

Transcript of the Sheku Bayoh Inquiry

Wednesday, 7 February 2024

(10.00 am)

MR KEITH HARROWER (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning, Mr Harrower.

Ms Grahame.

MS GRAHAME: Thank you.

Good morning, Mr Harrower. I would like to ask you some questions continuing with the issue of family liaison. Could we look at your first Inquiry statement, please. SBPI 00259. If we can look at paragraph 36. I am interested in looking at who was responsible for deploying the FLOs. So we see here that this is your Inquiry statement and you say:

"In a PIRC investigation, there would be a firm expectation that Police Scotland family liaison officers were deployed. Then, if there was a need for PIRC FLOs to be deployed, then that would potentially be a day or two after. I can't be more specific than that because it'll depend on the circumstances and a lot of communication and dialogue would need to take place between the PIRC-appointed FLOs and the Police Scotland FLOs, but a definite expectation that the Police Scotland FLOs would be deployed first. To a great extent, that's still the case in relation to

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1 FLOs. There will be a period where Police Scotland will
2 initiate that process, and then there will be a formal
3 communication and handover with the family for our FLOs
4 to have to take on that role."

5 Do you see that? So you seem to be saying here in
6 your Inquiry statement that there was a firm
7 expectation, a definite expectation, on the part of
8 PIRC, on the part of you, that the Police Scotland FLOs
9 would be deployed initially?

10 A. At that time, yes. That has changed slightly but it
11 still occurs that Police Scotland FLOs are deployed at
12 the outset of a critical incident, not all the time but
13 it does still happen regularly.

14 Q. Can you explain to what extent it has changed?

15 A. There will be on occasions -- depending on the
16 circumstances and geographically where the incident is,
17 I am aware that FLOs from the PIRC side have been
18 deployed from the outset, but I don't know on how many
19 occasions that has been. But certainly at that time
20 that was the normal process, that the Police Scotland
21 FLOs would be deployed initially, and then subsequently
22 there would be a decision made whether PIRC FLOs were
23 required and they would then get a detailed briefing and
24 handover from Police Scotland formally to the family to
25 then take on that role for the full extent of the

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- 1 investigation.
- 2 Q. When did the position change in relation to sometimes
3 PIRC FLOs go in first?
- 4 A. I couldn't give you a definitive date on that. I'm not
5 sure, I am quite sure Alistair Lewis would be able to
6 confirm that as the PIRC co-ordinator.
- 7 Q. We will ask Mr Lewis. You have obviously experienced
8 both options, the PIRC FLOs going in now, maybe first,
9 and in 2015 it was the Police Scotland FLOs --
- 10 A. Yes.
- 11 Q. -- who would go. Can you in your experience see any
12 advantages or disadvantages of PIRC FLOs going in first?
- 13 A. Again, it depend on their availability. On some
14 occasions FLOs would not be deployed on the first day of
15 an incident at all. Again, depending on where that is,
16 if it's seen there's a need for FLOs, immediately, then
17 obviously it would have to be weighed up where they
18 would deploy to, what the family position was, and you
19 know the time considerations in relation to that.
- 20 Q. Assuming a PIRC FLO was available now, they are
21 geographically available and in a suitable location, and
22 the family position is, for whatever reason, amenable to
23 a PIRC FLO being in attendance --
- 24 A. Yes.
- 25 Q. -- in regard to that set of circumstances are there any

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- 1 advantages of sending the PIRC FLOs in first,
2 straightaway?
- 3 A. Arguably I would think from continuity, right from the
4 beginning as far as -- I think we touched on that
5 briefly yesterday, as regards the family being
6 introduced to the -- some level of trust and good
7 communication being built up, to maintain that.
- 8 Q. Can you see any disadvantages in the PIRC FLOs going in
9 first in the circumstances --
- 10 A. A major part of FLO deployment prior to that is them
11 having a full awareness of that stage of the
12 investigation at that time, even if it is an early
13 stage. That is why the handover to individuals, it's
14 very significant that that is not done too quickly
15 because they are obviously the conduit with the family
16 and the investigation itself, and there is a requirement
17 for them to be confident in the information that they
18 have and that they are kept up-to-date with the
19 investigation and communicate relevant information to
20 the family representatives.
- 21 Q. So the quality of that handover or the timing --
- 22 A. Is very important, yes.
- 23 Q. -- could be a possible disadvantage?
- 24 A. So it's not only getting FLOs out and deployed, it is
25 then having the capability for them to be appropriately

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1 briefed. That is probably why the Police Scotland FLOs
2 quite regularly, particularly at that time, were
3 deployed initially, they had the availability, the
4 expertise to be briefed and deployed as soon as
5 practical.

6 Q. So sending out PIRC FLOs at an early stage could be
7 a disadvantage depending on a number of factors,
8 including the quality of the handover, the briefing they
9 have, the information that is available to them?

10 A. Yes, you would hope that collectively there would be
11 sufficient information to administer that briefing
12 depending on the availability of individuals. Obviously
13 on the day the Police Scotland FLOs were there, and
14 I understand that that update to them and briefing had
15 taken place at some late stage in the afternoon.

16 Q. Thank you. Can we look now please at SBPI 00258, which
17 is an Inquiry statement from Garry McEwan. If we could
18 look at paragraph 86. Here Garry McEwan has said -- he
19 is talking about the FLOs and he is talking about
20 the background to this, he said it is important:

21 "... because by the time I got involved with the
22 family directly ..."

23 We have heard evidence, and we discussed this
24 yesterday, that Garry McEwan had visited the family on
25 3 May.

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1 A. Yes.

2 Q. "... by the time I got involved with the family directly
3 there was already a great deal of anger and upset. PIRC
4 were responsible for family liaison. My point of
5 contention in this case is that they weren't dealing
6 with it properly. I felt like I needed to see the
7 family because it wasn't at the forefront of PIRC's
8 mind. On the day in question they didn't have the FLOs
9 out, they weren't even on duty. That wasn't good
10 enough. I raised that a couple of times directly with
11 PIRC. Their recommendation was 'it is fine we'll see
12 them tomorrow'. I disagreed. I said we can't leave the
13 family overnight. They needed to be briefed and made
14 aware. It was wholly inappropriate."

15 So in this paragraph, as you see from Garry McEwan's
16 statement, he seems to be of the view that PIRC were
17 responsible for family liaison. I'm wondering if you
18 can help the Chair and perhaps shed some light on this
19 apparent mismatch between your view that Police Scotland
20 were responsible and Garry McEwan's view that PIRC were
21 responsible for deploying the FLOs.

22 A. It was clear at that time that Police Scotland had taken
23 on that responsibility and that was from the early
24 discussions I had with Pat Campbell, he confirmed that
25 that process was ongoing, that the FLOs had been

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1 contacted and were en route at that time, and then
2 subsequently arrived at Kirkcaldy Police Station. As
3 I mentioned just a short time ago, I think they had got
4 as far as being briefed in relation to the incident.

5 Q. So the early discussions that you had had with
6 Pat Campbell had led you to believe that Police Scotland
7 had accepted the responsibility to deploy FLOs?

8 A. Very much so, and that was confirmed at the Gold Group
9 meeting as well and that is referred to I think in the
10 discussions that were had, that, you know, that was
11 ongoing, and that these -- the FLOs had been identified,
12 who these officers were.

13 Q. We looked at the minutes yesterday, I think.

14 A. Yes.

15 Q. I wonder if you would help me with the guidance that was
16 available at that time, to assist the Chair understand
17 what was available to Police Scotland and PIRC. Can
18 we look at the position of Police Scotland first of all.
19 I understand there may be two SOPs that may be
20 applicable to this type of situation, and I think the
21 simplest way of showing this is by looking at
22 a statement by Kevin Houliston. Do you know the name
23 Kevin Houliston?

24 A. Yes, I know Kevin Houliston.

25 Q. I think he was a FLO.

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1 A. Yes, he was. He was one of the two FLOs.

2 Q. Let's look at SBPI 00354. This is an Inquiry statement
3 that Mr Houliston has provided to the Inquiry and
4 I would like to look at two paragraphs, 47, and 49.
5 Hopefully we can see both of them on the screen. 47
6 says:

7 "I am now referred to the Police Scotland Death or
8 Serious Injury in Police Custody Standard Operating
9 Procedure 2013 ... at paragraph 5.8 ..."

10 This is set out, the terms of that paragraph are set
11 out:

12 "The PIRC may elect to deploy their own FLOs,
13 however it may be that, for logistical reasons, a police
14 FLO will require to be deployed in the initial stages.
15 Discussions and careful negotiations will take place
16 between the PIRC Senior Investigator and the SIO;
17 ideally an independent FLO will be deployed."

18 So that seems to be a SOP, a Police Scotland SOP,
19 from 2013. I don't know if you have ever seen that
20 before?

21 A. I don't recall having read it, no.

22 Q. Then if we can look at paragraph 49, there's another SOP
23 referred to here, Police Scotland Family Liaison SOP.
24 This is from the next year, 2014, and the reference is
25 to paragraph 6.1.2:

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1 "Where COPFS has directed an independent
2 investigation in the case of ... Deaths in police
3 custody ... fully trained independent Family Liaison
4 Officers will be deployed by the Senior Investigator of
5 the Police Investigation and Review Commission."

6 So on this occasion in this SOP it seems to be
7 saying that for an investigation where PIRC are
8 appointed to look into a death in police custody, which
9 is the scenario that you were in on 3 May, that FLOs
10 will be deployed by the senior investigator of PIRC.

11 Have you ever come across this SOP in your
12 dealings --

13 A. No, I don't recall. Really I don't.

14 Q. Let's now look at the position of PIRC in terms of the
15 guidance. Can we look at PIRC 03885. This is
16 a document, a PIRC document, in relation to family
17 liaison and we will get that up on the screen. You will
18 see that it's headed up, "Family liaison officer",
19 and we can see that the author is Alistair Lewis, who
20 I believe is a FLO, we are hoping to hear from him later
21 in the Inquiry, and you will see that the date published
22 is 24 June 2015. So this is the month after the events
23 at Hayfield Road on 3 May.

24 A. Yes.

25 Q. We haven't heard from Alistair Lewis in evidence yet,

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1 but my understanding is that he will say there was
2 an earlier version of this document, this document is
3 the closest the Inquiry has to that earlier version, and
4 I understand he will give evidence that there's
5 consistency there.

6 Can we look at page 2, please. This relates to the
7 deployment -- sorry, we have just passed it. Thank you:

8 "Deployment of a PIRC FLO."

9 And it says here:

10 "The PIRC will normally deploy a FLO in
11 circumstances where there has been a death following
12 police contact and where there is an identifiable
13 family."

14 It goes on to say:

15 "The PIRC may also deploy a FLO in other
16 circumstances~..."

17 So there's three versions of SOPs effectively here,
18 there's the two police SOPs and the PIRC document, and
19 the variations seem to be a PIRC FLO will be deployed,
20 a PIRC FLO will normally be deployed or PIRC may elect
21 to deploy a FLO or may not, in which case
22 Police Scotland will be required to deploy a FLO. They
23 all seem to have slight variations in terms of the
24 guidance that is being given --

25 A. Yes.

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1 Q. -- to PIRC and to the Police Service. From my reading
2 of these, and hopefully Mr Lewis will give us more
3 information about this, none of these documents spell
4 out the position if FLOs are simply not available and
5 none of them are entirely aligned with the guidance
6 given to the other organisations. There is no specific
7 guidance covering a situation where Police Scotland
8 elect not to deploy FLOs, as you have been talking about
9 at the Gold Group meeting.

10 Looking at all of this now in the cold light of day,
11 do you think that this may have contributed to some
12 confusion in the parts of police and PIRC in relation to
13 what should have been happening with the FLOs?

14 A. I think on the day certainly there was no confusion from
15 either our side or Police Scotland side on what was
16 actually going to happen in relation to family liaison
17 officers, until obviously that broke down at the later
18 stages in the evening. So that was clear from outset
19 that, you know, that decision was made that FLOs were
20 being deployed and who they were at that stage. There
21 would be a full intention from the PIRC side to deploy
22 our FLOs probably at an early stage, but not that day.
23 That was -- arrangements were put in place on the day.

24 Q. So from your perspective it was agreed, it had been
25 discussed and agreed Police Scotland FLOs would be

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1 deployed on 3 May, PIRC FLOs would come in at a later
2 stage?

3 A. Yes, my understanding -- there is no dispute over that,
4 that was clearly understood on both sides and was
5 happening because they subsequently did attend the
6 office ready to deploy.

7 Q. And then, as you say, that arrangement broke down?

8 A. Yes.

9 Q. And I think yesterday you explained that you first
10 became aware of that breaking down at the Gold Group
11 meeting?

12 A. Yes.

13 Q. Was it quarter past eight in the evening or in the
14 evening?

15 A. Yes.

16 Q. That was the third Gold Group meeting. Can I ask you
17 about the ability to secure the service of FLOs.

18 A. Yes.

19 Q. Can we look at your second statement, that is
20 SBPI 00382. This is paragraph 65. You are asked here
21 to refer to your operational notes. Do you still have
22 the hard copy of those in your blue folder? You are
23 asked to look at page 6 of those. This related to your
24 note of the Gold Group meeting at 14.05, this question
25 says, so it was the one in the afternoon, I think.

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1 A. Yes.

2 Q. We looked at the minutes yesterday, they were timed
3 14.40.

4 A. Yes.

5 Q. It says:
6 "FLOs deployment soon."
7 So this was in the afternoon of 3 May and you were
8 noting in your operational notes:
9 "FLOs deployment soon."
10 "Following the Gold Group meeting at 1405 hours~..."
11 You are then asked:
12 "... what was your understanding of
13 Police Scotland's planned deployment of ... (FLOs)~..."
14 And you say here:
15 "At the conclusion of the Gold Group Meeting my
16 clear understanding was that Police Scotland intended to
17 deploy FLOs imminently and that the family would be made
18 aware of the death. The FLOs were later identified as
19 DC Kevin Houliston and Jane Bell. PIRC FLOs would not
20 have been deployed that day. They would have been
21 identified at the earliest the following day [that would
22 be 4 May] with a view to a planned briefing and formal
23 handover of responsibility between the PIRC and
24 Police Scotland FLOs."
25 I think that is what you were describing earlier?

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- 1 A. Yes.
- 2 Q. "It was imperative that the Police Scotland FLOs were
3 deployed as soon as practicable on 3 May ... to engage
4 with the family."
- 5 A. Yes.
- 6 Q. That was your clear understanding after that Gold Group
7 meeting?
- 8 A. Yes.
- 9 Q. That was the first Gold Group meeting that you had
10 attended?
- 11 A. That is correct.
- 12 Q. And certainly from the note that you have made in your
13 operational statement you were under the impression they
14 were being deployed imminently.
- 15 Can I just check, I asked you this yesterday, but
16 when we look at your operational notes can you confirm
17 those were either prepared at the time of events
18 happening or shortly after?
- 19 A. Yes.
- 20 Q. Does that apply to all of the notes?
- 21 A. Yes.
- 22 Q. Thank you. So did you -- after that Gold Group meeting
23 did you feel reassured that that matter was in hand and
24 arrangements --
- 25 A. Yes, certainly.

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1 Q. Was there any indication after that meeting that things
2 were changing or matters had moved on?

3 A. Not to my knowledge. It was obviously clearly
4 a surprise when -- as I say, the first indication from
5 memory was at the next Gold Group meeting where it came
6 out of the blue.

7 Q. Let's look at the minutes for the next Gold Group
8 meeting, please. This is PS03139. So this is
9 the minutes we looked at yesterday from a Gold Group
10 meeting at around quarter past eight in the evening, so
11 it's around six hours later. And if we look at page 2,
12 item 5 on the agenda is entitled, "Family concerns".
13 You will see here it says:

14 "Chief Superintendent McEwan discussed
15 brother-in-law in of deceased, he is part of
16 an independent advisory group and had advised the
17 initial attending Officers that he knew Mr McEwan and
18 requested that he attend and speak with him within
19 24 hours.

20 "Ch Sup and Ch Insp Shepherd attended at home
21 address of [next of kin], highly charged environment,
22 deceased's partner Collette and extended family within,
23 family concerned that early contact they had was
24 purposely vague. They were unhappy they had not been
25 told anything about who contacted the Police and

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1 Ambulance. Ch Sup provided them with an understanding
2 of events. Ch Sup discussed the Role of the PIRC and
3 reassured them it would not be P Division officers
4 investigating the incident."

5 We have heard evidence previously that P Division
6 was Fife Police?

7 A. Yes.

8 Q. It was a legacy force. And then:

9 "TASK - Family crave reassurance and are asking
10 about witnesses etc they do not wish anything publicised
11 until they inform deceased Mother who is in London."

12 Who was it that spoke to item 5 on the agenda, do
13 you remember?

14 A. I am sure it was Mr McEwan.

15 Q. Had you been made aware prior to this meeting that
16 Chief Superintendent McEwan had visited with the family?
17 Were you aware of that before this meeting?

18 A. Yes, I think I was because I know that during his
19 evidence he has already said that we had a discussion.
20 I don't specifically remember the discussion but he
21 mentioned that I had suggested it might not be a good
22 idea to go to the house and certainly in the
23 circumstances, not knowing exactly what the family's
24 request specifically was, that clearly from my
25 perspective it would be a lot better that the FLOs took

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1 on that visit, initial discussion. But, as I say,
2 I don't know the specifics around his personal visit and
3 how strong the family were in wanting that to happen.

4 Q. Why did you think it would be better for the FLOs to
5 have a discussion with the family?

6 A. Because they are fully trained to deal with these
7 situations. They would be aware of what information to
8 pass, what they are satisfied was appropriate in the
9 circumstances. Obviously during his visit I am aware
10 that there was additional information given regarding
11 the incident which was different from both the previous
12 visits that were made by other officers.

13 Q. You are aware of that how; from evidence from the
14 Inquiry?

15 A. Yes.

16 Q. Can we look at your first statement SBPI 00259, please.
17 Paragraph 45. Thank you. This is in connection with
18 the Gold Group meeting, chaired by ACC Nicholson and you
19 say:

20 "My statement notes that we were advised by Garry
21 McEwan that he had recently returned from visiting
22 Mr Bayoh's family. He explained that the family had
23 'significant concerns over information disclosed to them
24 by representatives of Police Scotland, resulting in
25 a perceived mistrust of local police'."

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1 And there was a highly charged atmosphere and the
2 family were not happy with disclosure of information by
3 the police. The family think that the relative was
4 murdered and they have distrust of local officers.

5 You were asked to comment on that. When was it you
6 were made aware that the family had significant concerns
7 about and did not trust the local police?

8 A. I'm sure that was in the feedback during the Gold Group
9 meeting.

10 Q. So you hadn't been told that prior to --

11 A. I don't recall any conversation I had been made aware in
12 any detail before that. I don't discount it is
13 a possibility but I certainly don't recall that.

14 Q. So at that Gold Group meeting was this the first time
15 became aware that the family did have significant
16 concerns --

17 A. Yes.

18 Q. -- in relation to Police Scotland officers? Did that
19 change the view about the benefits of sending
20 Police Scotland FLOs to see the family?

21 A. I think from what is recorded there, the distrust was in
22 relation to local officers, the FLOs that had been
23 delegated I understand are not local officers, they had
24 come from I think other legacy force areas outwith
25 the Fife area altogether.

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1 Q. Did you see a distinction between the family's views of
2 local officers or Fife officers, Kirkcaldy officers, and
3 the FLOs, the Police Scotland FLOs from a different
4 area?

5 A. I am unaware of what their general understanding would
6 be of saying "local officers", whether, you know, that
7 meant they had a perception that it would be officers
8 from Kirkcaldy or the Fife area that would be dealing
9 with that, and I could understand that.

10 Q. Certainly it says here:

11 "... significant concerns over information disclosed
12 to them by representatives of Police Scotland, resulting
13 in a perceived mistrust of local police."

14 Did you see their concerns as being very much
15 targeted towards the local police?

16 A. Yes.

17 Q. Rather than a wider view of Police Scotland officers?

18 A. Yes, it's mentioned on a couple of occasions during that
19 update that it is focused apparently on local officers.

20 Q. So if the Police Scotland FLOs were from outwith the
21 local area, did you -- what benefits did you consider
22 there would remain if they were deployed to the family?

23 A. From the family perspective, I dare say they would
24 mention where they came from, so they would try and
25 negate any of that trust as regards -- you know, they

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1 would have an explanation of where they were from once
2 they heard the concerns of the family.

3 Q. Did you have any sense, either before the Gold Group
4 meeting or at that Gold Group meeting, that your views
5 and the views of Police Scotland, the senior officers,
6 were now diverging in relation to the deployment of
7 Police Scotland FLOs?

8 A. They certainly were in relation to the deployment of the
9 FLOs. I don't know whose decision ultimately it was to
10 cancel that full arrangement but obviously that was
11 done.

12 Q. Let's look for a moment back at the minutes that we
13 looked at, the third Gold Group minutes. PS03139. And
14 we will move on to page 3. We are looking at the top of
15 page 3. It says:

16 "[Chief Superintendent] ..."

17 That is Garry McEwan:

18 "... discusses initial decision to have
19 Police Scotland FLOs but now handover to PIRC FLOs for
20 arrangement to gain entry to house of deceased
21 re collecting belongings for child. Discussion
22 re initial contact on phone from PIRC."

23 Can you tell us some of the background to this topic
24 of discussion? Was this the point -- was it
25 Garry McEwan that indicated the initial decision to have

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- 1 Police Scotland FLOs deployed was now being changed?
- 2 A. Yes, I mean I don't know where the understanding --
- 3 there seemed to be a thread of understanding that, you
- 4 know, that PIRC FLOs as a result of the action that was
- 5 taken would then come out. That was never going to
- 6 happen that evening. The kind of late hour was -- it
- 7 was wholly impractical for that to then occur.
- 8 Q. If it had been agreed that PIRC FLOs would come out
- 9 earlier in the day, would that have been possible?
- 10 A. It may have been possible.
- 11 Q. We will maybe come back to that. But this is the point
- 12 where you heard that Police Scotland FLOs were no longer
- 13 going to be deployed?
- 14 A. Yes.
- 15 Q. In light of that did you take any steps to see whether
- 16 it was possible for a PIRC FLO or PIRC FLOs to be
- 17 deployed even though it was after 8.00 in the evening?
- 18 A. I think I said in my statement I certainly took stock of
- 19 the situation after that Gold Group meeting, thought
- 20 about the alternatives to do that, but as I say given
- 21 the time in the evening, even if I was able to get in
- 22 contact with someone immediately and then make
- 23 arrangements to come out, realistically it was -- it
- 24 could potentially be the early hours of the morning
- 25 which in the circumstances was -- I didn't think was

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1 appropriate at all. Even -- and that's what focused my
2 mind on going to see the family with my colleague and
3 trying take things forward, explain to them the
4 situation and what was going to happen, details as
5 regards potential plans for the post mortem because that
6 was always moving closer to that point.

