them by various officers from Police Scotland." I'm asked if I remember what those concerns were. I remember the concerns related to the varying information they'd received through the 3rd of May and how they had received that information. They were very angry about that information that they'd received, the manner they'd received it and how it varied from the initial aspect. I'm

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asked if I recall if any notes were taken of that meeting. I initially was unsure if I had made any notes as I recall that the meeting room was very small for the number of people present and I had some difficulty in opening my daybook to take notes due to the cramp conditions.

73. However, looking in my day book, I have a note at 12.25 on 6 May 2015. I think it should have started at 12pm but there was a delay when we got there, we didn't get in to see then. The meeting is noted to be at Mr Anwar, 63 Carlton Place. I have noted that the family have the following queries

- about where the initial officers that met with Collette - we're talking about two uniformed, two detectives were from.
- family have asked about what instructions were given to the officers, to say re occurred re killing of Sheku
- Concerns re media release and FLO's
- The family have asked regarding timelines
 - re. ambulance,
 - timeline re. police attending,
 - who administered CPR,
 - officers enter the house kitchen, two CID, two uniform enter kitchen, took control of the house
- CID officers who said Sheku Bayoh died in street 0834 hrs.
- And then at 15.00, same two officers, no mention of police involved, looking for two men
- passer-by for call for ambulance, do not know how he died,
- 4.30 p.m. two same officers. Warrant for his arrest. Read this from a small notebook. I have also noted that the family tried to ask questions. At this point I have also noted that the family stated that 630 (should be PM) met with Mr McEwan and a female superintendent and I have recorded in inverted commas "Should not be telling you this," I have also recorded, Batoned him until he was unconscious. The family have asked "To Death" which I have noted and they stated that they put hands in air in no response to their question. I have also recorded MSP David Torrance's statement. Police

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contacted High Commissioner, met High Commissioner, re-releasing the body. I am aware that through this meeting Mr Anwar was constantly typing what I presumed to be notes from this meeting.

74. My PIRC notebook (PIRC 04200) also contains an entry for the same meeting on page 5. *“Attended at premises of Mr Aamer Anwar and Co. Family Lawyer, meeting by John McSporran and various family members, Mr Anwar, Mr Anwar's associate, Ade Johnson, Kadi Johnson, Collette Bell and Lorraine Bell, plus two other family members.”* And I've got, *“Provided overview investigation today, numerous questions. Wanted exact details that could not be provided at this time. Concerned with the police version of events, statement and press, re. police and MSPs.”*
75. In relation to the meeting with the family, I'm asked whether I was aware the family were viewing the body of Sheku Bayoh that morning and whether any family members raised any concerns about the viewing, whether bruising to the body or the timing of the post-mortem etc. What I do recall is that I was asked a question about whether Sheku Bayoh was all there? I think that was along these lines it was phrased, and I had to ask, what do you mean by that? They asked me had he lost an eye during this incident, and I said no. I would have given them – and I can't recall exactly the words used – an update on the post-mortem, the initial post-mortem findings. I don't know where that information had come from as the family did not say where they'd received that information, where they'd got that, that Sheku Bayoh had lost an eye during the incident.
76. I have been asked what is the usual process for Police Scotland notifying PIRC of incident involving the discharge of CS Spray or PAVA. I can confirm that PIRC has in place a structure that was put in place right when we commenced. It is all dealt with through Police Scotland PAVA /CS Training department at Jackton Training Centre. If a police officer use PAVA/CS

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spray, then the report of that use must be completed onto a form that was agreed when PIRC was established, the legislation requires a report to be made to PIRC. So that form should be completed by the officer before they go off duty. That form is collated by the Police Scotland team at Jackton, and then forward to us via an dedicated mailbox, and we have identified staff within the department who will examine each of the forms to ensure that the use of PAVA/CS Spray was appropriate justified and proportionate. So that's the process in place that records the use of PAVA and CS Spray. Over and above that, if Police Scotland submit a referral to us that contains details of the use of PAVA/CS Spray, maybe a serious injury following police contact, and that comes to us through the Professional Standards department, that's the second catch-all if PAVA's been used. But we have no way of knowing if PAVA's used, and it's not reported on a form into Police Scotland but, vice versa: Police Scotland, if they use PAVA, my understanding is that will be recorded in the STORM Incident and, if it's on the STORM Incident, then there should be a corresponding form that gets sent to Jackton and then passed through to ourselves..

- 77. I have been asked if PIRC have any powers or had any powers at 2015 to require Police Scotland to complete those forms. Police Investigation and Review Commissioner Regulations Legislation requires that the Chief Constable request PIRC investigate any serious incident involving the police. A serious incident involving the police includes the use of a firearm or other weapon. This includes discharge of CS or PAVA spray. This legislation is Section 33A (C)Police, Public Order and Criminal Justice (Scotland) Act 2006. I have powers under Regulation 5 of the Police Investigation and Review Commissioner Regulations 2013 that can require the police to provide information to us in respect of a police referral under Section S33A(C). But this was an instruction from Crown Office to investigate the Death of Sheku Bayoh so I do not have the use of this Regulation 5 powers to require Police Scotland to complete and provide such forms. The non-

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completion of the forms is a matter for Police Scotland to take up with their staff.