7 Q. So was your decision to speak to the family, was that
8 because there were no FLOs going to see the family?

9 A. I would have probably done that late in the evening
10 anyway, after the FLOs had deployed and spoken to the
11 family, and then by way of introduction and explanation.
12 Certainly at that time there was limited knowledge with
13 the police on what our full functions were but
14 significantly so with members of the public, so it was
15 appropriate to let them know what our function was, give
16 them some assurance as regards how that independent
17 Inquiry would be conducted, and that we were a separate
18 agency altogether from the Police Service.

19 Q. You say in your statement that when you found out about
20 the Police Scotland FLOs no longer being deployed, you
21 were extremely displeased about that?

22 A. Yes, very much so, because I mean this had been in place
23 for some time, that whole day, and you know in the
24 circumstances, particularly with the apparent
25 misinformation that had been passed to them in the first

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1 place, there was a need for somebody to act as that
2 point of liaison and have that training and knowledge
3 to -- to conduct the communications in a proper fashion.

4 Q. Can we look at your second statement SBPI 00382,
5 paragraph 104. Again, you are being asked about the
6 situation at the time of that third Gold Group meeting.
7 You say, at the bottom:

8 "I understand that the sudden change and decision
9 not to deploy Police Scotland FLOs was made by
10 Chief Superintendent McEwan. I did not agree with this
11 position and I felt it was inappropriate to take this
12 decision at that juncture. I am sure that I expressed
13 my disagreement and frustration on the decision to
14 Chief Superintendent McEwan and others after the
15 Gold Group Meeting. However, I cannot be more specific
16 on how and to who. In my view this decision was very
17 detrimental to attempts to engage with Mr Bayoh's family
18 and led to further frustration on their part moving
19 forward."

20 I'm interested in the part where you say:

21 "... this decision was very detrimental to attempts
22 to engage with Mr Bayoh's family~..."

23 You said it led to further frustration. Were you
24 concerned about the possible detriment to Mr Bayoh's
25 family?

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1 A. Yes, of course I was, and obviously at that stage we
2 were aware that the post mortem was going to take place
3 the following day, so the FLOs would have a significant
4 role in that process in explaining that process, and
5 making arrangements.

6 Q. In terms of the -- you are obviously the lead
7 investigator, you are conducting a PIRC investigation,
8 from the perspective of that investigation what impact,
9 if any, did this decision have on the investigation
10 itself?

11 A. On the wider investigation?

12 Q. Yes.

13 A. I think at the early stage I think the biggest impact
14 would be on the family and the lack of flow of
15 information. Particularly there was a lot of things
16 happening at that time, they were specifically dealing
17 with the grief and the circumstances of the death of
18 Mr Bayoh and then would be having to make decisions to
19 meet the request as regards the next stages of the
20 investigation.

21 Q. We have heard evidence that an investigation can benefit
22 from that flow of information from families?

23 A. Yes.

24 Q. Which can often -- FLOs can be a conduit for that. Is
25 that something you recognise as being a positive

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1 benefit?

2 A. Yes, they are the conduit for that, they are there to
3 assist the family with advice and communication but also
4 to assist the investigation itself.

5 Q. We've also heard evidence from Pat Campbell in relation
6 to this matter. He gave some explanation as to the
7 reasoning by Police Scotland's decision:

8 "... the family were refusing to engage, they were
9 not wanting to speak to Police Scotland officers at that
10 time or any local officers. I think it was as well --
11 was the fact~..."

12 I am quoting from his evidence at the moment:

13 "The discussion with Ruaraidh Nicholson and myself,
14 Lesley Boal, Garry McEwan was around -- and
15 Keith Harrower obviously involved in that as well -- was
16 that are we going to gain anything further here or is it
17 just simply going to aggravate an already sensitive
18 matter by deploying now Police Scotland FLOs to the
19 family? So we were all in agreement with that. The
20 fact is we didn't think there was any benefit at that
21 stage of deploying Police Scotland FLOs because of the
22 situation we found ourselves in to move forwards. At
23 that stage it was Garry McEwan being deployed to the
24 family to try to basically explain a bit more about
25 the incident and after the Gold Group Keith Harrower and

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1 the direction at the time from the ACC around the fact
2 that PIRC would deploy FLOs and Keith Harrower would
3 make contact with the family."

4 As far as you are aware, was the decision not to
5 deploy FLOs actually made at the Gold Group meeting?

6 A. My understanding it would have been made before that,
7 but I wasn't party to that at that stage.

8 Q. Did you feel during that Gold Group meeting that you
9 were taking part in a discussion where it was being
10 considered whether to deploy Police Scotland FLOs?

11 A. No, to my mind from my recollection that decision had
12 already been made and that was -- the presentation of
13 that update was at that stage. So I was taken unawares
14 by that.

15 Q. So your impression was that it was not a discussion
16 with -- that the outcome had been predetermined?

17 A. No, and that there wasn't an overall agreement on that
18 because I didn't agree with that.

19 Q. Did you make it clear at that meeting you didn't agree
20 with that?

21 A. After it, I think not -- I can't remember what input or
22 dialogue I had during the meeting. Because I was
23 obviously taken aback at that stage of what had actually
24 occurred.

25 Q. And because you felt taken aback you didn't make your

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- 1 own views clear?
- 2 A. I can't -- I can't recall specifically what I said in
3 the confines of the meeting itself.
- 4 Q. We have also heard from Garry McEwan in relation to
5 this. He had written in a statement that he was
6 informed after this Gold Group meeting that you had no
7 staff available to attend the house but you personally
8 would telephone the family. But I think you've said
9 already you actually went to visit the family?
- 10 A. Yes, I think I had possibly two phone calls initially to
11 make that introduction and to see when it would be
12 suitable to go and visit them that evening. And
13 an arrangement was subsequently made.
- 14 Q. Were there any steps taken by you that evening to see
15 whether you could muster some PIRC FLOs --
- 16 A. No.
- 17 Q. -- to visit the family?
- 18 A. No, given the hour in the day that I didn't see any
19 practical advantage to anyone in the circumstances
20 to ...
- 21 Q. Did you agree with Garry McEwan's comments which I read
22 out to you earlier, they were on the screen, that
23 waiting 24 hours before a family are given a thorough
24 proper update on the circumstances, do you agree that is
25 inappropriate to delay?

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- 1 A. In relation to the -- is this in relation to the FLOs?
- 2 Q. The FLOs. But to wait 24 hours before giving the family
3 a thorough and proper update, that that would be
4 inappropriate?
- 5 A. Yes, but they should be given as much information as is
6 appropriate in the circumstances at that time, and they
7 had obviously been provided with a lot of information at
8 different stages from Police Scotland during the course
9 of that evening.
- 10 Q. You have been asked a question about -- it's in your
11 first Inquiry statement, I don't think we need to go to
12 it, but you have been asked if there was ever any
13 discussion with Pat Campbell about a joint deployment of
14 FLOs, so a Police Scotland FLO and a PIRC FLO.
- 15 A. Yes.
- 16 Q. Do you remember any discussions of that sort being --
17 taking place --
- 18 A. No, definitely not.
- 19 Q. -- with Pat Campbell? Is that something that you have
20 experience of in the past, where you have joint --
- 21 A. No, the only joint thing that I would be aware of is the
22 formal handover process that I described, the respective
23 FLOs from the two organisations would have a very
24 detailed handover and then the FLOs would then introduce
25 the new FLOs to the family and have that formal

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- 1 handover. That would be the process.
- 2 Q. So there would be some sort of physical introduction?
- 3 A. Yes, there would be. Normally anyway, yes.
- 4 Q. Right, and that is when the Police Scotland FLOs and
- 5 PIRC FLOs would come together at that point?
- 6 A. Yes.
- 7 Q. Thank you. In hindsight, do you think now that it might
- 8 have been worth a phone call to the PIRC FLOs after that
- 9 third Gold Group meeting to see if they were available?
- 10 A. Honestly, I don't think so. As I said, I did consider
- 11 that, but for them to then, as I say, deploy within what
- 12 could be a fairly lengthy timescale, particularly given
- 13 what had gone before, that if they were to arrive and
- 14 then attempt at the back of midnight, 1 o'clock in the
- 15 morning to be introduced to the family, I didn't think
- 16 in the circumstances that was appropriate, so I didn't
- 17 do it.
- 18 Q. Did you take account of the fact there wouldn't need to
- 19 be a handover as such --
- 20 A. There would be because -- well, the FLOs would have to
- 21 be briefed properly so to what extent if they would get
- 22 a sufficient briefing to have a proper understanding of
- 23 what information could be conveyed to the family, what
- 24 had actually gone before in detail as regards any
- 25 misinformation that had been passed, it would be

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1 appropriate for them to be aware of all of that, and
2 again, given the time of night that they might attend
3 I would seriously question whether that would be
4 achievable. So thus it would be counterproductive.

5 Q. Could you maybe help us understand -- you are obviously
6 lead investigator, you are in charge of the
7 investigation looking into the death of Mr Bayoh. What
8 information -- if you had been in that situation and if
9 there had been FLOs available, what information would
10 you have wanted the FLOs to share with the family on
11 3 May?

12 A. If we -- I would want them to share information that was
13 confirmed 100%. Anything -- you know, conjecture or
14 assessment of what may or may not have happened to my
15 mind wouldn't be appropriate. It would have to be
16 factual. Ie that he had -- Mr Bayoh had come into
17 contact with the police, there had been some form of
18 restraint and as a result -- and that this independent
19 investigation would be conducted thoroughly and come up
20 with the answers of what actually happened to him during
21 that.

22 Q. In terms of the circumstances after the restraint or
23 during the restraint, would you have been in a position
24 to give the family any information about that?

25 A. I think at that stage we didn't have sufficient

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1 information to say exactly what happened, so it
2 wouldn't -- as I say, we wouldn't provide information
3 that we could not substantiate, which is -- again would
4 be counterproductive in the wider investigation.

5 Q. So is that the extent really of what you would have told
6 them, that he had come into contact with the police,
7 there had been a restraint and now PIRC had been brought
8 in as an independent body to investigate?

9 A. As you are aware, there was a variety of different
10 pieces of information that we had at different stages,
11 and none of this was absolutely confirmed, particularly
12 with the officers that were involved in the restraint
13 themselves. And there wasn't a lot of independent
14 witness evidence at that stage but that obviously
15 subsequently came through the Inquiry and potentially
16 that would be fed in to the family at different stages
17 where appropriate.

18 Q. Would you have felt comfortable giving them this
19 information and no more?

20 A. It would depend what it was. As I say, I don't know at
21 the different stages what it was, so I don't think it is
22 appropriate to comment on that unless I knew exactly
23 what it was.

24 Q. Can I ask you about -- can we look at the first
25 Gold Group meeting minutes actually, which is PS06491.

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1 This is the Gold Group meeting, the first one, at 11.30
2 that morning, and can we look at item 3 on the agenda,
3 which related to the investigative process. We have
4 heard evidence that this was spoken to by Pat Campbell,
5 who was the SIO. I'm interested there in the fourth
6 bullet point:

7 "FLO - Establish a working strategy."

8 Is establishing a working strategy something -- this
9 is the first Gold Group meeting -- is this something at
10 the forefront of an investigation which is commencing
11 into an unexplained death?

12 A. Yes, and the FLOs would obviously have a significant
13 input into that and how they were going to approach
14 that.

15 Q. Do you, as senior investigator or lead investigator,
16 have an input into establishing a working strategy?

17 A. I would have an input into -- in dialogue with the FLOs
18 themselves.

19 Q. Then can we look at the second Gold Group
20 meeting minutes which is PS07268. If we could look at
21 item 5 on the agenda. This is headed, "Family
22 concerns." This is the second impossible group meeting
23 at 2.40. It says here:

24 "Discussion re [next of kin] Strategy identified as
25 sister of deceased, Collette Bell, Girlfriend of

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1 deceased is currently within Kirkcaldy Police Station
2 and has been informed a deceased person is in hospital
3 and that it may be her partner."

4 Is a next of kin strategy the same as a FLO
5 strategy, or is it something different?

6 A. I would say it is something different.

7 Q. Can you explain what the difference is?

8 A. I haven't actually seen a next of kin strategy to be
9 honest. I can imagine what may be considered in it but
10 I don't know the specifics of it.

11 Q. Have you ever seen a next of kin strategy?

12 A. Not physically, no.

13 Q. Is it possible it is the same thing as a FLO strategy?

14 A. I don't think so, no.

15 Q. No. Is it a phrase you have ever used, next of kin?

16 A. I don't recollect using that before, no.

17 Q. Right. Tell us in relation to the FLO strategy then
18 what steps, if any, did you take to start to consider
19 a FLO strategy or formulate a FLO strategy or prepare
20 for FLOs arriving?

21 A. No, I didn't have any involvement in that.

22 Q. That was nothing --

23 A. No.

24 Q. -- that you were involved in? Did you instruct anyone
25 in your team to start thinking about a FLO strategy?

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- 1 A. No.
- 2 Q. Was that not something that you felt should be
3 prioritised?
- 4 A. It was prioritised from the Police Scotland perspective
5 and they would take responsibility at that stage for
6 that. And then once our FLOs were deployed it would be
7 a separate issue, it would be our responsibility.
- 8 Q. So was your expectation that Police Scotland would
9 develop the FLO strategy --
- 10 A. Yes.
- 11 Q. -- initially? And when would PIRC start developing
12 their own FLO strategy?
- 13 A. It would be the following day, when Alistair Lewis was
14 appointed from our organisations and he would progress
15 that from his perspective.
- 16 Q. Was that something that, as part of his role as a FLO,
17 he would develop --
- 18 A. Yes.
- 19 Q. -- a FLO strategy? Would you contribute to that if you
20 had been lead investigator the next day?
- 21 A. I -- I probably would have done but I wasn't, as you are
22 aware.
- 23 Q. I am aware of that. But is that something you would
24 have done, had you continued --
- 25 A. Yes, there would be dialogue between the lead

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1 investigator and him.

2 Q. Can I ask you about some issues relating to
3 post-incident management. There was evidence given to
4 this Inquiry by Pat Campbell and by Conrad Trickett who
5 was the post-incident manager, I think we mentioned him
6 yesterday.

7 A. Yes, we did.

8 Q. We've heard evidence that at some point before the first
9 Gold Group meeting, prior to the meeting that
10 Pat Campbell had with you, that he had a conversation
11 with Conrad Trickett and indicated to him that
12 statements were not required at this time.

13 Do you have any recollection of having
14 a conversation with Pat Campbell where you maybe
15 indicated that statements were not required from the
16 officers, the attending officers?

17 A. No, I have no recollection of that.

18 Q. Can you help us understand -- you are obviously
19 PIM-aware, post-incident procedures, you have had some
20 awareness training in relation to that. What are basic
21 facts?

22 A. Basic facts are kind of a short summary, general
23 information given in the first instance after a critical
24 incident which is coming from the officers involved, so
25 the PIM would basically put that together from the

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1 information that he had from the officer or group of
2 officers at the time, so that is the first stage of that
3 process.

4 Q. We've heard evidence that there are four stages?

5 A. Yes.

6 Q. And different -- there's basic facts, there's initial
7 accounts. We have heard that detailed statements from
8 officers would not be expected until perhaps 48 hours
9 after the event?

10 A. That is correct, yes and that would be either scripted
11 by the officers or members of police staff themselves or
12 invariably taken by PIRC investigators at the sort -- on
13 that sort of timescale.

14 Q. Would you see a distinction between what we've heard are
15 called operational statements -- and officers have
16 described self-penning or writing out their own
17 statements of what happened at an event, they have
18 called that an operational statement -- a distinction
19 between that and what may be called witness statement,
20 perhaps taken by a PIRC investigator?

21 A. An operational statement is a phrase -- to my mind
22 a statement is a statement and they may be a brief
23 statement initially but a more detailed statement
24 covering the whole incident and actions and use of
25 force, et cetera, would be more detailed. So I don't

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1 know where they are referring to the operational
2 statement is in effect at that stage the initial account
3 which is normally written, which is a brief account of
4 what occurred during the incident. And then, as I say,
5 that is followed up at an early stage within that time
6 period with a full detailed statement covering hopefully
7 everything.

8 Q. We may have heard -- we have heard evidence from
9 Conrad Trickett, who was the post-incident manager, that
10 from his perspective there was no need to get basic
11 facts from the officers because the basic facts were
12 already known. Would you -- from a PIRC perspective do
13 you take the view that the basic facts were already
14 known during the day on 3 May?

15 A. No, I don't think so, because you know initially there's
16 differing accounts that I got of the incident and I know
17 that was the case later as well, where there was things
18 that never occurred that were referred to, so ...

19 Through that process, that is definitive, you get
20 the basic fact, you get initial account and you go to
21 that final stage where you get the statements, so
22 there's -- you don't deviate, would be my view, from
23 that process if you were involved in the post-incident
24 procedure. Whether there is a viewpoint that, you know,
25 in general terms that basic facts of the incident are

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1 already known.

2 Q. From the perspective of the PIRC investigation, would it

3 have been of assistance to you to get basic facts?

4 A. Definitely, yes.

5 Q. And then later initial accounts?

6 A. Yes.

7 Q. Then ultimately more detailed statements?

8 A. Yes, at a later stage.

9 Q. Would that be some point after 48 hours after the

10 incident?

11 A. Yes, round about that, it would be normally the

12 following -- not the next day but the following day.

13 But you would already have some sort of account, as

14 I say, within that initial account.

15 Q. Thank you. Can I move on and ask you about the contact

16 you had with the family on the evening of 3 May. You

17 said you made a couple of calls?

18 A. Yes.

19 Q. And you then did visit the family?

20 A. I did, yes.

21 Q. Can we look at SBPI 00259, and we will look at -- this

22 is your Inquiry statement, and we will have a look at

23 paragraph 53. You say:

24 "After the Gold Group meeting that evening, I made

25 several unsuccessful attempts to contact Ade Johnson.

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1 About 2145 hours, I spoke to Mr Johnson by telephone and
2 arranged to see him and other members of Sheku Bayoh's
3 family at Mr Johnson's home. I then attended there at
4 2210 hours. I was introduced to Mr Johnson and
5 requested to speak to him in private. When I went in
6 there was a large group there. My operational notes, at
7 page 9, record that there were approximately 16-18 other
8 persons there in addition to Kadi and Ade Johnson. I am
9 assuming some were family members, but I didn't know who
10 everyone was, so to my mind it was actually much more
11 appropriate to meet one-to-one initially. If then I'd
12 been requested to speak with the assembled group and
13 explain everything to see if things went - then that
14 would've been fine but, at the initial stages to speak
15 to Mr Johnson and convey the information that I wanted
16 to initially seemed to me the most appropriate way to
17 deal with that, but that was rejected. I was asked to
18 sit in the living room along with my colleague,
19 Alex McGuire and the other persons would were present.
20 My statement describes that~..."

21 And you have this in quotations:

22 "... 'Mr Johnson began to outline his displeasure in
23 the way that the Police Scotland personnel had
24 communicated information to him which differed and
25 conflicted significantly. He intimated that he wished

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1 to make a complaint regarding this and I outlined the
2 appropriate channels if he wished to make a complaint to
3 Police Scotland'."

4 Can I ask you about this meeting. You were with
5 Alex McGuire, who you have mentioned yesterday I think?

6 A. Yes, I was.

7 Q. He was taking the role of scribe?

8 A. Yes, and any other relevant functions that we had to
9 undertake and he accompanied me to the house.

10 Q. Can I ask why you selected Alex McGuire? Because
11 yesterday you gave evidence that he was not from the
12 local area. He was not from -- sorry, Strathclyde?

13 A. That is correct.

14 Q. Was there a particular reason you selected Alex McGuire
15 to go with you to see the family?

16 A. The other four investigators had specific functions
17 obviously to deal with the two locations and were fully
18 involved in that. So Alex was available at that stage.

19 Q. So there was nothing specific about his background --

20 A. No, not at all. No.

21 Q. -- or anything of that sort. Given the comments in
22 quotations there that you have noted down, did you feel
23 that the atmosphere in the house and the communication
24 you had with the family was consistent with the
25 description you had heard at the Gold Group meeting from

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1 Garry McEwan about the way the family were feeling at
2 that time?

3 A. In some ways, yes. There was clearly grief with the
4 group, which was wholly understandable in the
5 circumstances. There was an element of anger and there
6 was certainly frustration which -- from what Mr Johnson
7 articulated and the differing pieces of information he
8 had, so that was fully understandable given what they
9 had been told.

10 Q. You have talked about Mr Johnson being displeased at the
11 different and conflicting information that had been
12 given to them --

13 A. Yes.

14 Q. -- by Police Scotland. Did you take details of that?

15 A. No, I didn't write down specifics, and it really
16 wasn't -- it was kind of difficult in the circumstances
17 and I think that -- again, if I tried to communicate,
18 the circumstances that we had in front of us, and the
19 emotions et cetera, it would have been -- I didn't think
20 that would be appropriate to do that either. And
21 I think that was just in general terms what I notes at
22 some stage once I left the house.

23 Q. So you didn't take notes when you were in the room?

24 A. Not in the house, no.

25 Q. Did you not feel that would be appropriate in the

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- 1 circumstances?
- 2 A. No, not in the circumstances, no.
- 3 Q. So the operational notes you took later, were they --
- 4 how long later after the meeting did you prepare that?
- 5 A. I don't know, I think I returned to Kirkcaldy.
- 6 I don't have a recollection of, you know, sitting in the
- 7 vehicle that I was in and doing that when I left
- 8 the house, so it was at some reasonably early stage
- 9 after that, I can't be more specific.
- 10 Q. How long did the meeting with the family take; do you
- 11 remember?
- 12 A. I would be guessing, maybe 15-20 minutes, something like
- 13 that.
- 14 Q. Did you return to Kirkcaldy Police Station --
- 15 A. I think so, I think so.
- 16 Q. -- immediately after the meeting? You have talked about
- 17 the family having anger and frustration. Can you
- 18 explain, was it -- was that exclusively in relation to
- 19 the different and conflicting information that they had
- 20 received from Police Scotland or was it for other
- 21 reasons as well?
- 22 A. As part of the discussions obviously I had to touch on
- 23 the arrangements for the post mortem and obviously the
- 24 initial feedback is aware that there was considerations
- 25 that they had for other family members, specifically

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1 Mr Bayoh's mother I understand was travelling, which
2 I took -- from England somewhere, I wasn't sure where
3 she was located, and that they did not want anything to
4 do with that until she had arrived and had discussions
5 in relation to that.

6 Q. Was there any mention during that meeting about concerns
7 the family had about obviously the actions of the police
8 officers, that they may have been due in some part to
9 Mr Bayoh's race?

10 A. No, I don't remember anything in relation to that, no.

11 Q. Were there any discussion or comments made about recent
12 events that were in the media, about recent events in
13 Baltimore; do you remember anything along those lines?

14 A. No, I don't recall anything.

15 Q. We have heard evidence from a DC Wayne Parker, who was
16 responsible for delivering the death message -- one of
17 the officers responsible.

18 A. Yes.

19 Q. And a DC Andrew Mitchell, who was the other officer
20 responsible for delivering the death message, saying
21 there was some discussion that this incident may have
22 been similar to one in Baltimore in America. Was any
23 part of the discussion you had with the family about
24 events, recent events?

25 A. Not to my recollection, no.

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- 1 Q. Any reference by the family that evening that there
2 may -- concerns they had there may have been racial
3 element in the death of Mr Bayoh?
- 4 A. No.
- 5 Q. To what extent were you aware that this would be
6 a significant event publicly, that a man had died after
7 contact with the police and he was a black man; to what
8 extent was that something that you were conscious of on
9 3 May?
- 10 A. Yes, I was conscious of it, and I knew that certainly
11 there would be a lot in the media in relation to it.
12 There would be a focus on the events and the subsequent
13 investigation.
- 14 Q. To what extent did that awareness or that consciousness
15 of that impact on your role as lead investigator on
16 3 May?
- 17 A. It was just one of many considerations. I was certainly
18 aware of it, I wasn't blind to it. That is certainly
19 the case.
- 20 Q. When you say you were not blind to it, how did that
21 awareness translate in terms of any actions that you
22 took or any steps you took as part of the investigation?
- 23 A. It was all -- it was all part of the thinking and
24 consideration of any of the actions. I don't know if
25 you are focusing specifically on the media attention

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- 1 side of things or just in general?
- 2 Q. Well, let's look at the media. Did you have any -- did
3 you take any particular steps in relation to the media
4 on 3 May that were -- that we would like to hear about?
- 5 A. No, I fed back information and briefed Mr Casey
6 regularly on that, who was liaising with our media
7 representative for the PIRC at that time, and with
8 I understand Crown as well in relation to any media
9 releases, so he dealt with that.
- 10 Q. Are PIRC possible for liaising with the media in
11 a situation like that where there is a PIRC
12 investigation going on?
- 13 A. Yes, in those circumstances not directly but they would
14 liaise with their counterparts within Police Scotland or
15 what other agency was involved. And obviously because
16 it was an investigation referred by Crown, they would
17 communicate with them also in relation to any media
18 releases that were being considered.
- 19 Q. Were you involved on 3 May with any discussions about
20 press releases or media interest or anything --
- 21 A. No. Not from my recollection, not directly, no, other
22 than feeding information into the process.
- 23 Q. I'd like to -- you have mentioned the arrangements for
24 the post mortem and I would like to move on to that.
- 25 A. Yes.

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1 Q. Can we look at paragraph 55 of your Inquiry statement.

2 It says here:

3 "After explaining to the family regarding the PIRC
4 role and function, I then advised the family that
5 Crown Office had made arrangements for a post mortem
6 examination on the afternoon of Monday, 4 May."

7 So by the time you visited family in the evening on
8 3 May you had had a conversation with David Green, had
9 you, about the post mortem arrangements?

10 A. Yes.

11 Q. And you were aware that arrangements had been made for
12 a post mortem the following day?

13 A. Yes.

14 Q. You said:

15 "I asked for two family members to make themselves
16 available to attend the city mortuary in Edinburgh to
17 identify the body."

18 Then you make a reference to page 9 of your
19 operational notes. I don't know if you want to have
20 a look at them as we go through it. I will read out the
21 quotation here. It says:

22 "... 'Adi indicated stated the family had discussed
23 matters and no representatives were willing to do the
24 identification until family members, including the now
25 deceased's mother attended~... She was travelling with

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1 a group, including elders from England'. My
2 understanding of this was that the family were refusing
3 to do the identification in the timescale outlined.
4 I don't think it was the intention that it would be the
5 mother that would do the identification, but that they
6 were not willing to participate in that process until
7 she arrived~... I'm aware she was travelling from down
8 south or was about to travel. I don't have any
9 recollection of being advised as to when she would
10 arrive. I got the impression she was in the process of
11 travelling but I don't think established where she was
12 actually coming from other than it was somewhere in
13 England. I think it was suggested that they would
14 arrive at some time the following day, which was the
15 Monday, and obviously the post mortem was arranged for
16 midday on the Monday. I have been asked if the family
17 understood that I was the Crown's ..."

18 That should maybe be "it":

19 "... it was the Crown's decision as to the timing of
20 the post mortem. Yes, I think so. I'd explained
21 specifically it was the Crown's decision. My statement
22 records that Mr Johnson wasn't willing to be more
23 specific on the expected arrangements of the arrival of
24 the family members etc. That part of the conversation
25 was closed down."

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1 So I would like to go through the circumstances of
2 this if I may. First of all, when you say there, "That
3 part of the conversation was closed down", who closed
4 the conversation down?

5 A. I think we had -- the discussion we had in direct
6 relation to that had been exhausted by that stage.
7 Mr Johnson had clearly articulated the family position
8 that it was significant to them that they could make no
9 further decisions or arrangements in relation to who
10 would carry out that function in relation to
11 the post mortem until they had arrived and the timing of
12 that was unspecific, so I think what is meant by that is
13 the conversation ended, we were both -- on both sides
14 were clear what the respective positions were, and it
15 was then just to communicate that information back to
16 Crown at an early stage to see how that would be
17 approached the following day.

18 Q. Where did this conversation take place?

19 A. In the living room.

20 Q. Who was present during this conversation?

21 A. Mr Johnson, his wife, and several other people. From
22 memory. It all took place -- there was a short
23 conversation, I don't know whether it was when I was
24 leaving the house or when I first entered, it took part
25 I think in the hallway at the front door. But that was

Transcript of the Sheku Bayoh Inquiry

1 brief, but I'm sure that the majority -- the vast
2 majority of the conversation we had was with the
3 collective group of people that were there.

4 Q. Do you remember Collette Bell being present?

5 A. No.

6 Q. Or her mother?

7 A. I wouldn't have known -- I wouldn't have been able to
8 identify either of them at that stage.

9 Q. Did you have a discussion about the post mortem with
10 Collette Bell --

11 A. No.

12 Q. -- at separate time?

13 A. No.

14 Q. Had you seen her during that visit to the family?

15 A. I'm unaware of whether she was there or not, I'm not
16 sure.

17 Q. Can we look at your operational notes please of this
18 meeting with the family. So it's page 9, this is
19 PIRC 01468. I will try and read this out, if I get it
20 wrong you could perhaps point that out to me. It says
21 22.10:

22 "Attended at home address at ..."

23 That is redacted:

24 "... with Alex McGuire and met with family. In
25 house were Ade and Kadi Johnson and approximately 16-18

Transcript of the Sheku Bayoh Inquiry

1 other ..."

2 Is that "persons"?

3 A. "Persons", yes.

4 Q. "... Ade confirmed he had been elected as family
5 spokesperson. The family appeared~..."

6 A. "... clearly upset~..."

7 Q. "... clearly upset and angry~..."

8 Perhaps I should actually ask you to read this; do
9 you mind?

10 A. Yes, fine:

11 "Ade stated that they were angered and frustrated by
12 the differing and conflicting information provided by
13 Police Scotland officers and they intended to make
14 a complaint re them. Brief overview of this process
15 given and the requirement to make complaint to
16 Police Scotland direct. They were advised of the PIRC
17 role and function. I outlined this would ..."

18 I think that should be "be", it doesn't say "be":

19 "... a fully independent and thorough Inquiry
20 conducted by experienced investigators. I also outlined
21 arrangements in place for the post mortem on 4 May, 2015
22 at Edinburgh. Ade indicated the family had discussed
23 matters and no representatives were willing to do the
24 identification until family members including now
25 deceased's mother attended."

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Carry on to the next column.
- 2 A. "She was travelling with a group, including elders from
3 England. Ade also indicated that he intended to go to
4 the media and consult with local councillors regarding
5 these issues."
- 6 Q. Thank you. From that description, which you prepared
7 after your meeting with the family, is it fair to say
8 that you were made aware by the family that they were
9 not refusing to identify the body per se but they wished
10 for Mr Bayoh's mother to be coming up from London and
11 that they effectively wished the post mortem delayed
12 until after she had arrived in Scotland?
- 13 A. Yes, I would agree in general terms.
- 14 Q. Certainly we have heard evidence from Kadi Johnson who
15 said she tried to explain to PIRC that her mum -- she
16 has given evidence that her mum was in London, they
17 would be arranging for her to come up the next day,
18 which would have been the Monday and they would arrange
19 for that and to go and identify the body once she was
20 there. Do you agree with that evidence?
- 21 A. I don't remember specifically that wording but it's kind
22 of similar to my understanding that the timing --
23 timeframe was too short and that they wanted the
24 relatives, particularly Mr Bayoh's mother, to be there
25 before they entered into that process.

Transcript of the Sheku Bayoh Inquiry

1 Q. Thank you. We hope to hear evidence later in the
2 Inquiry from Alistair Lewis, who was later appointed as
3 the FLO, and he has an entry in his FLO log that you had
4 spoken to the family on 3 May and you had advised Lewis
5 that the family's single point of contact was
6 Ade Johnson and you had spoken to him regarding the need
7 for a post mortem. He has said in his log:

8 "This was refused regarding formal ID as mother was
9 travelling from England with family elders."

10 A. Yes.

11 Q. So did you pass that information on to Alistair Lewis?

12 A. Yes, first thing in the morning.

13 Q. Was that on 4 May?

14 A. Yes.

15 Q. Again, we have not heard evidence from Dave Green in the
16 Inquiry yet, we hope to, we do have a statement from him
17 regarding the events and I think it is noted in your
18 operational notes that at 23.35, so this is on -- just
19 the next column, the same day, so after your meeting
20 with the family, 3 May, 23.35 you actually contacted
21 Dave Green at Crown Office, and I will get to you to
22 read out that passage from your operational notes, if
23 you would.

24 A. 23.35?

25 Q. 23.35 that day.

Transcript of the Sheku Bayoh Inquiry

1 A. "Updated Dave Green COPFS re the ID issue for
2 post mortem. Alternative arrangements discussed for
3 selected police officers to carry out ID function. Goes
4 ahead."

5 Q. In Dave Green's Inquiry statement, if we look at
6 SBPI 00227, and looking at paragraph 4 I think.
7 (Pause). Sorry, I will confirm the position with that.
8 I think I have the wrong reference in my note. But what
9 he has said in that statement is:

10 "Late that night, about 23.30 hours I think, I was
11 advised by PIRC that the family had indicated that they
12 would not attend the mortuary to ID ..."

13 Mr Bayoh:

14 "I instructed that the post mortem should proceed as
15 arranged. My reasons for this were that in my view it
16 was essential to ascertain the cause of Sheku Bayoh's
17 death as soon as possible."

18 As I say, we have not heard evidence yet from
19 Mr Green, and I am just putting those words to you
20 because they are in a statement from him. But it would
21 appear that his understanding during that late night
22 conversation with PIRC was that the family had indicated
23 they would not attend the mortuary to identify Mr Bayoh.
24 So it was not -- apparently it was not his understanding
25 that they were effectively asking for the post mortem to

Transcript of the Sheku Bayoh Inquiry

1 be delayed while waiting for the mother to come up from
2 London. Do you have any comment about that, if that is
3 indeed what he speaks to in evidence?

4 A. Other than saying that I summarised the visit to the
5 house and specifically in relation to the response for
6 the arrangements in place for the post mortem at that
7 time, and I am fairly confident that I told them
8 regarding the expected visitors travelling and that
9 there would be no decision finally made on that until
10 they had arrived, so basically accurately summarising
11 the discussion with Mr Johnson in relation to the
12 arrangement for the post mortem.

13 Q. Can you give any -- think of any reason or any
14 explanation why Mr Green may have formed the impression
15 from that conversation that the family were simply
16 refusing to attend to ID Mr Bayoh's body?

17 A. No, I cannot.

18 Q. I also understand that Mr Green may give evidence that
19 he expected you to call the family again after that
20 discussion the following morning to see if they had
21 maybe changed their mind?

22 A. Yes, I recall that, and that was done the following day
23 as well.

24 Q. I think my understanding of Mr Green's position is that
25 he thought that conversation the following morning would

Transcript of the Sheku Bayoh Inquiry

1 be to see if the family could -- had changed their mind
2 that they would come and identify the body. Do you
3 remember if you had the same view? Were you trying to
4 change the family's mind or was it for some other
5 reason?

6 A. Part of the reason -- well, initially part of it was to
7 introduce Alistair Lewis but obviously one of the
8 priorities with that first contact with the family again
9 in the morning was to try and get that representation at
10 the post mortem as well.

11 Q. Can I ask, would there have been any reason why you
12 couldn't have asked David Green to delay the post mortem
13 on the Monday?

14 A. To be honest it is not for me to interfere in that
15 process. I am unaware of how -- what the availability
16 of the appropriate people are, including the pathologist
17 and what was available, whether that day or further
18 ahead in the timescale on that. It is not for me. He
19 was aware of all the circumstances that were relevant in
20 relation to the scheduling of that.

21 Q. We have heard evidence that ultimately the decision for
22 a post mortem is for the Crown --

23 A. Crown, yes.

24 Q. -- to make. I wonder to what extent PIRC could be
25 persuasive in relation to the timing of the post mortem,

Transcript of the Sheku Bayoh Inquiry

- 1 where PIRC are aware of particular wishes being
2 expressed by the family?
- 3 A. That had occurred earlier in the day, I think we
4 discussed that previously, where there was an initial
5 consideration for having the post mortem that day. On
6 that occasion I was asked by Mr Green for an opinion in
7 relation to that.
- 8 Q. So you gave your opinion to David Green on 3 May?
- 9 A. At his request, yes.
- 10 Q. At his request or invitation?
- 11 A. Yes, his invitation.
- 12 Q. In relation to the timing of the post mortem?
- 13 A. Whether it was feasible or practical in the
14 circumstances, and my response was, particularly at that
15 early stage, not knowing too much about it at that
16 stage, that I didn't view it as practical at all so that
17 was I think then thereafter was dismissed as
18 a consideration.
- 19 Q. So he took on board -- on the 3rd, earlier on the 3rd he
20 took on board your comments and did not have that
21 post mortem that day?
- 22 A. I assume so, I don't know if it was directly
23 attributable to that or otherwise.
- 24 Q. We know the post mortem didn't take place on the Sunday.
- 25 A. Yes, we do.

Transcript of the Sheku Bayoh Inquiry

1 Q. Did you not feel that you could again offer an opinion
2 and perhaps persuade him to delay the post mortem on the
3 Monday?

4 A. I didn't choose to give an opinion or apply any specific
5 request in that regard. He was -- as I say, he was
6 fully aware of everything I was aware of at that time
7 and the circumstances regarding the family. Obviously
8 you have mentioned already from what you have told me
9 that his major consideration, and I fully appreciate
10 that, was to -- in the absence of other information,
11 that we didn't have at the time was to, as soon as
12 practicable, to get a cause of death.

13 Q. In the circumstances you were in on the Sunday and the
14 Monday, there were no FLOs deployed to the family --

15 A. No.

16 Q. -- the family had expressed concerns. They were upset,
17 angry, frustrated. Can you explain why you didn't
18 choose to give your opinion to David Green about perhaps
19 delaying or deferring the post mortem until the mother
20 had arrived?

21 A. As I say, I didn't know what the alternatives were.
22 Again, that wouldn't be something that I would ask him.
23 He is a very senior member of the Crown Office, and
24 I didn't feel it was my position to push for any sort of
25 alternative. He was armed with all the relevant

Transcript of the Sheku Bayoh Inquiry

1 information on the feelings of the family in relation to
2 that, and he has clearly had uppermost in his mind as
3 regards finding out medically what hopefully caused the
4 death at that stage, which was very important for the
5 investigation moving forward, so I chose not to pursue
6 anything else in relation to those arrangements. He
7 knew what the facts were.

8 Q. Thinking about that communication between you and
9 David Green, you have said it wasn't your position to --

10 A. No.

11 Q. -- do that. Did you feel on an equal footing with
12 David Green, because you are lead investigator of PIRC,
13 you are in charge of the investigation into Mr Bayoh's
14 death, he has asked your opinion previously, and he is
15 a member of Crown Office, a senior member. Did you feel
16 he was -- he had more authority than you or you couldn't
17 speak to him on an equal footing?

18 A. No, not that I couldn't speak to him but certainly on
19 that topic, that was for him to decide as long as he had
20 the full facts that were available at the time.

21 Q. Do you feel he did have the full facts about the
22 family's concerns and their wishes?

23 A. Yes, I do.

24 MS GRAHAME: Thank you. I wonder if that might be
25 an appropriate time to break.

Transcript of the Sheku Bayoh Inquiry

1 LORD BRACADALE: We will stop for 20 minutes.

2 (11.32 am)

3 (A short break)

4 (11.52 am)

5 LORD BRACADALE: Ms Grahame.

6 MS GRAHAME: Thank you. I would like to move on to 4 May,
7 and you will see in your operational notes actually, on
8 page 9 that we were looking at before, that you head it
9 up, "Monday 4 May", so you were still in the office
10 I think you said that day.

11 A. Yes, I was.

12 Q. I will be asking you about some items on page 10. I'm
13 interested in the call you made to Ade Johnson at 10.30.
14 So that is on page 10 of your operational notes which
15 are PIRC 101468. Or is that 01468. An extra 1 has
16 slipped in there. It's page 10 that I am interested in.

17 Before I look at this on the screen, I think you
18 have already said that you made a call to Ade Johnson on
19 the morning of 4 May?

20 A. Yes.

21 Q. And you -- one of reasons was to attempt to introduce
22 him to Alistair Lewis, who was going to be the FLO?

23 A. Yes.

24 Q. If we look at the operational notes on the left-hand
25 side halfway down that page you will see:

Transcript of the Sheku Bayoh Inquiry

1 "10.30. Call to Ade Johnson."
2 Could you read that out please?
3 A. "Call to Ade Johnson. Confirmed family not willing to
4 attend the post mortem and identify body. I confirmed
5 to him that Crown directed post mortem to go ahead as
6 planned. I asked if I could attend this morning with
7 Alistair Lewis to introduce FLO. He declined and stated
8 he was in discussion with solicitor who would contact
9 PIRC on their behalf. I arranged a call back and
10 provided him with a contact number for Alistair Lewis."
11 Q. And then is that another call to Ade Johnson at 10.50?
12 A. Yes.
13 Q. At the bottom of that page, and can you read that entry
14 please?
15 A. "Call to Ade Johnson's mobile. No response. Message
16 left to contact PIRC/Alistair Lewis on FLO mobile. Also
17 left message with Kadi Johnson at home address to have
18 Ade contact Alistair Lewis on the number provided."
19 Q. And then it says, "Update from Alistair Lewis", is that
20 when you had a discussion with Alistair Lewis?
21 A. Yes, I don't know, there is obviously not a time against
22 that but it is running at some point that morning:
23 "Deceased family have appointed Amer Anwar
24 solicitor to represent family~..."
25 I think there is a mobile number there:

Transcript of the Sheku Bayoh Inquiry

1 "Alistair spoke to Mr Anwar and will take a few days
2 to collate information. He is making a complaint to
3 local Chief Superintendent re seizure and search of ..."

4 There was an address there.

5 Q. So the call you make so Ade Johnson on the morning of
6 the Monday is just before you are advised that
7 Aamer Anwar has been instructed as the solicitor
8 representing the family?

9 A. Yes, that is correct.

10 Q. Let's look at your Inquiry statement. Paragraph 59,
11 please. This is also in connection with that telephone
12 call to Mr Johnson at 10.30.

13 A. Yes.

14 Q. "This was an attempt to introduce the family liaison
15 officer, Alistair Lewis. Mr Johnson was asked again
16 regarding the availability of somebody to carry out the
17 identification of Sheku Bayoh, and he declined to do
18 that. There wasn't any extension to that, that would
19 require more time to consider it or whether people would
20 be available. I have no recollection of any further
21 discussion."

22 I wonder if you can explain what is written there.
23 So Mr Johnson -- you asked Mr Johnson on the phone about
24 the availability of somebody to carry out the ID of the
25 body, and he declined to do that. Obviously in the

Transcript of the Sheku Bayoh Inquiry

1 operational notes from 3 May in the evening, the visit
2 with the family --

3 A. Yes.

4 Q. -- they didn't want to identify the body until the
5 mother came from London?

6 A. Yes.

7 Q. So it was conditional upon the mother's arrival. But
8 here it says he was asked about availability of somebody
9 to carry out identification and he declined to do that.
10 Then you go on to say there wasn't any extension to
11 that. I'm just wondering what that sentence there
12 actually means?

13 A. To my mind there was no further conversation during that
14 call in relation to arrangements, so the function of the
15 phone call was twofold: to make arrangements to
16 introduce Alistair Lewis, but to revisit the discussions
17 that I had with Mr Johnson the day before, if, one,
18 things had moved on or whether there was
19 a reconsideration of being involved in that process.
20 I don't know whether -- I don't think I got an update of
21 whether any of the relatives had arrived at that stage,
22 the conversation wasn't that involved.

23 Q. Did you speak about the arrival of the mother,
24 Mr Bayoh's mother?

25 A. I can't recall that. I think I would have mentioned

Transcript of the Sheku Bayoh Inquiry

1 that if I had.

2 Q. Do you remember if you asked about the mother, her
3 travel plans?

4 A. I don't recall I'm afraid.

5 Q. Was there any reason why you felt you couldn't ask for
6 an update on the mother --

7 A. I don't think so, that may have been part of the
8 conversation to establish if she had actually arrived or
9 not, but I don't recall that specifically, and I've not
10 noted anything in that regard.