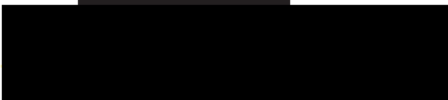
78. I have had sight of the PIRC briefing minutes (PIRC-04156), which is a short minute of the meeting on 26 May 2015. It's an update from John Clerkin on the CS and Use of Force forms, and he says "they have been requested some time ago via chief inspector Liz Macleod; however, they have not arrived with PIRC yet." I have also been shown PIRC Action 00147 (PIRC-02926). The date it's raised is 18 May and under nature it states "See Message 086. Email sent to CI McLeod requesting CS/PAVA reports and use of force form. IO Clerkin to monitor this and await response". At some stage, the action is marked as completed, and the result is: *"This action was discontinued. I made contact with chief inspector Liz Macleod at PS Professional Standards Department. I was informed by Chief Inspector Macleod that Detective Chief Inspector Keith Hardie is the SPOC for Police Scotland for the investigation and that matters relating to the provision of CS spray/PAVA discharge forms and the Use of Force form were passed to him. DSI Little was made aware and subsequently informed me that I was no longer required to complete this action following his further contact with Police Scotland."* This was possibly added during the second to last update on 2 July 2015. I imagine that this would have been by John Clerkin but I can't be sure. I can see I was the last person to update this action on 2 November 2015 – I would have added the update "Action had never been marked off as complete following update as above now marked as complete, WL."

79. I have been asked why the PAVA/CS Spray forms were no longer required from Police Scotland. This was because there was no reports; no forms were ever completed and submitted by the officers. I can't remember exactly what was in their statements but the information regarding then use of PAVA/CS Spray was included in the statements , but basically they (Principal officers) advised by their legal representatives not to complete these forms. Yes, so we weren't getting them. They hadn't been completed. The officers, for all

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intents and purposes, the feedback we were getting were refusing to complete them, but we had their statement with the information therein. So in effect, there was no forms of the incident, and that was reported to Crown the fact that there was no forms completed in respect of the use of force or discharge of CS/PAVA.

80. I am asked if I know when the decision was taken not to continue to chase these forms. I can't recall. Possibly sometime around 2 July 2015. I was on holiday on 2 July 2015 so it would have been prior to that. My recollection and, it's just my recollection, is that they'd obviously got statements from the officers, and it was apparent they hadn't completed these forms. I don't recall chasing them for them to be completed retrospectively. The principal part was they should have completed them, but they didn't complete them and they made a decision not to complete them, so we were completely blindsided in respect of what had actually happened. I don't think there was any value in completing the forms retrospectively, from a PIRC perspective, as we covered the officers' use of PAVA and CS in the statements.
81. I am asked whether I am aware of what the procedures are in place, within Police Scotland, to address failures to meet the statutory requirements for submission of CS Spray and PAVA forms. That would be a matter for Police Scotland, but that's them failing to follow processes within Police Scotland. That'd be a conduct matter.
82. I am asked about my second PIRC statement (PIRC-00371) and the following excerpt on page 2: *"About 09.20 on Friday, 11 September 2015, accompanied by DSI Brian Dodd, I attended at Stirling Police Office. There, by prior arrangement, I met with DC John McGregor and DC Simon Telford. I advised them of the role of the PIRC and that a male, Zahid Saeed, had made an allegation that he had been assaulted by the officers whilst a statement was being taken from him on 3 May 2015. The PIRC had been instructed by COPFS to investigate this allegation. I did not caution the officers at Common*

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Law. No questions were asked of them.” I am asked about the purpose of the meeting with these officers on 11 September, in view of the fact the interviews ██████████ didn't take until around 2 weeks later. The purpose was just as it says in my statement: to advise them that a criminal allegation had been made against them. That was to be up front; that was not to be untoward about it, let them know there was a criminal investigation in respect of their conduct that day, and that the PIRC would be doing investigations ‘into these allegation. I am asked how I would normally advise officers of criminal allegations against them. I would advise Police Scotland through a letter that we've been instructed by Crown to undertake a criminal investigation against an identified officer. I would advise this through the PSD. At that time, we had previous circumstances where officers were not aware that they were subject of a criminal investigation so there were issues with the communication from PSD. Then when we sought to seek to interview them ██████████ that came as a real surprise with them and it caused us issues around about arranging the interviews and, getting the federation and lawyers involved. So at that time it was just common practice, and we didn't have many criminal investigations in these early days that we would notify the officers. We wouldn't ask them for comment, we would have just, “Here just to let you know this is what's happening, just so you're aware that the PIRC are conducting a criminal investigation into you.”

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- 83. I have been referred to my PIRC notebook at page 21. It has a time of 9.20 on 11 September 2015: I can confirm the entry reads: *"I attended at Stirling Police Office with DSI Brian Dodd. Met with prior arrangement with DC John McGregor and DC Simon Telford. Advised that PIRC had been instructed to investigate an allegation of assault that had been made by Zahid Saeed [...] that had been made via COPFS by Mr Aamer Anwar. Assault having taken place on Sunday, 3 May 2015."*

- 84. I have been asked whether I consider that that early approach to the officer prior to the interview [REDACTED] could be seen as putting the officers on notice and providing advanced warning. It was merely to advise the two officers that we were conducting a criminal investigation. I don't see it as that being that. I refer to what I had said previously a police officer who was considered a suspect during a PIRC investigation would have been told that in advance normally by a letter to the Police so there was no dubiety what their status was. I have been asked whether the officers said anything to me about it at that time voluntarily. No, they didn't. If they had it, I would have noted it.

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

DocuSigned by: [REDACTED]

February 1, 2023 | 2:20 PM GMT
Date.....Signature of witness.. [REDACTED]