11 Q. Was there any -- do you remember asking about the timing
12 of arrival or when she was expected, or anything along
13 those lines?

14 A. No, I don't remember anything further in relation to
15 that.

16 Q. Can I ask, when you were on the call with Mr Johnson did
17 you take the view that there was a change in the
18 family's position on that morning, or a hardening of the
19 family's position? Or did you -- was your impression
20 that their position had not changed since the previous
21 night?

22 A. No, I -- yes, I don't think their position had changed.
23 I wouldn't say it had hardened, there had obviously been
24 discussions, other discussions, and obviously we got the
25 information that they had contacted a named solicitor,

Transcript of the Sheku Bayoh Inquiry

- 1 to represent the family.
- 2 Q. When you noted at that subsequent entry in your
3 operational notes that Mr Anwar was representing them,
4 you say he was to represent the family. Did you know
5 who the family was, the identification of the family
6 members? Was he representing the whole family?
- 7 A. Well, Mr Johnson had been -- had been nominated as
8 representing the wider family, was my understanding,
9 which included his wife, and I would assume Mr Bayoh's
10 mother and any other relevant family members. So that
11 kind of point of contact in relation to the family
12 was -- my understanding -- was being passed to the
13 solicitor.
- 14 Q. What about Collette Bell, Mr Bayoh's partner, and the
15 mother of his baby?
- 16 A. Whether that was part of the -- the group being
17 represented? It may be. I didn't have any knowledge of
18 that either way.
- 19 Q. Did you seek to clarify that?
- 20 A. No.
- 21 Q. We know that mention had been made of Collette Bell in
22 the Gold Group minutes, the Gold Group meeting minutes,
23 she had been brought to Kirkcaldy Police Office.
- 24 A. Yes.
- 25 Q. A statement had been taken in Kirkcaldy. There is

Transcript of the Sheku Bayoh Inquiry

1 mention of this in the minutes. There is mention of the
2 death message having been delivered to her at Kirkcaldy
3 Police Office.

4 A. Yes.

5 Q. The officers had sought the details of the next of kin
6 from Ms Bell. Did you raise the issue of Ms Bell at
7 all?

8 A. No, I did not.

9 Q. Is that the sort of thing that FLOs would be involved
10 in?

11 A. Yes, I would anticipate that that would be part of the
12 subsequent discussions they would have with the family
13 and that sort of -- the significant and relevant network
14 of individuals that had to be kept informed or
15 information had to be obtained from would be identified
16 and that would be dealt with moving forward.

17 Q. So someone such as Alistair Lewis may be able to assist
18 with this?

19 A. Very much so.

20 Q. But part of his role as FLO would be to define the
21 family members --

22 A. Yes.

23 Q. -- and explore the wider family issue?

24 A. Yes.

25 Q. I see. There is no reference in these operational notes

Transcript of the Sheku Bayoh Inquiry

1 for the morning of 4 May, or even later that day, of you
2 calling David Green back to update him about the
3 family's position on the post mortem. Was there a call
4 with David Green later that day?

5 A. Erm, I don't know if anyone -- I didn't, but I'm not
6 sure if anyone else, part of the PIRC did, or not.

7 Q. Did you ask anyone else to call David Green and update
8 him about the family's --

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

10 Q. Given that you were the one who had the conversation
11 with the family on the 3rd and with Mr Johnson on the
12 morning of the 4th, is there anyone else in PIRC who
13 could have updated David Green or would have been aware
14 that he was expecting a call?

15 A. It's possible. I think by that time Billy Little was in
16 the office, and other senior managers within the PIRC.
17 So they were -- they would be aware of the update from
18 these early conversations that morning.

19 Q. Did you consider on the morning after your conversation
20 with Mr Johnson phoning David Green again and asking him
21 to reflect on the timing of the post mortem?

22 A. I don't have any recollection. As I say, that
23 information would have been passed for definite, but
24 whether there was further dialogue with Mr Green on that
25 topic, that is outwith my knowledge.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. When you say the information would have been passed,
2 what do you mean?
- 3 A. Generally the update of conversation that the position
4 was still that the family would not become directly
5 involved in that, and conversation -- clearly there was
6 going to be conversation with the family solicitor as
7 a follow-up to that conversation, and hopefully the
8 introduction of Alistair Lewis formally to the family.
- 9 Q. So the -- you think the information would have been
10 passed to David Green, is that ...?
- 11 A. No, I'm saying the other PIRC managers were definitely
12 aware of what came out of that telephone conversation.
13 I don't know what happened thereafter and whether there
14 was any conversation with Mr Green.
- 15 Q. It may be that we will hear from Mr Green. So on that
16 morning, after the call with Mr Johnson, your
17 operational notes obviously deal with that call,
18 a number of calls before that, and then an update at
19 4 o'clock. There are fewer entries for 4 May than there
20 were for 3 May.
- 21 A. Yes.
- 22 Q. Was this the day that you handed over the role of lead
23 investigator to Billy Little?
- 24 A. Yes, I don't know exactly what time that was but it was
25 fairly early on, on the morning of 4 May.

Transcript of the Sheku Bayoh Inquiry

1 Q. Is there any note in your operational notes about that
2 handover to Billy Little?

3 A. No.

4 Q. Is there any paperwork that describes the briefing that
5 you gave to Billy Little?

6 A. I don't think so, no. Other than it would be very much
7 based on the document that I created at the very latter
8 stages of the 3rd, which he would have a copy of that.

9 Q. I will come on to that and we can have a look at that in
10 that moment. Before I do that can I ask you some
11 questions about Collette Bell. At any stage, either on
12 3rd or on the 4th, did you receive confirmation from
13 anyone -- Ade Johnson, anyone at all -- that either
14 Mr Johnson or subsequently Aamer Anwar was to be the
15 single point of contact for her?

16 A. Not to my knowledge, no.

17 Q. Did you at any time ask if Collette Bell was of the same
18 view as the other family members, Kadi Johnson,
19 Ade Johnson, about not wanting to identify the body
20 until the mother had come from London?

21 A. No, I am unaware of that.

22 Q. Looking back now, obviously with the benefit of
23 hindsight, do you think that perhaps that would have
24 been a sensible thing to do, to contact Collette Bell
25 herself direct, to discuss the post mortem arrangements?

Transcript of the Sheku Bayoh Inquiry

1 A. Possibly in hindsight and whether, you know, she may
2 have offered to do that, the identification.

3 Q. I would like to talk to you about some evidence we have
4 heard from Collette Bell on Day 40, February last year.
5 She had said when she was in the police station she had
6 been under the impression that if she got her statement
7 done, so the statement that was given in Kirkcaldy
8 Police Office that morning, if she got that done then
9 she would be able to go and see Sheku Bayoh. Her mum
10 had said to her, "Let's just do the statement and then
11 maybe you will get to see him after".

12 Then in relation to the post mortem she had found
13 out that the post mortem had already taken place, but
14 only on the Tuesday, so the 5th, or after the 4th
15 certainly, when she was in Amer Anwar's office. She
16 gave evidence to the Inquiry that she was under the
17 impression that they needed permission to do the
18 post mortem. She says:

19 "Answer: I remember when I was in the police station
20 they had said they would need to be identified, so
21 nothing could go ahead without him being identified
22 anyway. And I just remember thinking: but he hasn't
23 been identified so how have they managed to do
24 post mortem? It was my understanding that they would
25 need permission to do that."

Transcript of the Sheku Bayoh Inquiry

1 She says:

2 "Answer: I remember on 3 May I stayed up really,
3 really late, obviously upset, but I kept thinking: why
4 have they not contacted me to go and see him yet? And
5 I remember saying to my mum, 'I thought they were going
6 to phone me to go and see Shek', and then I was like,
7 'But I don't have a number to get in contact with them,
8 surely they will just get in contact with us', because
9 I had made it very, very clear to them that I wanted to
10 see him."

11 Were you aware that Collette Bell wanted to see
12 Sheku Bayoh?

13 A. No, I was never made aware of that.

14 Q. Who would you have expected to tell you about that?

15 A. It would come through Police Scotland and probably more
16 than likely Pat Campbell.

17 Q. Would you consider that from information about
18 Collette Bell to be important for you to know, that she
19 really wanted to see Sheku Bayoh?

20 A. Yes. And that would be again significant information
21 that would be passed to the family liaison officer.

22 Q. When you say passed to the family liaison officer,
23 am I right in saying not just to the family liaison
24 officer, but --

25 A. It would be passed to PIRC, obviously, in the first

Transcript of the Sheku Bayoh Inquiry

1 place but then that would be the primary person to be
2 subsequently made aware.

3 Q. Would you also be a person that should be made aware of
4 that?

5 A. On the 3rd, certainly, yes.

6 Q. She said she didn't realise there was different ways
7 that a body could be identified. I asked her about the
8 impact of her not seeing Sheku Bayoh prior to the
9 post mortem and she said -- I had asked her:

10 "Question: What impact has not being able to see him
11 before the post mortem had on you?"

12 And her answer was:

13 "Answer: Really bad. I think because I didn't get
14 to say goodbye, I didn't get to see him, even now
15 I think maybe they still got it wrong. Like, I know
16 they didn't get it wrong, I know it was Shek, but
17 I often find myself thinking maybe they did get it
18 wrong, maybe it wasn't actually him. I often have
19 nightmares and things about it, that I will be walking
20 down a beach on holiday and Shek will be coming towards
21 me. I think it is just I didn't have that closure
22 and I didn't have that time to say goodbye because it
23 was so sudden, and then not being able to see him, it
24 has had a massive impact on me."

25 Hearing that evidence perhaps for the first time,

Transcript of the Sheku Bayoh Inquiry

1 I wonder if you would like to comment given the impact
2 that not having the opportunity to view the body has had
3 on Collette Bell?

4 A. I can understand that and she has conveyed that quite
5 vividly in what he has said.

6 Q. So looking back now, do you think that getting in touch
7 with Collette Bell and speaking to her directly about
8 the post mortem might have been a very valuable thing to
9 do?

10 A. Possibly.

11 Q. You only think possibly? She has also given evidence to
12 the Inquiry about the visit in the evening. She said it
13 was around 10 o'clock and she thinks it was people maybe
14 from PIRC. So she wasn't able to name anyone but we
15 know that you and Mr McGuire attended after 10.00 that
16 evening. Her impression at the time was that you were
17 very rude and quite aggressive -- not you specifically
18 but the people from PIRC. And she says:

19 "I just remember them being very rude and quite
20 aggressive. I just remember thinking: I just wish you
21 would go away."

22 She was to make a list, she said, after that of
23 things she would need from the house, and she asked for
24 Shek's pillow and a hoodie of his. Do you have any
25 comment to make about that evidence, the impression that

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- 1 you were -- that people were PIRC were rude and
2 aggressive?
- 3 A. I mean, the people collectively, and I would think that
4 I did the vast majority of the talking, if not all of it
5 during that time, so it's -- it's not in relation to the
6 organisation, that would be directed I would assume at
7 me. It's very disappointing to hear that, obviously
8 I address that, and some of the comments that are made,
9 that she wasn't the only member of the family that had
10 made similar comments. I started off the initial
11 conversations with, quite rightly, giving condolences to
12 the family and understanding the position they were in,
13 how they must have felt at that particular time. It was
14 extremely difficult circumstances, and it's
15 incomprehensible for me to be unprofessional and rude
16 and arrogant in any sort of way, that just is not the
17 reflection of any of the discussion or period of time
18 that I spent in the house.
- 19 Q. You are not a trained FLO?
- 20 A. No.
- 21 Q. I wonder if there were trained FLOs in the house that
22 evening, at that late point in the evening, do you think
23 that would have aided the communication with the family
24 in relation to matters to do with Mr Bayoh?
- 25 A. It's hard to -- I can only focus on how I think the

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1 conversation with the various family members went and my
2 recollection of that, and I have spoken to many, many
3 individuals and family representatives over a long
4 number of years, passing death messages, speaking about
5 deceased victims, I have done that an awful lot so I do
6 have a lot of past experience in that. I think I know
7 how to approach people with empathy and understand the
8 circumstances, so as I say, again it is very
9 disappointing to hear that that is the perception of how
10 I was received and what I said at the time.

11 Q. We have heard evidence that delivering a death message
12 and speaking to bereaved families can be a particularly
13 difficult job for police officers.

14 A. Of course it can.

15 Q. Is that something you would agree with?

16 A. Yes.

17 Q. Is that a similar experience for officers from --
18 investigators from PIRC, although you are not
19 necessarily delivering a death message, being in that
20 environment with bereaved families?

21 A. We still have the need to talk to people and communicate
22 with them in relation to these very difficult sets of
23 circumstances and everybody's response to that situation
24 is very different, and can be sometimes significantly
25 different and you have to adapt to those circumstances

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1 as that develops.

2 Q. In relation to Ade Johnson, we have an Inquiry statement
3 which indicates that he also considered the approach of
4 yourself and Mr McGuire as being arrogant and he further
5 stated in paragraph 25 of his statement:

6 "They talked down to us as though we were idiots,
7 black people who didn't have a clue. But of course like
8 the police they were shocked by the questions we asked
9 and our failure to comply with their stereotypes."

10 Do you have any comment to make about that statement
11 by Mr Johnson?

12 A. No, other than I would just reiterate that, as I say, it
13 is very unfortunate and disappointing from my
14 perspective that -- that there is that sort of
15 perception.

16 Q. In relation to the accusation that, "They talked down to
17 us as though we were idiots", do you feel that is a fair
18 reflection of the way you were speaking?

19 A. Not at all. Not at all.

20 Q. The suggestion that you thought black people didn't have
21 a clue; do you have any comment to make about that?

22 A. Definitely not. I don't think that for a minute.

23 Q. He said:

24 "... like the police they were left in shock at the
25 questions we asked."

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1 Did you have surprise or shock about questions that
2 were asked by the family?

3 A. I wouldn't say so. If there were questions in that
4 regard put across I don't have any recollection of
5 questions like that being asked, I certainly -- as
6 I said, I went there with a purpose to communicate with
7 the family, display some empathy and try for them to get
8 an understanding of how things would move forward, and
9 spend as long a time there as was required.

10 Q. When you were with the family that evening on 3 May did
11 you have in your mind, either when you went to the house
12 or during your time in the house, did you have any
13 stereotypes or racial stereotypes in your head as to how
14 the family would be or how they would communicate with
15 you?

16 A. Absolutely not, no.

17 Q. Let's move on to the briefing document that you
18 mentioned a moment ago. PIRC 03694. And I think you
19 said you prepared this on 3 May. The date is given at
20 the top as 3 May. Was this prepared over a period of
21 hours or was it prepared in one go?

22 A. Mm-hm, yes.

23 Q. When did you start preparing this?

24 A. I don't really know the starting time. It was probably
25 a small part of it done during a period at Kirkcaldy

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1 Police Station, and probably the majority was done when
2 I got back to the office, I recall.

3 Q. And --

4 A. Our own offices, sorry.

5 Q. Did you go back to the office on the 3rd or did you go
6 back to your office on the 4th?

7 A. No, back to our office on the 3rd.

8 Q. So was this after your visit to the family, you returned
9 to Hamilton?

10 A. Yes.

11 Q. So the calls that you made after your visit to the
12 family to Green and Pat Campbell, were they from the car
13 or from the Hamilton office?

14 A. It probably -- it could be either/or, I am not quite
15 sure. I know the call to Mr Green was a fair length of
16 time after, but I couldn't be 100% sure where I was,
17 whether it was while we were driving or whether it was
18 back at the office.

19 Q. So we know that you attended at the family's home at
20 22.10.

21 A. Yes.

22 Q. From page 9 of your operational notes and then the call
23 to David Green is at 23.35.

24 A. Yes, so --

25 Q. Does that help you?

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1 A. We probably -- I reckon about 20-25 minutes maybe at
2 Mr Johnson's home which would take us to ... maybe 25 to
3 11, 20 to 11, so close to an hour probably after that
4 that I eventually spoke to David Green.

5 Q. So do you think during that period you were travelling
6 back to Hamilton?

7 A. I don't -- I don't remember how long I spent at
8 Kirkcaldy. In fact, I'm not 100% sure actually whether
9 we just drove straight from the Johnsons' and then drove
10 straight back to Hamilton. It's quite vague as far as
11 whether I went back to Kirkcaldy Police Station for
12 a short time or not.

13 Q. All right. Let's look at this briefing note. It's
14 a briefing note for the director of investigations, my
15 understanding at that time the director of
16 investigations was John Mitchell?

17 A. That is correct.

18 Q. And I understand that he will say that he returned to
19 work on 5 May, which was the Tuesday.

20 A. Yes. As far as who that is for, the information, that
21 would be kind of standard practice but that document
22 would be for sharing with the PIRC managers and
23 potentially used as a briefing document in some fashion
24 for investigators as well. But it would still be headed
25 for the director of investigations, just as a standard

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1 process.

2 Q. So this document could be used on 4 May, and I asked you
3 about Billy Little earlier today.

4 A. Yes.

5 Q. Was this document used when you briefed Billy Little?

6 A. I don't know if it was used but he would have sight of
7 that, as would the other PIRC managers that were on duty
8 first thing that morning.

9 Q. So would they receive copies of that?

10 A. Yes, I think it would have been circulated at the time,
11 they would certainly have seen it.

12 Q. When on 4 May did you hand over the role of lead
13 investigator to Billy Little?

14 A. I mentioned that before, I don't know, it was some time
15 I think fairly early in the morning that a decision was
16 made, I think potentially by either one of the
17 senior investigators or the head of investigations,
18 Irene Scullion.

19 Q. Did you do a briefing at that time, personally give
20 a briefing?

21 A. To the managers, yes.

22 Q. Who were the managers?

23 A. I don't know who was all present at the time, whoever
24 was in that morning, so Billy Little would have been one
25 of them. And I don't -- I can't remember if

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1 John McSporrان was there that morning or whether he came
2 back to duty the following day, but any of the senior
3 managers who were on duty would have been fully briefed
4 and that would be a part basis of what that was --

5 Q. On the basis -- partly on the basis of this document?

6 A. Yes, and obviously a lot of things would be added to in
7 some degree by myself.

8 Q. And you would have your operational notes to rely on if
9 necessary?

10 A. Yes.

11 Q. What was your expectation after briefing the managers;
12 was it that they would then cascade information out to
13 the wider team?

14 A. Yes, where required and getting the response or what was
15 seen as the priority actions for later that day.

16 Q. Can we look at first of all page 2 of the briefing. At
17 the bottom of page 1 it says:

18 "Incident - involvement with police."

19 So it's a summary of your -- the information you had
20 available; is that correct?

21 A. Yes.

22 Q. Then looking at page 2, if we can look at paragraph 4 on
23 that page. You will see the paragraph, it says:

24 "It was reported ..."

25 This is you indicating what information you have

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1 available about the incident?

2 A. Yes.

3 Q. Where it says, "It was reported", is that a specific
4 reference to an individual that is reported to you?

5 A. No, I would say that is the collective from the
6 information that we had and forming a summary of what
7 that was, what was known at the time.

8 Q. "It was reported that as the officers drove into
9 Hayfield Road they saw the now deceased coming towards
10 them as the vehicles came to a halt. They could clearly
11 see he was in possession of a knife and was making his
12 way towards them. Some of the officers, unknown how
13 many at this stage, drew their police issue batons. At
14 least one of the officers also drew their PAVA spray and
15 issued a warning towards the now deceased, who continued
16 to come forward. PAVA was subsequently sprayed towards
17 the now deceased, however this had little effect, there
18 is some reference to him laughing at the officers. It
19 was also reported that one of the female officers was
20 apparently kicked in the back and also sustained a blow
21 to the back of her head. She sustained no serious
22 injury as a result but complained of pain.

23 "As the PAVA had little effect, a number of
24 the officers struck the now deceased with their batons.
25 It is unknown at present how often he was struck or how

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1 many officers struck him. A struggle then ensues and
2 the now deceased was eventually taken to the ground
3 where he was handcuffed to the rear. Due to his
4 constant struggling, leg restraints were also applied to
5 him."

6 So on the basis of that information, that briefing
7 document, it appears that the suggestion that the
8 subject was the aggressor and the police responded with
9 spray and batons again appears to be the understanding
10 that you had at that time?

11 A. (Inaudible) collective summary of the information that
12 I had at different stages.

13 Q. So still no accounts from the officers who were at the
14 scene?

15 A. No.

16 Q. So you are still reliant at that point on the
17 information that we looked at yesterday --

18 A. Yes.

19 Q. -- that indicated that the subject was the aggressor?

20 Can we look at your paragraph, please -- sorry, your
21 Inquiry statement, paragraph 139. The second Inquiry
22 statement, sorry. I should have said that. It's
23 paragraph 139. This is a series of questions that you
24 were asked about this briefing note and in particular
25 about page 2 and the entries that I have read out from

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1 there. I wonder if we can look at your response,
2 please. You say:

3 "This part of the briefing document was based on the
4 accounts provided to me in the first instance, by
5 [Superintendent] Craig Blackhall, then
6 [Detective Superintendent] Campbell and
7 DI Colin Robson."

8 Yesterday we looked at the information you got from
9 David Green, Craig Blackhall and Pat Campbell. We
10 didn't -- I didn't ask you about information you
11 received from Colin Robson. Was that consistent with
12 the information you had had from the other three, or
13 different?

14 A. Again, there were similarities but there were some
15 differences within that as well, and this was based
16 solely on his update at the Gold Group meeting of the
17 facts known at the time, so that was -- I can't recall
18 how much was reflected within the minutes of that, but
19 that was notes kind of taken during the course of that
20 meeting, and again there were variances and subsequently
21 inaccuracies in that as well.

22 Q. Right. This would be the second Gold Group meeting, the
23 first one you attended; is that right?

24 A. Yes.

25 Q. So can we look at those minutes again, please. PS07268.

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1 So this is the second Gold Group meeting at 14.40. We
2 can see that Detective Inspector Robson was present on
3 page 2. Item 3, "Investigative process", it was
4 actually spoken to by Pat Campbell. We have heard about
5 that. It appears that Detective Inspector Robson speaks
6 to item 5, which related to family concerns. Is it
7 possible that it was at a different meeting or
8 a different discussion? I wonder if you could look
9 at --

10 A. I think it was the first Gold Group meeting.

11 Q. Can we look at the minutes for the first Gold Group
12 meeting. PS06491. We have heard evidence from
13 Detective Inspector Robson that he had attended that
14 first Gold Group meeting at 11.30 in the morning but we
15 know you weren't present at that?

16 A. No.

17 Q. I think you said you wouldn't have received the minutes
18 for that. At item 2 on the agenda, starting on page 1,
19 it says:

20 "Synopsis of events provided by DI Robson which
21 included circumstances of initial calls ... verbal
22 account of police engagement with the male ... update on
23 the injury to PC Short~..."

24 It says towards the bottom of page 1:

25 "... consideration with regards to the incident

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1 involving recording and seizure of a knife believed to
2 be in possession of the male. The welfare of the
3 officers concerned and identification of significant
4 witnesses was also outlined.

5 "The events relating to the deceased being
6 conveyed~..."

7 So it would appear that at the first meeting that
8 DI Robson's update indicates that there was reference to
9 a knife believed to be in possession of the male. There
10 doesn't seem to be anything more in the minutes with
11 regard to that update.

12 A. Yes.

13 Q. Was that the part of the information that was shared
14 with you?

15 A. Yes, there is definitely -- my recollection was that
16 during one of the Gold Group meetings he provided
17 an operational update on basically what was known and we
18 made reference to that ultimately in this briefing
19 document, and obviously one of the significant things
20 was in relation to the knife etc being presented, which
21 ultimately was not the case.

22 Q. However you obtained the information given by DI Robson,
23 is it fair to say his account and the account he shared
24 with you was consistent with the other three accounts?

25 A. In general terms, yes. There were some differences, as

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- 1 I said earlier.
- 2 Q. We may hear from John Mitchell that he was given
3 a briefing on 5 May when he returned and it was on the
4 basis of this briefing document. So it would appear
5 that you have talked yesterday about cascading of
6 information, would it appear that on the basis of your
7 briefing note, although you stepped down from the role
8 of lead investigator --
- 9 A. Yes.
- 10 Q. -- that the summary that we see on page 2 of the
11 briefing note about -- I am calling it subject
12 aggressor, police taking action in defence, that
13 information was then being shared with others on 4 May
14 and on 5 May?
- 15 A. I think that is likely, yes.
- 16 Q. And there was no information available from the police
17 officers at the time --
- 18 A. No.
- 19 Q. -- that would have contradicted any of that?
- 20 A. No.
- 21 Q. Do you know why you were removed from the role of lead
22 investigator and Billy Little was brought in in that
23 role on the 4th, given that then John McSporrnan came on
24 the 5th?
- 25 A. Yes, I think we discussed that yesterday. There was

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1 awareness that I was due to go on annual leave and that
2 was within a period of days, I think it was near to the
3 end of that week and the decision was made that it was
4 more appropriate to change it immediately so
5 Billy Little could run with that from what was -- well,
6 day two effectively. As opposed to it would cause more
7 issues leaving it for a period of days and then changing
8 it thereafter. That was the more sensible decision.

9 Q. Okay. Can I ask you to look at the fourth Gold Group
10 meeting minute. PS03161. This was a Gold Group meeting
11 on 4 May, so the Monday, at 12.30. I think in your
12 Inquiry statement you say you have no recollection of
13 being made aware of this Gold Group meeting.

14 A. No, I certainly wasn't there.

15 Q. By 12.30 would you have handed on the role of lead
16 investigator?

17 A. I believe so, yes.

18 Q. We have also heard evidence that no one from the PIRC
19 was present at this meeting. Are you aware why
20 Billy Little didn't attend this meeting?

21 A. No, I'm not.

22 Q. Do you have any recollection on that morning of hearing
23 of concerns that were being expressed by Police Scotland
24 of the handover and the change of lead investigator
25 between --

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- 1 A. Not -- I don't think about the lead investigator but
2 I think there's -- in my operational notes there's
3 reference to a call with ACC Nicholson I think, but that
4 was partly I think to do with the range of the
5 investigation at that time, and also some issues being
6 raised about the introduction of the FLOs and perceived
7 delays in that. But as we have discussed, that was
8 ongoing from first thing in the morning.
- 9 Q. So that was between Little and Nicholson, you were not
10 involved in that?
- 11 A. No, I don't think I was but I was made aware of in
12 general terms the concerns, let's call them, that were
13 being raised at that time.
- 14 Q. So you were still being kept in the loop to some extent
15 on 4th May?
- 16 A. Yes, I was aware -- I was in the office for the major
17 part, if not all of the day, so I was aware of --
- 18 Q. Were you available to other investigators if they had
19 wished to come and speak to you?
- 20 A. Yes.
- 21 Q. Did any of them come and speak to you, specifically
22 about this investigation?
- 23 A. I don't have any specific recollection, I spoke to
24 a number -- obviously I spoke to Alistair Lewis at
25 length, Billy Little as well, and I would have spoken to

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1 others but as far as relaying what conversations took
2 place, I wouldn't be able to confirm that.

3 Q. Tell us about your conversation with Billy Little. Do
4 you remember ...?

5 A. Not a great deal about it other than I would have gone
6 through, basically summarised the whole incident, the
7 actions that had been taken, potentially we would have
8 discussed the issues in relation to the post mortem and
9 obviously there was things late in the day that had to
10 be arranged in relation to that. So -- and that was
11 I think various people were tasked to -- to do various
12 actions in relation to that.

13 Q. We've got the minutes of this Gold Group meeting on the
14 screen. Can we look at page 2. This is effectively
15 item 3 on the agenda, "Investigative process", spoken to
16 by DI Stuart Wilson. If we can go just above halfway
17 down there are some tasks identified above item 4 on the
18 agenda. It says here -- so PIRC were not present at
19 this meeting, we have heard, and I don't think --

20 A. I am not sure. I don't know whether -- I'm pretty sure
21 Billy Little was not there but I'm unsure whether there
22 may have been another representative there that is not
23 listed.

24 Q. We can maybe ask Billy Little to clarify that. But
25 certainly you weren't present at this meeting?

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1 A. No, I definitely wasn't present.

2 Q. So the task here is:

3 "Advice to be gained from PIRC regarding the

4 disclosure of the PM results to the Officers involved in

5 the incident. Supervisor to be identified to carry this

6 disclosure out."

7 I'm interested in whether you had any knowledge

8 about this suggestion that the results of the

9 post mortem should be disclosed to the officers

10 involved?

11 A. No, I wasn't a party to any discussions in that regard.

12 Q. You weren't aware of any of that then, that day?

13 A. No, not then. But obviously post that I am aware.

14 Q. I would like to move on then, please and talk to you

15 about 13 May. I don't know if you were back from

16 holiday that day or if you were still on holiday?

17 A. No, I wouldn't have been back. I was away for two weeks

18 at least. I probably went away around about, as I say,

19 the end of that week or that weekend.

20 Q. I would just like to ask you for your general view.

21 Obviously you were acting as lead investigator at one

22 time in this investigation, and you are a very

23 experienced member of staff at PIRC. We have some

24 evidence available to the Chair that Ade Johnson gave

25 a statement to PIRC and I will summarise this for you.

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1 He describes having a meeting with DC Mitchell and
2 DC Parker, they were the two officers who delivered the
3 death message on the afternoon of 3 May, so they are
4 Police Scotland officers. And he said in that statement
5 he was told, if I can summarise four things: that
6 Mr Bayoh was pronounced dead in the ambulance on the way
7 to the hospital, they didn't know how Mr Bayoh had died,
8 the police were looking for two guys, and there had been
9 a warrant out for the arrest of Mr Bayoh.

10 Now, obviously there are differences between what
11 people say they delivered as part of death message and
12 what the family say they were told as part of the death
13 message. I am not asking you to comment on any of that.
14 But I am interested in the fact that after Mr Johnson
15 gave that statement to PIRC nobody went back to Mitchell
16 and Parker and asked them to comment on these different
17 statements that had been made. I am wondering in your
18 perspective whether you think as lead investigator that
19 would be a topic of some interest to the PIRC
20 investigation into the way that the family had been
21 handled? Do you think that maybe someone should have
22 gone back to Mitchell and Parker to ask about this?

23 A. I don't know if you -- I seem to have some recollection
24 I was possibly present when Mitchell was interviewed,
25 possibly, that is just something that is there but

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1 I don't know to what extent that was and what that
2 actually incorporated. I think -- I mean it's clearly
3 relevant information, particularly in relation to -- did
4 you mention two persons that were of interest that ...

5 Q. Police looking for two guys~...

6 A. Yes, which --

7 Q. This was on 13 May that Mr Johnson gave this statement
8 so you were on holiday the day he gave the statement,
9 but that would be the point at which PIRC would have
10 something in writing about this issue.

11 A. Yes, I mean the statement would -- all statements would
12 be read in detail and any actions highlighted within
13 that, that were appropriate to follow up, whether that
14 was re-interview or interview other persons in relation
15 to that. But obviously I can't comment on what was done
16 with that statement and specifically that information.

17 Q. Given -- if you take from me that PIRC had that
18 statement and it contained some concerns that the family
19 had about the information they were being given, do you
20 think that is the type of thing that PIRC would
21 ordinarily want to go back and ask officers about, given
22 the disparities?

23 A. It depends what information they had already; whether it
24 was viewed that there was an answer to that question
25 already. But that is hypothetical, as one potential out

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1 come from it. So without knowing the specific facts and
2 the reasoning when that statement was read, that it
3 wasn't warranted as following up, it is hard to say.

4 Q. So if they had an explanation or another statement that
5 explained the situation, then they may not go back to
6 Mitchell and Parker?

7 A. That is possible.

8 Q. If they didn't have an explanation or an understanding
9 of how this disparity had arisen, in that situation
10 would you expect PIRC to go back to Mitchell and Parker?

11 A. I would expect the information to be -- if it was
12 thought as relevant and important, that it would be
13 bottomed out in whatever fashion to -- and if that, you
14 know, that may mean further interviews, as I said, or
15 establishing from elsewhere, someone else.

16 Q. So that was 13 May that Mr Johnson gave this statement.
17 On 12 June, so roughly a month later, and after the PIRC
18 had received statements from the officers on 4 June, the
19 terms of reference for PIRC were expanded by
20 Crown Office to include investigating allegations by the
21 family that they had been provided with misleading and
22 erroneous information concerning the death of Mr Bayoh.
23 So at that point there was an instruction from Crown for
24 PIRC to formally investigate this aspect. We had the
25 statement from Mr Johnson -- you had the statement from

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- 1 Mr Johnson and the formal instruction from Crown.
- 2 A. Yes.
- 3 Q. At that point would you expect an investigator from PIRC
- 4 to go back to Mitchell and Parker and ask follow-up
- 5 questions?
- 6 A. Clearly what you have outlined as far as an additional
- 7 direction incorporates what you are talking about from
- 8 what you have conveyed there, so the answer to that
- 9 would be yes.
- 10 Q. It appears that they were never asked about Mr Johnson's
- 11 allegations, Mitchell and Parker, about this misleading
- 12 and erroneous information. Looking back now, do you
- 13 think that that was maybe an omission that should have
- 14 been rectified by PIRC?
- 15 A. There may be an explanation for that. As I said,
- 16 it's ... I have no knowledge of that other than that
- 17 there was an extension of the direction from the Crown
- 18 in relation to that. But it is hard to know without
- 19 looking at the detail of these statements and what
- 20 actions were subsequently identified as a result of that
- 21 additional Crown direction.
- 22 Q. So again, if there was maybe some other source of
- 23 information available to PIRC that provided the
- 24 explanation or the answer to any apparent disparity,
- 25 PIRC would not need to go back?

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- 1 A. Yes.
- 2 Q. But in the absence of that, they probably should have
3 gone back to Mitchell and Parker?
- 4 A. When that additional direction came in, as I say, I'm
5 sure there was a thorough approach to that, in
6 identifying what actions had to be completed and who had
7 to be interviewed to fully exhaust that line of enquiry.
8 That would be what would be required.
- 9 Q. Can I ask you questions about 8 July. So again --
- 10 A. Moving on.
- 11 Q. -- moving on. I would like to ask you about
12 Kirsty MacLeod. We have heard evidence that she was the
13 partner, now the wife, of Martyn Dick.
- 14 A. Yes.
- 15 Q. Now initially when the police were investigating the
16 events leading up to Mr Bayoh's arrival at
17 Hayfield Road, that was one of the properties that they
18 were involved in?
- 19 A. Yes, I'm aware of that.
- 20 Q. You talked yesterday about a parallel investigation.
- 21 A. Yes.
- 22 Q. Kirsty MacLeod was -- gave an initial statement but she
23 was questioned again on 8 July, so two months after
24 Mr Bayoh had died, and she was asked questions about
25 where Mr Bayoh had obtained his drugs. We have heard

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1 evidence he had taken illicit drugs on 3 May. I am
2 interested in why PIRC, if you know, wanted to explore
3 that avenue as part of the PIRC investigation; that you
4 would go back to Kirsty MacLeod a second time and ask
5 her questions about Mr Bayoh's supply of drugs. It
6 wasn't part of the terms of reference directed by the
7 Crown Office, I should say for the avoidance of any
8 doubt. So why would that be of interest to PIRC?

9 A. Who the actual supplier was?

10 Q. Yes.

11 A. Or what commodity --

12 Q. Where he obtained his drugs. Who the supplier was.

13 A. There could be a number of reasons. One of them in
14 particular what drugs had at any time specifically been
15 supplied, if that was the case.

16 Q. The question was where he obtained his drugs, not about
17 what drugs he obtained.

18 A. But that may be part of the reason for establishing
19 that, is to subsequently establish, identify what kind
20 of drugs.

21 Q. So you think that might have been an interesting part of
22 the investigation?

23 A. Yes. As I say, I've got very little knowledge in
24 relation to that, kind of behind those actions. I have
25 certainly visited that house. I don't know if I spoke

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1 to that lady or not, but I was there at one -- it may
2 have been to speak to Martyn Dick possibly.

3 Q. This is 8 July. We have a statement from a Brian Dodd.
4 You know Brian Dodd?

5 A. Yes.

6 Q. He has given the Inquiry a statement, and he speaks to
7 the questioning of Kirsty MacLeod around the potential
8 supply chain associated with Mr Bayoh's drugs. He says,
9 and I quote:

10 "I was not involved in the decision-making process
11 regarding these matters. I believe that this would be
12 public safety related."

13 So he suggests that perhaps it was a public safety
14 matter and that is why Kirsty MacLeod was approached
15 another time and asked about the supply of drugs. Would
16 you think that is a plausible explanation?

17 A. It's a possibility, but there could be others. It's
18 fairly speculative without knowing any specific facts
19 on -- surrounding what the reason behind an action being
20 raised to re-interview that individual to establish that
21 information.

22 Q. Would that be a matter for the lead investigator --

23 A. Yes, absolutely, yes.

24 Q. -- to maybe speak to? We can maybe ask Mr McSporran.
25 Out of interest, do PIRC have a public duty or

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1 a statutory authority to investigate issues of public
2 safety in terms of the supply of drugs?

3 A. Not to investigate it, but if we become aware of
4 a public safety issue, we certainly have
5 a responsibility to report that and take action
6 appropriately, particularly in case, you know, that
7 information that we came across was -- subsequently led
8 to any tragic event. So we have a responsibility to
9 ensure that that is dealt with, I would say.

10 Q. Who would it be reported to?

11 A. Probably the police.

12 MS GRAHAME: All right. I would like to move on to some
13 questions about the -- going back in a sense to when the
14 police officers gave statements to PIRC, and that was on
15 4 June 2015. I would like to move on to that and ask
16 you some questions, but I am also conscious of the time.

17 Would that be a suitable moment?

18 LORD BRACADALE: Yes. We will stop for lunch and sit at
19 2 o'clock.

20 (12.58 pm)

21 (The short adjournment)

22 (2.00 pm)

23 LORD BRACADALE: Ms Grahame.

24 MS GRAHAME: Thank you.

25 I was about to move on to 4 June 2015 and there's

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1 evidence available to the Chair that the officers agreed
2 to provide statements to PIRC, roughly the communication
3 began on 2 June and, then as I understand it
4 arrangements were made for the officers to attend and
5 provide those statements.

6 A. Yes.

7 Q. Were you aware that that had moved on --

8 A. I was.

9 Q. -- from the initial stages? And, as I understand it,
10 some of the officers were in different locations, some
11 of them were in the same location. They weren't all
12 together.

13 A. When the interviews took place?

14 Q. When the interviews took place.

15 A. I think the majority, from memory, were done at offices
16 at the Scottish Police College.

17 Q. When it was arranged, were there two PIRC investigators
18 interviewing every officer?

19 A. Yes.

20 Q. Was it all happening at the same time?

21 A. Yes.

22 Q. Were arrangements made or was there to be breaks during
23 that period?

24 A. Yes.

25 Q. Were those breaks designed to allow the PIRC

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1 investigators to confer, maybe compare what the officers
2 were saying?

3 A. I think both. As far as comfort breaks well. I think
4 they were fairly lengthy as well.

5 Q. Right. As I understand it those statements were taken
6 over the course of that day, on 4 June?

7 A. Yes, they were.

8 Q. This would be PIRC getting the accounts of the attending
9 officers, and that would be the first accounts they had
10 received from those officers?

11 A. Yes.

12 Q. Did you at any stage become involved in doing
13 comparisons between statements or considering versions
14 that had been given by different officers?

15 A. After these statements were taken?

16 Q. After these statements were taken.

17 A. I don't think so, no. I have no recollection of that.

18 Q. Or during the breaks were you involved in any
19 discussions?

20 A. Possibly dialogue with other investigators who weren't
21 involved directly in the interviews, possibly, but
22 I can't remember any specific conversations like that.

23 Q. Do you remember actively discussing issues with any of
24 the other investigators in relation to accounts that
25 were being given?

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1 A. I don't have any direct recollection of doing that.

2 Q. Let's look at your second Inquiry statement first of
3 all. It's covered -- this is covered in paragraphs 166
4 to 175 and we will get that on the screen. So that is
5 SBPI00382, and if we look at paragraph 166 first of all.
6 4 June 2015, and you will see that you are being asked
7 a question in connection with you taking a statement
8 from PC Craig Walker, and you are asked about the
9 process and the statement taking and your impressions,
10 and your answer is:

11 "I have some limited recollection of taking the
12 statement at the Scottish Police College ... with
13 Investigator ..."

14 Is that Ungi?

15 A. Ungi, yes.

16 Q. "I followed a witness interview strategy while taking
17 the statement. However, I do not have sufficient
18 recollection of PC Walker to provide any impressions of
19 him. A number of PIRC investigators were taking witness
20 statements at the same time at the [Scottish Police
21 College]. However, I cannot recall what contact I had
22 with them during this period."

23 Then over the course of the next few answers that
24 you have given you talk again about the witness
25 interview strategy, and I won't need to go through all

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1 of these answers, and your contact with PC Walker. So,
2 was that the task you were allocated that day, along
3 with the other investigator, was to take a statement
4 from Constable Walker?

5 A. Yes, it was.

6 Q. We have heard evidence that he was one of the first two
7 officers at the scene?

8 A. Yes.

9 Q. In terms of your approach did you consider him to be
10 quite a significant witness?

11 A. Yes.

12 Q. Was that one of the reasons you were selected to take
13 his statement, because of your experience?

14 A. Possibly, I don't know definitively but I would think
15 so.

16 Q. Let's look that the witness interview strategy. It's
17 PIRC 04182. Do you know anything about how this
18 strategy was prepared, collated?

19 A. I think from memory we have qualified or trained
20 interview advisers and I think they created that,
21 obviously from a lot of information that was accrued
22 during the course of the Inquiry up to that date,
23 obviously we then had, you know, eyewitness accounts and
24 information from a variety of locations, so there would
25 be a kind of summary of events, which I think is there,

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1 is created, and then work out in conjunction with the
2 lead investigators what questions are going to be posed.
3 A lot of these will be unique to that individual, but
4 probably the majority in this instance would be similar
5 as regards how they became involved in the incident,
6 what they actually did at specific times, what use of
7 force, et cetera.

8 Q. You do recognise the front page of this is the -- we
9 have been provided with one witness interview strategy,
10 so this appears to be a generic version.

11 A. Yes.

12 Q. Was it a generic version that was prepared for your use
13 on 4 June?

14 A. Yes, but I think that was -- each of them were specific
15 to the certain officers I think, from recollection.
16 I don't know if all the questions were exactly the same,
17 I don't remember.

18 Q. So you think there may have been a specific witness
19 interview strategy for each individual officer?

20 A. Yes. I don't remember fully but I would anticipate that
21 might have been the case. But I'm not sure.

22 Q. Is that something that is commonly done?

23 A. It would be, depending on their involvement. The likes
24 of somebody who is front and centre of what has happened
25 but somebody else is maybe coming after the events but

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1 for whatever reason they decide a strategy is required
2 for that individual, then they would probably be quite
3 different.

4 Q. Is that common practice now for PIRC when they were
5 interviewing officers, to be looking for a specific
6 witness interview strategy?

7 A. It is not that often -- it is not that common we would
8 use this, obviously a very critical incident that we
9 create these to support, other than that in normal
10 investigations the lead investigator would create
11 something on a smaller scale for the interviewing
12 investigators specific to that Inquiry. But this is not
13 particularly common to go into this significant detail.

14 Q. So in a more common PIRC investigation, if there is such
15 a thing, there will maybe be fewer witnesses?

16 A. Yes, fewer witnesses, maybe not as wide array of
17 information that requires to be obtained in relation to
18 whatever incident it is we are investigating.

19 Q. So in a smaller PIRC investigation you may have
20 individual strategies for individual witnesses?

21 A. Possibly, yes.

22 Q. Possibly?

23 A. Yes.

24 Q. But more commonly is there simply no strategy and PIRC
25 rely on the experience of investigators such as

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1 yourself?

2 A. Yes, to some degree, the actions that we create, that is
3 a kind of computer-generated document that will outline
4 the information that we expect to get or want to get
5 from a specific witness, they will probably be details
6 within that. But, as I say, there was a lot of
7 information to obtain and we obviously wanted to try and
8 get that without follow-ups if that was possible.

9 LORD BRACADALE: Could I clarify something please,
10 Mr Harrower. When you talk about interview advisers,
11 who are they; are they PIRC officers?

12 A. They are PIRC investigators who have a trained skill set
13 in relation to supporting major investigations where
14 part of that function is to create documentation. That
15 can either be for witness strategies or for suspect
16 persons occasionally as well, in preparation for
17 an interview.

18 LORD BRACADALE: Thank you.

19 MS GRAHAME: Do you remember which adviser prepared the
20 witness interview strategy here?

21 A. I'm afraid not. No, I don't remember.

22 Q. Is that something that the lead investigator would be
23 liaising with the adviser on?

24 A. I would say so, yes.

25 Q. So whoever was the lead investigator on or prior to

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- 1 4 June, he would be the best person to ask?
- 2 A. Yes, they would be very au fait with what was contained
3 within that and may -- would certainly have input to
4 that as well.
- 5 Q. Had you used a witness interview strategy document in
6 any investigations in PIRC prior to 3 May 2015?
- 7 A. I don't know about prior, certainly after that I think.
8 I wouldn't be able to say what it was but I have
9 certainly used it in the last 11 years. As I say, it is
10 not common, it's not something that we would use very
11 often.
- 12 Q. Do you have any recollection of using a strategy such as
13 this prior to 3 May?
- 14 A. Not specifically. No, I wouldn't be sure, no.
- 15 Q. Had you been given any training or guidance about the
16 use of a witness interview strategy during the process
17 of taking a statement?
- 18 A. No.
- 19 Q. Had you used these when you were a police officer?
- 20 A. Yes.
- 21 Q. Did you have experience of using these when were you
22 were involved in major crimes?
- 23 A. Yes, major crime investigation, yes.
- 24 Q. Had you had training with the police on how to use these
25 strategies?

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1 A. No, I don't think it was -- there was obviously specific
2 training for the interview advisers that are referred to
3 in creating these but not for implementation and taking
4 statements, I don't think. It may have been
5 incorporated within certain courses and touched on but
6 it wasn't, to my recollection, specific training.

7 Q. Do you remember any courses that touched on how to use
8 a witness interview strategy effectively?

9 A. No. I would be guessing. Probably one in particular
10 but I wouldn't -- I couldn't be factual whether that was
11 the case or not.

12 Q. So if we move down this first page we see it's in
13 relation to the death of Mr Bayoh, and it gives his date
14 of birth then there is a list of bullet points of
15 officers who are to be questioned in terms of this
16 witness interview strategy.

17 A. Yes.

18 Q. And they range through Paton, Walker, Gibson, Tomlinson
19 Good, Maxwell, McDonagh, Short, Smith, and you were to
20 be interviewing Craig Walker?

21 A. Yes.

22 Q. If we can move on to the next page, we see the summary,
23 and the opening paragraph comments that there were
24 a number of calls received reporting a black male in
25 possession of a knife on Hendry Road near to

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1 Hayfield Road and then it goes through the identities of
2 the nine officers, and the report that was made, and it
3 says:

4 "... they saw the male walking towards them and that
5 he may have been in possession of a knife (Comment: It
6 may be that the knife was discarded before this)."

7 That appears to be a change in the summary compared
8 to the information you had had previously?

9 A. Yes, as I referred to there, that this should be and
10 would be up-to-date with the investigation at that
11 stage, that things had moved on and obviously they'd
12 established where the knife had been recovered, and
13 potentially that that wasn't as initially reported in
14 the early information that we had.

15 Q. The comment there is that:

16 "... It may be that the knife was discarded before
17 this)."

18 That would be on the basis of further information
19 that has come to the attention of PIRC?

20 A. Yes.

21 Q. "The officers ... exited their vehicles. It was
22 reported that the male punched, then kicked, PC~...
23 Nicole Short. Some officers drew their police issue
24 batons. Some of the officers also drew their PAVA and
25 CS sprays, which were subsequently sprayed towards the

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1 male, however it is believed this had little effect."

2 So however continuing in this paragraph, does it
3 appear that the primary report there is that the male
4 punched and kicked Nicole Short and then the officers
5 drew their batons and their sprays? So again, it
6 appears at this stage the information was still that
7 subject aggressor, police responding.

8 A. Still part of that original narrative.

9 Q. And then:

10 "... believed that some of the officers struck the
11 now-deceased with their batons. A struggle then ensued,
12 and the now-deceased was eventually taken to the ground
13 where he was handcuffed~..."

14 And leg restraints were applied:

15 "About 0730 hrs ... still on the ground ... [he]
16 lost consciousness. An ambulance was summoned and the
17 officers attempted CPR. He was thereafter conveyed by
18 ambulance to Kirkcaldy Victoria Hospital where medical
19 staff continued to treat him, however at 0904 hrs life
20 was pronounced extinct."

21 And that is essentially an update on information you
22 had presumably now gathered in --

23 A. Yes.

24 Q. -- as part of the PIRC investigation. So on the next
25 page, page 3, the purpose of the interview is set out.

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1 Would this document have been made available to you
2 prior to going to interview Craig Walker?

3 A. Yes.

4 Q. To give you the opportunity read through it?

5 A. Yes.

6 Q. It says here:

7 "To carry out a planned and structured interview of
8 the police witness to achieve a detailed account of
9 their movements, intentions and actions leading up to,
10 during and immediately after contact with
11 Sheku Bayoh~... Additionally, to obtain details of the
12 post-incident process and what discussion, if any, was
13 held between the officers regarding the incident. To
14 obtain details of briefings and other information
15 provided to the officers by Federation Staff and senior
16 officers of Police Scotland."

17 So it would appear that the purpose of the interview
18 was to find out about the movements of the officers and
19 I think at that stage you had not had any initial
20 accounts, so was that still unclear to PIRC at that
21 time --

22 A. Yes.

23 Q. -- what the initial movements had been?

24 A. Yes.

25 Q. Then to look at the intentions of the officers, what was

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- 1 your understanding of that word?
- 2 A. Sorry, where was that?
- 3 Q. On the second line in the middle the purpose of the
4 interview:
- 5 "To carry a planned and structured interview of the
6 police witness to achieve a detailed account of their
7 movements, intentions~..."
- 8 A. I would take that to mean that they were considering
9 what they were attending, maybe listening to radio
10 messages as they approached it, did they have some sort
11 of intended plan of action in response to whatever they
12 saw when they arrived.
- 13 Q. So what was going on in their minds?
- 14 A. What was going on in their heads, what they were
15 balancing up: what is my alternatives here as
16 I approach, could it be A, B, C or D or anything else?
- 17 Q. Looking at alternative options --
- 18 A. Yes.
- 19 Q. -- and considering one rather than the other?
- 20 A. Yes.
- 21 Q. Then their actions themselves. So the consequences of
22 those movements and intentions would be looking at the
23 actions of the officers?
- 24 A. Yes, and what they actually did when they arrive in
25 response to what they saw.

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1 Q. On this date were PIRC still unclear as to what actions
2 had been taken by individual officers?

3 A. I think generally speaking, yes. I think by that time
4 there would have been some eyewitness evidence and
5 potentially other material available at the time --
6 I don't think it mentions it there -- as regards CCTV
7 and other footage and, as I say, descriptions of actions
8 of officers.

9 Q. So would you, in the purpose of the interview, expect to
10 find details of things like CCTV that was available or
11 statements, significant statements that were available
12 or comments that had been made or Airwaves or STORM
13 records; would you expect any of that in the purpose?

14 A. Certainly the interviewing officers to be aware of
15 anything specific that may impact on the statement and
16 the truth of what they are actually being told.

17 Q. Were you given -- was the expectation that in advance of
18 this interview you would go and identify significant
19 evidence that you should be aware of before you
20 interviewed PC Walker?

21 A. Yes. I don't know the specifics of that but I would --
22 anybody should be armed with all the relevant
23 information to the task in hand, which -- that is
24 a significant task, as regards getting the full account
25 from these individual officers. But I don't know to

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1 what extent that was done, I have no recollection of
2 that.

3 Q. Was it your normal practice to go and read significant
4 evidence or look at CCTV footage --

5 A. Yes, absolutely. Again, and maybe a -- from
6 a description of a lesser-type incident that if you had
7 CCTV or if you had accounts from independent witnesses
8 then you would be completely au fait with that and you
9 would look at the CCTV, you would read these accounts,
10 and you would frame in your mind all the various
11 different versions of different parts of the incident,
12 if that was the case.

13 Q. Was that part of your normal preparation --

14 A. Yes.

15 Q. -- in advance of an interview?

16 A. Yes.

17 Q. So in the period between 2 June and 4 June when you
18 actually took Craig Walker's statement, would you have
19 spent some of that time at least preparing for the
20 interview?

21 A. Certainly beforehand, yes, absolutely.

22 Q. Then it goes on to say:

23 "Additionally, to obtain details of the
24 post-incident process and what discussion ... was held
25 between the officers~..."

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- 1 What was that a reference to?
- 2 A. Basically after the incident when -- during the course
3 of returning or having returned to the office, accounts
4 of that activity and what their knowledge of the process
5 that occurred immediately after the incident involving
6 all the Police Scotland staff that were managing and
7 assisting with the incident.
- 8 Q. We heard yesterday when I asked you to look at a number
9 of documents at the beginning of your evidence about
10 conferring --
- 11 A. Yes.
- 12 Q. -- and warnings in relation to that. Would that have
13 covered any possible conferring between officers?
- 14 A. Yes, well, you would elicit from them basically what
15 happened during the period from whatever time you
16 returned to the office until you left to go home and
17 fill in all those blanks and give their account of what
18 happened and any significant discussions or actions.
- 19 Q. Then finally:
- 20 "To obtain details of briefings and other
21 information provided ... by Federation Staff and senior
22 officers~..."
- 23 A. Yes.
- 24 Q. As part of this, did you consider for example
25 a statement by Amanda Givan, who was the Federation rep,

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1 who had -- I think I asked you to comment on some of
2 that yesterday, about the status of the officers and
3 whether that has been clarified. So again, did you
4 familiarise yourself with statements from Federation
5 reps?

6 A. We would have done. I can't remember when she was
7 interviewed, whether she was interviewed before or after
8 that. I anticipate it was before but I would have done,
9 that would have been significant as well. Anybody that
10 is feeding into -- that had contact with these officers,
11 that may have relevant information that we should be
12 aware of just to assure us, as much as possible, that
13 the account we are getting is accurate and honest.

14 Q. Then it recognises the situation where it may appear
15 an officer incriminates himself during that
16 statement-giving --

17 A. Yes.

18 Q. -- and gives direction on what to do in the situation.

19 A. Yes.

20 Q. And then initially you were to request the witness to
21 verbally recall their recollection of events prior to
22 noting the statement?

23 A. Yes.

24 Q. Is that the process that you followed with
25 Constable Walker?

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- 1 A. Yes. Although it was slightly different with him due to
2 his actions at the beginning of that.
- 3 Q. Did he give you a self-penned statement?
- 4 A. He did, yes.
- 5 Q. So when you gave you that -- we have heard evidence from
6 Constable Walker that he prepared a statement and gave
7 it to you at the outset. Did you have an opportunity to
8 read that statement?
- 9 A. I am sure I did before we started, yes, and then it was
10 I think that was passed on to the management team.
- 11 Q. The next page is essentially a list of points in
12 relation to the background of the officer, are these
13 points that the strategy is designed to get out of the
14 officer as well?
- 15 A. Yes, these are specific unique information to them as
16 far as their own police numbers, and specific training
17 dates, location, work and current duties.
- 18 Q. Then on page 5 a number of points regarding the
19 description of the officer. Again, generic questions
20 that can be asked of each officer?
- 21 A. Yes, but still important in their own right,
22 particularly for independent witnesses who are
23 describing actions of specific officers.
- 24 Q. Weight is not included in that strategy?
- 25 A. No, but build is but yeah -- no, it's not.

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- 1 Q. Page 6 it says "Introduction":
- 2 "Ask the officer to provide, in their own words,
- 3 details of their duty on Sunday 3 May~... If necessary,
- 4 ask the following questions for clarity if the officer
- 5 does not provide such information."
- 6 And we can see a number of questions there focused
- 7 towards the shift, the office they were working from,
- 8 when they got to work, the duties they were doing and
- 9 just general questions that would allow you to identify
- 10 where they were and what they were doing that day?
- 11 A. Yes, just a kind of painting a picture of the build up
- 12 to it.
- 13 Q. And then underneath that there is "Muster", we have
- 14 heard evidence from the officers about a muster, and
- 15 again you are trying to find out who attended, who
- 16 carried out the muster, what supervisors were present.
- 17 So at that stage you didn't have any of that information
- 18 available to you, or were you simply using this as a way
- 19 of --
- 20 A. I don't know, they may have already acquired statements
- 21 from supervisors who were not directly involved in the
- 22 incident which may have filled the gaps with some of
- 23 that information. I don't know at what stage they would
- 24 have been taken or followed up.
- 25 Q. Then page 7, "Incident attendance". You were to ask the

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1 officers details of their attendance at the incident,
2 and it covers the topics of knowledge of the locus and
3 knowledge of the incident. And information that they
4 were sent and location and suchlike?

5 A. Yes.

6 Q. Then page 8 is about arrival at the locus, so
7 essentially this is going through the events of 3 May in
8 chronological order?

9 A. Correct, without -- you know, obviously on occasions
10 some of that information might be missed in a statement
11 if it wasn't listed initially as a specific question to
12 ask.

13 Q. So it may be that with individual witnesses you will
14 have known some of the information or some of the
15 answers to the questions but this was put down to be
16 thorough to ask all the questions that they wanted you
17 to cover?

18 A. Yes.

19 Q. There is also reference on page 8 to a map, towards the
20 bottom. And we have seen copies of maps that officers
21 drew on to identify their location at Hayfield Road; is
22 that the maps that were used?

23 A. Yes.

24 Q. Were you given copies of those use as part of the
25 strategy?

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- 1 A. Yes, I used that during the interview.
- 2 Q. Some of the questions about arrival do ask about when
3 Mr Bayoh was first seen, was he in possession of
4 anything, a knife, where was it, and questions of that
5 sort.
- 6 A. Yes.
- 7 Q. Then on the next page, page 9, it asks about initial
8 dealings with the deceased, and this is primarily
9 focused about what the officers did, what the officers
10 said, and what the officers heard.
- 11 A. Yes.
- 12 Q. Page 10, "Arrest and restraint". Again, the focus is on
13 what the officers did, what other officers did, what
14 they may have seen and how Mr Bayoh reacted --
- 15 A. Yes.
- 16 Q. -- to those steps. And then the next page, page 11, it
17 deals with post-arrest and medical care. And then it
18 goes on to the post-incident procedures and other
19 ancillary details to be obtained.
- 20 A. Yes.
- 21 Q. Can we look at pages 9 and 10. We have heard evidence
22 at the Inquiry that it is necessary -- officers, if they
23 use force during the course of their duties, that they
24 have to justify that use of force. That is an important
25 part of their obligations as officers?

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- 1 A. Yes.
- 2 Q. You agree?
- 3 A. Yes.
- 4 Q. You agree with that. And that as part of that
5 justification, they have to provide that in relation to
6 every single use of force that they have adopted?
- 7 A. Yes.
- 8 Q. So if -- I think an example was given in evidence, if
9 someone is struck three times with a baton, that officer
10 has to justify each individual strike of that baton;
11 that is correct?
- 12 A. Yes.
- 13 Q. And we have been given evidence on the Inquiry that
14 every use of force to be legal has to be necessary, it
15 has to be reasonable, and the officer has to use the
16 absolute minimum level of force?
- 17 A. Yes.
- 18 Q. We have also heard about preclusion, it is important
19 that officers consider other maybe less forceful
20 options?
- 21 A. Tactical options, yes.
- 22 Q. They either have to try them and they fail so they
23 escalate or they have to take the view, based on their
24 experience, their knowledge and their training that that
25 is not worth trying. I would like to know in relation

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1 to this witness strategy, because I have read through
2 it, there don't appear to be any questions at all about
3 inviting officers to justify the use of force, and
4 I wondered if that was something that was obvious to you
5 on the day?

6 A. I think once you got to that point in the statement that
7 would be -- certainly you would be progressing on
8 certain points in relation to that, that would just be
9 a natural progression of part of the evidence you are
10 getting from that individual. I don't think you could
11 ever have a position where you have every question that
12 you need answered because one thing leads to another on
13 most occasions when you are interviewing witnesses. So
14 this was a guide that was to provide an initial standard
15 to make sure that we got -- I take your point on, you
16 know, the justification for that, and you may consider
17 that the absence of that is significant but certainly
18 that is something that I would be asking during the
19 course of the interview if that was -- it got to that
20 point, that somebody was describing an incident or part
21 of that incident where force was being used. Because
22 that is the crux, the major crux of the account you are
23 getting.

24 Q. So if the use of force is the major crux, would it be
25 your normal practice to ask questions like: why did you

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- 1 think it was necessary to use that force at that time?
- 2 A. Why did you preclude the other options? How quickly did
3 you go through that process of considering the extent of
4 danger that you faced that you went from option one to
5 option four, for instance, straight away? And they
6 should be able to justify that.
- 7 Q. We have heard evidence about a SOP that the police use
8 which has profile defender behaviour categorised at that
9 time, and also at that time had a reasonable officer
10 response categorised with level five being lethal force?
- 11 A. Yes.
- 12 Q. Or deadly force. So would it have been your practice to
13 ask questions about: why did you use that level of
14 force, was there not another option available, why did
15 you not de-escalate that type of thing?
- 16 A. Yes.
- 17 Q. Any of those answers given to those questions would have
18 been noted down in the statement?
- 19 A. Would have been incorporated into the statement.
- 20 Q. As I looked through this strategy, the other area that
21 appeared to be absent was any questions in relation to
22 the impact of race. There is no reference at all to
23 race in the witness strategy?
- 24 A. No, there is not.
- 25 Q. You obviously explained to us yesterday about keeping

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1 an open mind, and I am wondering to what extent you were
2 able to both keep an open mind yet not ask any questions
3 about race in the statement taking. If you are not
4 asking any questions about it, is that reflective of
5 truly keeping an open mind about the question of race?

6 A. I said to you my belief is that personally I have kept
7 an open mind during that. Again, it's -- you know it's
8 an issue raised that is not incorporated within that,
9 I don't know if anything was asked at any of the
10 interviews in relation to that. You may be aware of
11 that already. But ...

12 Q. I am really just asking about the witness interview
13 strategy at the moment. Do you think that might have
14 been of use to have some strategy or some questions
15 prepared and available for you as the investigator
16 taking a statement, to have a page perhaps about
17 possible questions that could be asked in relation to
18 race?

19 A. There may be a reason why that specific question is not
20 there but I am not aware of that.

21 Q. There was no questions, as far as I can see, about
22 racial discrimination or mindset in relation to race at
23 all. Do you remember being encouraged to ask any
24 questions about that?

25 A. No, I don't have any recollection of that.

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1 Q. Were you generally encouraged to ask additional
2 questions and prepare additional pages for the witness
3 interview strategy? Would it have been within your
4 power to maybe add in another page about questions to do
5 with use of force and justification or racial
6 discrimination?

7 A. I think if there was something obvious that was
8 considered absent by the individuals that were going to
9 conduct that interview, then that conversation would
10 probably take place prior to the interview.

11 Q. Certainly there were no questions about intention or use
12 of force and mindset in the strategy. Not all officers
13 are as experienced as you are, Mr Harrower, do you think
14 that perhaps even less experienced investigators may
15 benefit from a more fulsome strategy?

16 A. They could do, yes.

17 Q. We have heard -- we have statements from a Ross Stewart
18 and a Brian Dodd, I think we have mentioned --

19 A. Brian already.

20 Q. -- at least Brian Dodd before. Ross Stewart is
21 an investigator for PIRC, he interviewed
22 Sergeant Maxwell who was the acting sergeant for the
23 response team on 3 May. He said:

24 "I do not recall considering specifically asking
25 Sergeant Maxwell why he took a particular course of

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1 action. I do not recall being encouraged to ask why."

2 So it doesn't appear that Investigator Stewart
3 considered asking questions about justification for use
4 of force or intention in relation to use of force. Then
5 Brian Dodd, who took a statement from PC Tomlinson, says
6 in his statement:

7 "To my knowledge PIRC investigators were not
8 encouraged to add their own questions to the witness
9 interview strategy prior to or during the interview or
10 encouraged to ask why officers took certain decisions or
11 actions."

12 Do you have any -- do you want to comment on that
13 about the lack of encouragement?

14 A. Probably what I had said already, that during the course
15 of the interview there is different strands will come
16 out and you -- I would expect anyone with any
17 investigative experience at all to then expand on that
18 and ask the appropriate questions. And that may not fit
19 anywhere within that original strategy, but you know the
20 expectation is that you would follow that through and
21 record the answers to these questions.

22 Q. Certainly?

23 A. It is not specific, you know, follow that and nothing
24 else. That is definitely not what it is.

25 Q. Mr Dodd does seem to say investigators were not

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1 encouraged to add their own questions. Do you think
2 some investigators felt they were constrained by the
3 strategy?

4 A. I wouldn't say so, no.

5 Q. That wasn't your experience?

6 A. No.

7 Q. So if you had felt it appropriate, you have said normal
8 practice would be to ask for justification of use of
9 force. If you had felt it appropriate you could have
10 asked questions about racial -- possible racial
11 discrimination or the mindset of officers in relation to
12 race, if you had wished to do so?

13 A. Yes.

14 Q. I would like to move on and ask you about expert
15 witnesses. You have spoken in your statement about part
16 of the PIRC investigation involving the need to go to
17 experts, mainly medical or forensic experts --

18 A. Yes.

19 Q. -- to provide additional opinion and evidence available
20 for PIRC?

21 A. Yes.

22 Q. I think you were involved to some extent in instructing
23 or being involved in that process of instructing
24 experts?

25 A. Yes, and more the preparation and delivery in some

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- 1 fashion of packages.
- 2 Q. I think you had prepared, at least for Dr Payne-James
3 and a number of other witnesses such as Dr Karch, what
4 was called an expert witness package?
- 5 A. Yes.
- 6 Q. Can you explain to people what an expert witness
7 package, what that was?
- 8 A. From memory it was -- you would have a summary of the
9 incident within that, any reference to any other
10 evidence which built the picture for the period of time.
11 You would outline what you were looking for them to
12 achieve, what their expertise was required for, and
13 there would be initial contact with these individuals to
14 ascertain whether they were appropriate for that
15 function and then a decision would be taken at a much
16 higher level whether they would be used and that would
17 include contractual arrangements and -- to inform that
18 final decision. And then there would be -- a covering
19 letter went with the packages to -- again, just
20 outlining in summary fashion what they were being
21 requested to do and agreeing to their contractual
22 arrangements and specifying what information we were
23 hoping they would provide.
- 24 Q. Who was responsible for selecting the evidence that
25 would build that picture?

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- 1 A. I was involved in that partly but I think -- I think
2 Billy Little and John McSporran, it would be
3 a collective involvement in that and then a final sign
4 off the completed document, that they were satisfied
5 with the content and the presentation of it.
- 6 Q. You have given some detail in your Inquiry statement
7 about the issue that arose with Ashley Wyse's statement,
8 I think a paragraph had been --
- 9 A. I believe so, there was --
- 10 Q. -- omitted. As I understand your Inquiry statement,
11 a typist had omitted an important paragraph from that.
12 I am interested in the sort of quality assurance process
13 in place in relation to the expert witness package. So
14 was there somebody checking that everything -- all the
15 information being given to the experts was complete?
16 Beyond yourself, was there anyone that was helping with
17 that or managing that process?
- 18 A. Yes, there was -- I am not 100% but I think that would
19 have fallen between the lead investigator and their
20 deputy, the final sign off on the packages.
- 21 Q. Would you expect the lead investigator or their deputy
22 to be checking that individual statements were complete?
- 23 A. Possibly, I don't think they would read through and
24 check word-for-word. There was an expectation that the
25 statements -- when they are taken, most of them are in

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1 handwritten form. They will then be typed and then they
2 are proof-read by the investigators that are taking
3 them, and that is a core part of that process. So the
4 expectation would be that it is correct at that stage,
5 so if a package was getting put together, I don't think
6 I would be anticipating the lead investigator would be
7 reading every statement and comparing that with the
8 other version of it.

9 Q. So in terms of that comparison between the handwritten
10 version and the typed version, would it be the
11 individual investigator who took that statement that you
12 would expect to carry out that --

13 A. Yes, more often than not the written statements would be
14 dictated, they would be typed by administration staff
15 and then they would be checked by the investigator that
16 took it and confirmed and if there was any
17 discrepancies, spelling mistakes, anything that was
18 missing, that would go back and get taken care of.

19 Q. If the investigator dictates the content of a statement
20 that he or she has taken, but for some reason omits
21 a paragraph, how would the typist know?

22 A. They wouldn't.

23 Q. They wouldn't?

24 A. They will type what they get, and when it comes back the
25 written version should be getting checked against the

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- 1 typed version.
- 2 Q. So again, would that go back to the original
3 investigator to do that process of checking?
- 4 A. On most occasions but there will be occasions when they
5 are absent and whatever, so -- but somebody else, it
6 should be done in every case by someone.
- 7 Q. What if the investigator makes a mistake or
8 intentionally leaves out some key information, how would
9 that be checked and corrected before use was made of the
10 statement?
- 11 A. If the written version was not the same as the typed
12 version?
- 13 Q. Yes.
- 14 A. It's hard to say, it might not be corrected.
- 15 Q. Is that -- does that remain the position today?
- 16 A. I don't know exactly how the Ashley Wyse situation came
17 about and was subsequently identified. I can't --
18 I can't recall what the specifics of that was.
- 19 Q. You know it was identified. Did all the experts then
20 receive a fresh copy of the typed version?
- 21 A. I don't remember. I am not sure.
- 22 Q. Presumably you would have expected that to be corrected
23 for the experts?
- 24 A. Yes, I don't recollect when that omission was
25 identified. So I don't know if that -- the whole

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1 process is gone through and their reports had been
2 submitted, I don't remember at what the stage that was
3 identified and what the subsequent actions to resolve
4 that were.

5 Q. Can I ask you if you had any training, is it common for
6 investigators for involved in instructing experts and
7 pulling together an expert witness package?

8 A. No, it's not. It's not common. It doesn't happen --
9 again, it is very critical significant incidents where
10 you would go to that length to acquire that sort of
11 evidence. Obviously more in the police world it would
12 be the likes of murder investigations, other serious --
13 where you would acquire that type of evidence, obviously
14 different for us, different types of investigations, but
15 still high level.

16 Q. When you -- as a PIRC investigator, prior to 3 May 2015,
17 had you been involved in instructing experts in
18 investigations?

19 A. I don't think so, no.

20 Q. Had you received any training in PIRC about instructing
21 an expert in the proper way of doing that?

22 A. No.

23 Q. Have you had any training since?

24 A. No.

25 Q. As --

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1 A. I don't know if there is a defined way of doing that and
2 whether there is such a thing as a course in relation to
3 that, I would doubt it to be honest. I am certainly not
4 aware of any specific focused training on that subject
5 matter.

6 Q. You are not aware of any?

7 A. No.

8 Q. So you have never had anything like that with the
9 police?

10 A. No.

11 Q. As a police officer did you have to get involved with
12 instructing experts?

13 A. I don't recall ever doing that in my -- in the police
14 world.

15 Q. All right. Do you know when -- who was it that would
16 identify the expert as suitable, someone who would have
17 the correct qualifications and experience, who would
18 meet the criteria that he would or she would be able to
19 assist the PIRC investigation?

20 A. I certainly did some of that during the early stages of
21 that process and was actioned to do that by the lead
22 investigators.

23 Q. How did you find that given had you not had any training
24 or real experience in instructing experts?

25 A. I went to other organisations who did, for instance the

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1 College of Policing, and who hold databases on experts
2 in different -- a lot of different fields, and who have
3 done that on behalf of police forces and other agencies
4 over a period.

5 Q. Did you give them a list of criteria or qualifications
6 or experience that you were looking to be identified?

7 A. Yes, I think it was subject areas, the types of experts
8 for specific things.

9 Q. Mainly the subject area?

10 A. Yes, like restraint and under the influence of drugs,
11 that type of thing.

12 Q. Right.

13 A. So we got a number of responses back for -- as I say,
14 I don't know how many subject headings there were and
15 then the backgrounds of these individuals were passed up
16 the chain to consider these and I think ultimately they
17 would go to Crown for a definitive on whether they would
18 or would not be instructed.

19 Q. Did you go through a process where you looked at the
20 information you had been sent, say by the College of
21 Policing, and confirm that that expert or that
22 individual met the criteria that PIRC --

23 A. Yes.

24 Q. I think you were involved in preparing an expert witness
25 package for Dr Karch?

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- 1 A. Yes.
- 2 Q. Did you look at his criteria and his qualifications and
3 experience?
- 4 A. No.
- 5 Q. Any reason why?
- 6 A. Well, I did once I saw -- initially -- not initially,
7 I think it may have been John McSparran that had
8 identified his apparent specialism in a certain area and
9 then we -- I think I was the first person to contact him
10 to establish and get some background on where his
11 specialist area was and I had a number of communications
12 with him.
- 13 Q. What was your understanding of his specialist area?
- 14 A. I think it was in relation to the effects of ... the
15 name's just escaped me~... alpha-PVP.
- 16 Q. We have heard some evidence about toxicology and about
17 substances. Was it your view that Dr Karch had
18 expertise in toxicology or understanding illicit
19 substances?
- 20 A. I didn't have an in-depth -- as I say, initially the
21 research that identified him, I wasn't involved in doing
22 that but then progressed to contacting him and then
23 subsequently I think he was authorised by Crown as
24 an expert witness, and then a package was sent to him in
25 the manner I described in the statement.

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1 Q. As part of that, did you ask him for a CV --

2 A. Yes.

3 Q. -- or to provide information about his qualifications?

4 A. I am sure I did, yes.

5 Q. Can I ask you about a letter that was sent from the

6 Commissioner, Kate Frame, to Aamer Anwar on

7 9 October 2015, this is PIRC 01849. I am interested in

8 page 6. So this is a letter from the Commissioner to

9 the solicitor who was representing the family.

10 A. Yes.

11 Q. And:

12 "As you may be aware ..."

13 That paragraph. Do you see that?

14 A. Yes.

15 Q. "... in order to facilitate the examination by your

16 expert, Dr Nat Cary, of histology and other samples,

17 a PIRC investigator travelled to Dr Cary's home with the

18 samples and remained while he examined them. Dr Cary

19 asked who the experts chosen by Crown were and was

20 informed that they were Dr Karch and Dr Payne-James.

21 Dr Cary expressed his professional regard for the

22 significant expertise of both persons, considering

23 Dr Karch to be one of the most eminent and expert

24 practitioners in the world in the field of

25 cardiopathology."

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1 Can I ask you first of all, was it you that went to
2 take samples to Dr Cary?

3 A. It was, yes.

4 Q. And he was an expert -- we have heard evidence from
5 Dr Cary and he was an expert that was originally
6 contacted by Aamer Anwar & Co?

7 A. Yes, I am aware of that.

8 Q. You were then the investigator who travelled to
9 Dr Cary's home with samples?

10 A. Yes.

11 Q. Where it says there the investigator, namely, you:
12 "... remained while he examined them."

13 So remained there while Dr Cary examined them. Did
14 you remain there while Dr Cary examined them?

15 A. No.

16 Q. How is it that the Commissioner has come to write that
17 in this letter to Aamer Anwar?

18 A. I don't know.

19 Q. Did you have a conversation with the Commissioner about
20 this?

21 A. Not to my recollection, no.

22 Q. Did you provide any written documentation or other
23 communication to the Commissioner about the situation
24 with Dr Cary and the delivery of the samples.

25 A. I have no recollection of doing that, no.

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1 Q. So, as far as you are aware, where did that information
2 come from, that the Commissioner has put in this letter?

3 A. I don't know. There is obviously an inference within
4 that that I have had a discussion with Dr Cary regarding
5 other experts. I have no recollection of that. I do --
6 the only thing I remember is going there, I remember
7 meeting him and possibly his wife, we were in the
8 hallway of the house somewhere, and I think he had his
9 own room where he carried out examinations within the
10 premises there. I have no recollection and I would be
11 surprised if I specifically mentioned experts names to
12 him. I'm not discounting that that happened but I would
13 think that unlikely. I certainly have no recollection
14 of doing that whatsoever, or the references to
15 Dr Karch's eminence in that field.

16 Q. So on this second part of that paragraph, do you
17 remember Dr Cary asking you who the experts chosen by
18 the Crown were?

19 A. No. What I have said to you is all I can remember about
20 that visit. Obviously this information has come from
21 somewhere, it could only come from -- from that visit,
22 I would have thought, and anything that was fed back.
23 But I honestly cannot remember discussing -- I was there
24 for a purpose which was to deposit that stuff with
25 Dr Cary, allow him to do his examination and then return

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1 with the same items.

2 Q. So in relation to that paragraph in the letter by
3 the Commissioner, do you have any recollection about
4 the circumstances that are described in that paragraph?

5 A. No, other than attending Dr Cary's home. If discussions
6 took place, sorry, I just do not recall that. As I say,
7 I am not discounting it happened but I cannot give any
8 more information or detail on that.

9 Q. Were you with anybody else that day?

10 A. No.

11 Q. Thank you. Can I ask you to look at PIRC 01858, please.
12 This is a letter from Aamer Anwar to PIRC for the
13 attention of the Commissioner, Kate Frame, which sets
14 out a number of concerns about the selection of Dr Karch
15 as an expert witness. So this letter is dated
16 6 November 2015. The previous letter I just asked you
17 about was 9 October 2015. So this is the following
18 month that this letter is written with reference to
19 Dr Cary's alleged endorsement of Dr Karch and he makes
20 reference to the letter of 9 October that we have just
21 looked at.

22 Mr Aamer Anwar advises the Commissioner that
23 Dr Cary -- and the quotation in the letter says Dr Cary
24 is said to say:

25 "I did not lend any support to the instruction of

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1 either Dr Payne-James or Dr Karch. It is extremely
2 disappointing if this facilitation is now being used as
3 a means of manufacturing my implied support for the
4 instruction of Dr Karch."

5 Were you aware that there had been subsequent
6 correspondence between Mr Anwar and the Commissioner in
7 relation to the issue of Dr -- either Dr Karch or
8 Dr Cary?

9 A. I think the only thing I had any memory of was reference
10 made to my visit and not being there for a period of
11 time.

12 Q. Did the Commissioner or anyone else in PIRC come back to
13 you about this matter round about the November of that
14 year, to ask you further questions about --

15 A. No, I don't have any recollection of that, no. I don't
16 know what the timeline here is in relation to when
17 Dr Karch was initially identified, and when the visit to
18 Dr Cary's was. I don't recall what that was and how
19 relevant that is.

20 Q. I can take you through your statement if you wish but
21 I don't think the date so much --

22 A. No --

23 Q. -- makes any difference. The letter in October from the
24 Commissioner was 9 October and that is -- the paragraph
25 that she had written in relation to the matter regarding

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1 Dr Cary and Dr Karch was dated 9 October.

2 I am going to move on to another passage of evidence
3 now. I wonder if that might be an appropriate time for
4 the break.

5 LORD BRACADALE: We will take a 15-minute break.

6 (3.01 pm)

7 (A short break)

8 (3.20 pm)

9 LORD BRACADALE: Ms Grahame.

10 MS GRAHAME: Thank you. I would like to move on to another
11 topic now, Mr Harrower. We have heard from you that
12 PIRC were from the very outset investigating the events
13 at Hayfield Road and the death of Mr Bayoh, the cause of
14 his death, and from the beginning that was part of the
15 terms of reference from the Crown --

16 A. Yes.

17 Q. -- to PIRC. In terms of a PIRC investigation where
18 there is an unascertained death and you are
19 investigating the cause of that death as part of your
20 investigation, do you have a certain amount of
21 discretion as to how -- the best way to go about that
22 investigation, say into cause of death?

23 A. Yes, depending on what those terms of reference actually
24 are, and then your investigation would expand out where
25 you see fit, if there was need for consultation with

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1 Crown at some stage where it was a significant expansion
2 of that then it would be appropriate to correspond with
3 them and consult with them in relation to that.

4 Q. I asked a number of the senior police officers about
5 their approach to investigating unexplained death, and
6 we heard mention of something called the murder manual
7 and how they develop hypotheses. Do PIRC investigators
8 take a similar approach when they are investigating
9 an unexplained death?

10 A. I would say so, I mean we certainly have considerations
11 or hypotheses about what potentially at the outset would
12 be the relevant matters to consider, and conduct your
13 enquiries to negate any of these as it progresses.

14 Q. We have heard from Pat Campbell about -- he started
15 thinking about hypotheses on the way to Kirkcaldy that
16 day and we have heard from Lesley Boal about the type of
17 hypotheses she had in her mind that she would be
18 considering.

19 A. Yes, and I think he mentioned that we had discussed some
20 of these as well at an early stage.

21 Q. I think as I understand this method, or this use of
22 hypotheses, they are developed over a period of time,
23 and investigated, and then once -- where there is no
24 evidence to support a hypothesis, then it can be
25 eliminated. But you have to wait until you can be sure

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1 that there is no evidence to support it?

2 A. Yes.

3 Q. Would you agree with that --

4 A. Yes.

5 Q. -- type of approach? Can I then ask you about some of
6 the evidence we have heard about the type of hypotheses
7 that the police may have considered in relation to
8 the events of 3 May, and just see if PIRC, the PIRC
9 investigation mirrored that approach.

10 Lesley Boal, for example, gave evidence to the
11 Inquiry that potentially there may have been criminality
12 on the part of the police officers, and that could have
13 been one of the hypotheses that was investigated, into
14 the cause of death?

15 A. Yes.

16 Q. There may have been an underlying medical condition that
17 maybe caused or contributed to Mr Bayoh's death?

18 A. Yes.

19 Q. And a way of investigating that type of thing would be
20 to recover GP records, maybe take information from the
21 family about Mr Bayoh's health. Do you agree with that?

22 A. Yes.

23 Q. She talked about race as a possibility:

24 "... it being in the back of your mind when you are
25 thinking about all the possibilities. In terms of

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1 hypotheses one would have been that the male had been
2 treated differently because he was a black male."

3 Would you agree with that hypothesis?

4 A. That wasn't one of my considerations initially, as I say
5 I was keeping an open mind to that but at the forefront
6 was what you have mentioned already, the fact that he
7 may have sustained an injury immediately prior to his
8 interaction with the police, we were aware that he was
9 involved in... So that was a consideration that there
10 may have been criminal conduct by others prior to that,
11 at any of these locations that we had previously
12 mentioned that were coming under the responsibility of
13 Police Scotland at that time. There was excessive use
14 of force at the -- in Hayfield Road itself, and that
15 maybe even combined with one of -- the underlying
16 medical conditions considerations that you have
17 mentioned.

18 Q. As I understand the use of hypotheses, it is considering
19 all the possibilities that may have caused the death of
20 Mr Bayoh, not fixing on any particular one, not
21 favouring any particular one, but keeping an open mind
22 about all of them, and investigating each possible
23 hypothesis, seeing if there is evidence to support it.
24 If ultimately there is no evidence, that can be
25 eliminated. Is that a fair summary?

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- 1 A. Yes.
- 2 Q. So you would have been keeping an open mind about all of
3 the hypotheses --
- 4 A. Yes.
- 5 Q. -- that were possibilities, so criminality on the part
6 of the police, excessive use of force in Hayfield Road,
7 a previous assault, a medical condition?
- 8 A. Yes, drugs.
- 9 Q. Drink and drugs could have been a factor?
- 10 A. Yes.
- 11 Q. Equally, as Ms Boal has said, is one of the things you
12 would keep an open mind about that he -- Mr Bayoh had
13 perhaps been treated differently because he was a black
14 male, and that -- when I say treated differently,
15 treated differently by the officers, and that the
16 actions taken by them were because he was black? Was
17 that a hypothesis that you considered?
- 18 A. That wasn't at the forefront of my mind at the time, as
19 I say but --
- 20 Q. Was it at the back of your mind?
- 21 A. -- really I was open minded to that. But considering
22 you know the evidence that was available, the
23 information at the time, and that there were these
24 previous incidents in the lead-up to it which suggested
25 that is probably more likely as a consideration at that

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1 time so they were higher on the list, I would say, as
2 a consideration.

3 Q. Were you categorising in terms of likelihood already --

4 A. In my mind, yes.

5 Q. In your mind.

6 A. And just, you know -- and that would be reassessed at
7 different stages as additional information came in and
8 obviously later in the Inquiry there was still was
9 consideration and evidence to support that drugs had
10 been taken at some time, so that would remain
11 a higher --

12 Q. In carrying out that process of categorisation and
13 considering some more likely than others, did that have
14 an impact on you keeping an open mind? Did that start
15 to close down, perhaps --

16 A. No, I wouldn't say so.

17 Q. -- your mind? I think you have given us a lot of
18 information in your second statement and without going
19 through all of the paragraphs I think at paragraph 209
20 you say you can't be positive but you don't believe PIRC
21 had ever considered the issue of race in
22 an investigation before 3 May 2015. 208:

23 "Prior to 3 May~..."

24 You say:

25 "... I had no experience of an investigation of

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1 a death in custody or following police contact where
2 race was a factor in the investigation. I do not recall
3 ever having worked in an investigation since the death
4 of Sheku Bayoh where race was a factor."

5 A. I don't believe so, no.

6 Q. Do you disagree with any of that?

7 A. No, I have certainly no recollection. I would be
8 surprised if it ...

9 Q. Thank you. Paragraph 207:

10 "Prior to 3 May I had no experience of
11 an investigation of a death in custody or a death
12 following police contact in which the deceased was
13 someone from an ethnic minority and I have no
14 recollection of dealing with one since the death of
15 Sheku Bayoh either."

16 Does that remain the same?

17 A. Yes.

18 Q. Yesterday you spoke about having led on three deaths in
19 custody and I think I asked you some questions about
20 that. You couldn't recollect that.

21 A. I couldn't recall exactly what they were.

22 Q. From those answers in your statement, is it fair to say
23 that none of the three deaths in custody you had
24 investigated involved any issues of race?

25 A. Not to my recollection at all, no.

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1 Q. Thank you. Now, it was on 2 September 2015, perhaps we
2 can look at this, that a letter was sent from the Crown
3 to the Commissioner, Kate Frame, and that is
4 COPFS 02557. You will see this is a letter from
5 Crown Office to Kate Frame, 2 September 2015. And if we
6 move down the page, please, and if we can look at page 4
7 I think it is. It's a detailed letter. It starts:

8 "I require confirmation from the Commissioner that
9 issues of race and whether there is any evidence of
10 racial motivation is a primary focus in the PIRC
11 investigation. The investigation should examine whether
12 there is any evidence that any of the offices
13 involved ..."

14 I think that should say "officers":

15 "... has expressed any racist views or opinions in
16 the past. In particular ... indicated that officers
17 from within the Fife area had been investigated for
18 texting racial slogans and that one of the officers was
19 referred to him. The family have enquired as to whether
20 any of those officers apparently involved in that
21 enquiry were in the group of officers engaged with
22 Mr Bayoh."

23 So this was a separate matter. We have heard some
24 evidence from DI Robson about a separate matter
25 regarding WhatsApp messages, and involving other

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1 officers who were not any of the nine officers who
2 attended at Hayfield Road.

3 Had there been any -- when you were involved as lead
4 investigator or in any of your involvement with the
5 investigation after that date, was there any mention of
6 race by the Crown to PIRC prior to this letter, that you
7 are aware of?

8 A. Not that I am aware of, no.

9 Q. So up until this point, race has not been part of the
10 written correspondence or terms of reference with the
11 Crown, as I understand it?

12 A. Not to my knowledge, no.

13 Q. Can you tell us then, if you know, what steps were
14 taken, if any, prior to the 2 September when PIRC were
15 keeping an open mind about these matters, to consider
16 the aspect of race as part of investigation? So this is
17 prior to that letter from the Crown.

18 A. I think John McSporran or Billy Little would need to
19 comment on that. I can't give any specific answer on
20 that.

21 Q. In your role as an investigator involved in the
22 investigation -- obviously you have taken statements
23 from at least one officer, you took statements from
24 DS Dursley, I think, and a trainer, Inspector Young --
25 were there any discussions amongst PIRC about race and

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- 1 investigating race prior to 2 September?
- 2 A. Not to my knowledge, no.
- 3 Q. After this letter came in from the Crown on 2 September
- 4 were you aware of steps being taken to look into the
- 5 issue of race?
- 6 A. I was aware in general terms that actions were being
- 7 raised in response to this extension to the terms of
- 8 reference basically.
- 9 Q. What changes were put in place after this letter was
- 10 received from the Crown?
- 11 A. Changes as in ...?
- 12 Q. What additional steps were taken to look into the issue
- 13 of race after this letter was received?
- 14 A. There was certainly investigation conducted in relation
- 15 to Fife officers etc, to answer that specific point that
- 16 you have detailed there. I can't tell you exactly what
- 17 they were.
- 18 Q. Were the investigations carried out focused on that
- 19 issue regarding Fife officers and texting and --
- 20 A. Yes, I believe so, yes.
- 21 Q. Any other expansion of the investigation to incorporate
- 22 issues of race?
- 23 A. Not that I am aware of. But again, that is something
- 24 that they would be able to answer specifically and in
- 25 detail, I am quite sure.

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- 1 Q. Better to ask Little or McSporran.
- 2 So if I have additional questions regarding whether
- 3 discrimination was considered or the type of
- 4 discrimination that was considered, or statements
- 5 obtained, would I be better speaking to Mr McSporran
- 6 about that?
- 7 A. I would say so, yes.
- 8 Q. In your role as an investigator were you ever tasked
- 9 with obtaining any statements --
- 10 A. Not in relation to that aspect.
- 11 Q. -- primarily in relation to race?
- 12 A. No.
- 13 Q. Were you ever asked to seek guidance on investigating
- 14 race?
- 15 A. No.
- 16 Q. Were you ever tasked with looking at how previous
- 17 enquiries or investigations had looked at race and
- 18 investigated race?
- 19 A. No.
- 20 Q. Were you ever tasked with seeking guidance from third
- 21 parties who may be able to assist in preparing
- 22 a strategy to look at race?
- 23 A. No, I wasn't. Not personally, no.
- 24 Q. Were you ever asked to speak to someone who maybe had
- 25 experience or lived experience in relation to

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- 1 an investigation in relation to race?
- 2 A. No, I wasn't.
- 3 Q. Were you ever asked to seek guidance from anyone in
4 Crown Office in relation to what further investigations
5 the Crown may have wished PIRC to carry out in relation
6 to race?
- 7 A. No, I wasn't.
- 8 Q. Were you ever asked to do any sort of analysis of the
9 statements you had to consider the use of any racial
10 language or racially stereotypical language?
- 11 A. No, not personally.
- 12 Q. Sorry?
- 13 A. Not personally I wasn't, no.
- 14 Q. Were you aware of anyone carrying out that comparison?
- 15 A. No, I don't know the full extent of what actions were
16 placed for -- to cover the race issues that you are
17 talking about. There was a lot, I am quite certain of
18 that, but I don't know the specifics of all of those and
19 how far that extended and whether review of previous
20 material that we had got into the investigation.
- 21 Q. So again, is it fair to say you think perhaps
22 Mr McSporran or maybe Mr Mitchell would be in a better
23 position to help me with that?
- 24 A. Yes, they would.
- 25 Q. In the statement you took from Craig Walker he made

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- 1 mention as part of that about terrorist threat, the
2 level, the threat level at that stage.
- 3 A. Yes, I think that was one of -- I can't remember your
4 terminology but basically the thoughts going through
5 an officer's head before they actually arrived, and
6 I think he alluded to -- that was one of the things that
7 he was -- had considered prior to his arrival.
- 8 Q. Did you consider perhaps when you were taking
9 a statement from Constable Walker, consider that that
10 might have been an indication of a link in his mind
11 between terrorism and the fact that Mr Bayoh was black?
- 12 A. I don't recall.
- 13 Q. Do you remember asking any questions about that or
14 exploring that as an issue?
- 15 A. Not specifically, no.
- 16 Q. Nowadays is there more guidance available to PIRC
17 investigators in relation to carrying out investigations
18 regarding race?
- 19 A. Internally or externally?
- 20 Q. Internally, I was thinking. I will show you document
21 I am interested in. PIRC 04724. And the Inquiry has
22 received a copy of these guidelines, "PIRC guidelines
23 for dealing with allegations of discrimination when
24 undertaking investigations and complaint handling
25 reviews", but I am particularly interested in the

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1 investigations part. The pages are numbered top
2 right-hand side, and my understanding is that this
3 document came into existence in 2021. Have you seen
4 this document before?

5 A. I think so, yes.

6 Q. Have you read this document before?

7 A. I believe I have, yes.

8 Q. Have you had training in relation to the content of the
9 document?

10 A. Not that I recall.

11 Q. Were you -- in terms of having read through it, was that
12 something you were given time to do; was there any
13 discussion with fellow colleagues about the content?

14 A. I don't remember whether when it was circulated. I know
15 of its existence but it obviously will appear on our
16 internal systems for reference when required.

17 Q. We have heard about documents that are available to
18 police officers on their internal systems, that some of
19 them find -- we have heard evidence that some of them
20 find it very difficult to carve out time to read those
21 documents because they are so busy on their shifts. Is
22 that something that you experience in PIRC given your
23 workload?

24 A. I don't think the volume is anywhere near what
25 Police Scotland have as far as procedural documents and

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1 standard operating procedures, there is huge numbers to
2 deal with the various types of incidents.

3 Q. So in terms of having access to documents and the time
4 to read them, is that something that PIRC investigators
5 are very comfortable with fitting in, in their day?

6 A. I would say so. They are certainly readily accessible
7 and invariably when a new document is created, there
8 will be a communication, a circulation highlighting what
9 it is and where it is.

10 Q. Was it that circulation that gave rise to your reading
11 this document?

12 A. I would think so, I don't know, I can't remember for
13 sure.

14 Q. Are you comfortable that you have read this document in
15 its entirety?

16 A. I am sure I have, yes.

17 Q. Do you remember when you did?

18 A. No, I don't.

19 Q. So if you were faced with an allegation or
20 an investigation today that involved a black man,
21 an unexplained death perhaps, issues of possible racial
22 discrimination or excessive use of force, would you go
23 to these guidelines to provide you with assistance?

24 A. I think we all would and refer to a variety of things,
25 to inform the way that we approach it, I would think.

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1 Q. Can I ask you -- I am not going to read out this entire
2 document, it is available for the Chair to consider in
3 detail, but would you look at page -- I think it is the
4 investigation section. Page 30. On page 2 it says
5 section 6 is conducting an investigation, and that is at
6 page 30. I should have put a Post-It on this. It is
7 actually -- I think on my copy it's page 31:

8 "Conducting an investigation or [case handling
9 review]."

10 Do you see that?

11 A. Yes.

12 Q. This is the section which sets out -- it says here:

13 "Investigating and Review officers~..."

14 That would be someone like yourself?

15 A. Yes.

16 Q. "... should have a detailed understanding of equality
17 and diversity issues and an appropriate level of
18 knowledge, skills and experience to be able to apply
19 these guidelines and undertake effective
20 investigations~..."

21 So is the advice and guidance here that is contained
22 in section 6 designed by PIRC to provide investigators
23 with a route map --

24 A. Knowledge and support to do their appropriate function.

25 Q. -- about undertaking an investigation which may involve

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1 possible racial discrimination or race issues. Do you
2 agree with that?

3 A. Yes.

4 Q. Have you found this -- I appreciate you have said you
5 have not been involved in any investigations regarding
6 race since these guidelines came out, but having read
7 the document, has this guidance been easy to read, have
8 you found it helpful? There are a number of practical
9 examples --

10 A. Yes, it's like various -- you will go and seek these
11 out, and read in more detail and refresh the memory from
12 the initial reading of it, to guide yourself and make
13 sure that you are approaching things in a proper
14 fashion.

15 Q. We see on page 31 on the screen it says:

16 "The terms of reference for an investigation into
17 a death that raises issues of discrimination should
18 explicitly refer to and address any discrimination
19 allegations raised."

20 And:

21 "... where no specific allegation of discrimination
22 has been made but it is apparent that discrimination may
23 be a relevant consideration."

24 You have also to refer to these guidelines?

25 A. Yes.

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1 Q. So it gives advice about understanding the allegation,
2 conducting the investigation, using a comparator to see
3 if that is of assistance. It comment on discriminatory
4 language, probing accounts. Is this -- looking at that
5 now, would that have been of assistance to you in 2015,
6 all of that advice?

7 A. I think so. More than of assistance, it's a kind of
8 direction to follow in certain instances.

9 Q. So if you were in a situation today, as you were on
10 3 May 2015, would this document have been invaluable to
11 you in deciding how to investigate?

12 A. It would have assisted, I think.

13 Q. Thank you. Can I ask you about lessons learned. I have
14 asked a number of people about learning lessons after
15 3 May 2015. Can we look at your second statement which
16 is the 382 one, at paragraph 7. You are asked here
17 about lessons learned and it says here:

18 "During the course of, or at the conclusion of more
19 complex investigations, debriefs are sometimes held.
20 This provides an opportunity to identify learning and
21 other relevant information for future investigations.
22 This involves a structured meeting with management and
23 the investigation team involved where the key parts of
24 the investigation are discussed in detail. Any relevant
25 actions are taken forward."

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1 I am interested in this process that is adopted in
2 PIRC. Can you help us understand on what occasions
3 would this type of process be embarked upon, the lessons
4 learned process?

5 A. It is more often at the direction of one of the very
6 senior members of staff, the director of operations
7 probably, in relation to the justification and need for
8 doing that. It is not done as a matter of course, it's
9 selective, just depending on the investigation, possibly
10 what is established process-wise within that that has
11 maybe caused issues, and there may be a need after that
12 to cascade that learning out to Police Scotland, or the
13 other -- any of the other agencies who are responsible
14 for, to discuss that and make changes in the processes
15 for the future.

16 Q. So this process doesn't necessarily just have to be
17 an internal process, it can be --

18 A. Not necessarily, I mean if you are going to have
19 significant learning and it does involve the
20 participation and taking on board from partner agencies,
21 then we would do that.

22 Q. In your experience have you found these exercises to be
23 beneficial in improving practice internally or dealings
24 with third parties?

25 A. Yes, both.

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1 Q. Both. You say that that is held sometimes. Does it --
2 you have said it depends on the investigation. Does it
3 depend on the manager?

4 A. I think it is more on the complexity and the potential
5 for learning and significant process change, that really
6 you can't go to another similar type of investigation
7 without that changing in the interim period, so that
8 that process works better.

9 So, as I say, it would normally come about by
10 direction from one of the senior managers, whether that
11 may be cascaded upwards with a suggestion that that
12 occurs, but it is obviously involving a lot of people,
13 a lot of time, significant discussions. So, as I say,
14 it doesn't happen for every investigation, nothing like
15 it. So ...

16 Q. Then you go on to say:

17 "No debrief was held in relation to the death of
18 Mr Bayoh. This would have been a decision for senior
19 management in PIRC at that time. It is difficult to
20 form an opinion at this late stage on whether any
21 benefits would have been derived from this."

22 Can you think of a reason why there would not have
23 been this debrief or --

24 A. That was certainly from my knowledge, I don't know in my
25 absence if anything occurred, I don't think it was, but

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1 again probably John McSparran will be able to confirm
2 that 100%. Why it didn't happen, I don't know. I can't
3 give you an answer to that.

4 Q. You have said in your statement it's difficult to form
5 an opinion on whether benefits may have -- would have
6 been derived, but in light -- obviously we have been
7 talking for two days now nearly, we have been going
8 through a lot of different aspects of the investigation,
9 and I wonder in light of that and my questions, do you
10 think that there may have been opportunities for
11 learning, that if there had been this exercise --

12 A. Undoubtedly they were and, as I say, soon after there
13 were very significant changes and maybe that was
14 effectively a debrief at a much higher partnership level
15 that that happened, probably the top of that list of the
16 post-incident process, I can't remember when --
17 discussions started fairly soon, it took quite a while
18 to actually implement those full changes but that is now
19 an integral part of the whole process for this type of
20 incident, and is a massive change in how these critical
21 incidents are dealt with.

22 Q. This may be my ignorance but I imagine a debrief
23 involves input from the staff who were --

24 A. Yes, at every level.

25 Q. -- involved in the investigation because that is

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1 a positive way of really learning lessons, and improving
2 things from the people who lived that experience.

3 A. Yes, even smaller issues that collectively can make
4 a difference.

5 Q. So if there had been a lessons learned exercise or
6 a debrief, can you think of a reason why the first lead
7 investigator on 3 May wouldn't have been included as
8 part of that conversation?

9 A. No.

10 Q. I would like to ask you some -- a couple of
11 clarification points that arise out of your evidence
12 yesterday and just to cover those at the moment if you
13 don't mind. I didn't have a document ID number
14 yesterday and became little bit confused about
15 a document and I said I'd stop digging, do you remember
16 that?

17 A. The different handwriting, yes.

18 Q. Could you look at PIRC 04528, please. We will look at
19 page 1. Alternatively we could look at ... This was
20 the document we had on the screen yesterday. Now, this
21 handwriting as I understand it comes from
22 Richard Casey's notebook, so it wasn't your handwriting
23 it was Richard Casey's handwriting. And it was
24 Richard Casey who was having a conversation, as
25 I understand it, on Sunday, 3 May 2015 at 10 am with

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- 1 yourself, Harrower.
- 2 A. Yes.
- 3 Q. And it was during this conversation that he noted the
4 words, and I find it quite difficult to read there, but
5 he noted the words "political side". It is quite faint
6 on the screen as it appears there. But do you see it
7 just under the Dave Green instruction and then
8 "Political side"?
- 9 A. Yes.
- 10 Q. Do you see that there? And then there is the word
11 "Kay?" Do you see that?
- 12 A. Yes.
- 13 Q. I am wondering if you have any recollection about what
14 was meant during that conversation with
15 Investigator Casey that would have prompted him to write
16 down "political side"?
- 17 A. None whatsoever and it was mainly a one-sided
18 conversation by way of updating him on the incident,
19 what the instruction was and what the intentions were as
20 far as staffing. Obviously those words are beside --
21 I think I agree it is "Kay?" That most likely would be
22 media representative for PIRC at the time.
- 23 Q. That is very helpful. So we have heard evidence from
24 an Inspector Kay, but this would have been a reference
25 to --

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1 A. I very much doubt it was him because certainly at that
2 early stage it is unlikely.

3 Q. Was this a person within PIRC that dealt with media?

4 A. Yes, at that time.

5 Q. At that time?

6 A. Yes.

7 Q. Thank you. The other thing I want to clear up with you
8 is in relation to the comments you made yesterday about
9 Garry Sinclair.

10 A. Yes.

11 Q. You talking about him being tasked to recover the
12 equipment and the clothing of the officers. You gave
13 that as a possible explanation why he didn't turn up to
14 Hayfield Road until 7.20?

15 A. Later, yes.

16 Q. 7.20. In his Inquiry statement -- we have not heard
17 evidence from Garry Sinclair but in his Inquiry
18 statement -- for those behind me copies of this will be
19 available in due course:

20 "Recovery of the clothing, footwear and officers'
21 safety equipment was not my responsibility but was
22 a discussion that was with DSI Harrower."

23 I am just wondering, because I had the impression
24 yesterday from yourself that the recovery of the
25 clothing was Garry Sinclair's responsibility?

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1 A. Yes, I said to you previously that we were under the
2 impression that had taken place very early, but I think
3 once we got to the office, that that hadn't been
4 completed, I don't know if had started and we had
5 discussions with Stuart Houston as the co-ordinator
6 regarding that. So my recollection is that basically as
7 part of the Hayfield Road scene, that Garry and his
8 colleague would bring that matter to a conclusion. And
9 as I say, that was in combination with the CS or PAVA
10 canisters that -- the additional requests that were made
11 in relation to them.

12 So that was my recollection of how that unfolded at
13 the time, and it was offered as a -- potentially
14 an explanation of that, but his sort of complete
15 involvement in that aspect, I didn't have great detail
16 of that, it was just he had ownership of that, the
17 Hayfield Road location.

18 Q. So as far as you were concerned he was there to help
19 with Hayfield Road?

20 A. Yes, he was going to scene manage that from the PIRC
21 perspective in liaison with the Police Scotland scene
22 manager.

23 Q. You had spoken yesterday about a briefing at Hamilton,
24 at your offices, on 3 May?

25 A. Yes.

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1 Q. From memory was it 11.55 or 12 o'clock during the day
2 that that briefing had taken place?

3 A. I could give you the times in the diary.

4 Q. You had talked about officer -- investigators coming to
5 Hamilton to collect vehicles, receive the briefing, and
6 maybe collect equipment, I think?

7 A. Possibly.

8 Q. Possibly?

9 A. Additional things that the scene managers may require,
10 I don't know -- because I don't think any of the on-call
11 staff were scene managers per se and that is why we had
12 the additional~...

13 What I meant to mention yesterday, when we spoke at
14 length about the time of response from initial call-out
15 to them arriving, that virtually all of the members of
16 staff that were called out stayed very close to
17 Hamilton, apart from one, whose -- I am sure his route
18 would come fairly close to that on the way back. Just
19 to again indicate, my thoughts were there is not a huge
20 amount of time lost and the benefits of doing the other
21 things and discussing the incident, giving them my
22 knowledge of that and then being able to consider that
23 en route was advantageous.

24 Q. Thank you. I think in your statement you have spoken at
25 one point about collecting production kits from PIRC's

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- 1 offices. Would that be the type of equipment --
- 2 A. That would be part of what the scene managers would have
- 3 at their disposal, as well as the other investigators
- 4 need that as well, but ...
- 5 Q. We have been in the process of getting a statement from
- 6 Kate Frame, the Commissioner at the time. And in part
- 7 of her statement she says that:
- 8 "There was some material contained in the on-call
- 9 kit which provided a cultural awareness of various
- 10 faiths and their related beliefs and practices."
- 11 We've not had any indication from other witnesses
- 12 that an on-call kit exists or what that is. We don't
- 13 hold that in evidence. Is that something that you are
- 14 aware of having at the time that is maybe no longer
- 15 used?
- 16 A. At that time, I am not sure. Certainly more recently we
- 17 have large black hard case boxes that would be termed as
- 18 an on-call kit that would have those sorts of items
- 19 within. What we had at that time, I am not quite sure.
- 20 I don't remember.
- 21 Q. Do you use that sort of thing now?
- 22 A. Yes, they would be in the -- either be in or would be
- 23 taken into whatever vehicles were getting used to go as
- 24 a ready-made location for, you know, the production
- 25 labels, bags --

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- 1 Q. Preserve evidence from the scene?
- 2 A. -- statement paper, whatever else -- tape, for assisting
3 taping off scenes. And other materials.
- 4 Q. Thank you. I would like to ask you something about --
5 I had discussed this yesterday with you about the death
6 message --
- 7 A. Yes.
- 8 Q. -- and the delivery of the death message by
9 Police Scotland officers.
- 10 A. Yes.
- 11 Q. I'm wondering, obviously you were lead investigator on
12 3 May regarding the death of Mr Bayoh. And I asked you
13 yesterday about delivery of the death message and
14 whether you thought there could have been a more active
15 role taken by PIRC in the delivery of that death
16 message, and I think you explained timing might be
17 difficult to do that. But do you think as the lead
18 investigator in the future you could have an opportunity
19 to contribute to the death message, perhaps to ensure
20 consistency, to ensure accuracy, about information that
21 is being given to the family?
- 22 A. I don't know, I think that is a difficult one because
23 obviously I emphasise the need for death messages to be
24 passed swiftly and efficiently. But how much
25 information has to be in that to begin with, I don't

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1 think -- it has to be significant, that hopefully that
2 will be followed up with the interaction and proper
3 communication at an early stage thereafter. But the
4 fact that that message is passed and the family don't
5 establish that information from elsewhere, so I think
6 that in itself negates, you know, the involvement of
7 PIRC in any way in that. That is -- to my mind it's
8 a police responsibility to do that and to do it within
9 a very reasonable timeframe.

10 Q. I am going to ask you this question but I think your
11 last answer probably answers it. Given -- looking back
12 now at the circumstances that existed on 3 May 2015, do
13 you think that PIRC, yourself as lead investigator,
14 should have been involved or could have assisted in
15 clarifying, identifying, what the family should and
16 could have been told and when they were told? Do you
17 think that is something that PIRC could or should have
18 been involved with?

19 A. I don't think so. As I say, the limited information
20 that would be passed initially, it is basically making
21 them aware that a family member is dead. Later on
22 different as far as, you know, how much information is
23 passed and at what stage and the relevance of that.

24 Q. So in a sense would you rely on the FLOs to provide --

25 A. Expand on it, once it is more factual, and the

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1 information -- because it just makes the situation worse
2 if, with the best of intentions, you are trying to give
3 the family more information but it transpires that that
4 is flawed, and incorrect. And you sometimes can't
5 recover from that.

6 MS GRAHAME: Thank you. Could you give me one moment
7 please. (Pause).

8 Thank you very much. That concludes my examination.

9 LORD BRACADALE: Thank you. Are there any Rule 9
10 applications?

11 Mr Harrower, will you withdraw to the witness room
12 while I hear submissions, please.

13 (The witness withdrew)

14 LORD BRACADALE: Ms Mitchell.

15 Rule 9 application by MS MITCHELL

16 MS MITCHELL: My Lord, in relation to a document which my
17 learned friend looked at, PIRC 03694, this is the
18 minute, the briefing note of 3 May and the witness was
19 asked about this in particular, the section about it
20 being reported that:

21 "They could clearly see he was in possession of
22 a knife and was making his way towards them~..."

23 Of course we know this not to be true, and in
24 evidence this witness said it wasn't as initially
25 reported in the early information that we had.

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1 We know from other witnesses that the first
2 24 hours, they are called the golden hours, are the most
3 important of an investigation. In the early hours of
4 the investigation this was what was being -- this was
5 what was understood, and the question that I would like
6 to ask is: did he become suspicious that someone at some
7 point had suggested that officers had clearly seen him
8 in possession of a knife when he in fact had no knife?
9 Did this cause him to investigate who said this and why?
10 And finally, had this been an Inquiry in relation to
11 civilians and he had come across this information and
12 then such a change, would it have caused him to examine
13 the issue further?

14 LORD BRACADALE: Can you say that last bit again.

15 MS MITCHELL: Certainly: had it been an Inquiry in relation
16 to civilians, when he had come across evidence or he
17 understood the early evidence to be that a man
18 approached holding a knife and then had come to find out
19 that wasn't the evidence, would that have caused him to
20 investigate further?

21 What I am seeking to do there is test whether or not
22 there was some kind of different standard applied in
23 relation to civilians as it was in relation to the
24 officers that were there. I would respectfully submit
25 it would seem likely if police officers had heard

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1 at an early stage that someone had a knife and came
2 towards them and then, from whatever source, that story
3 changed, that might be something that would make
4 an investigating officer want to enquire about it more.
5 So that is the basis of that question.

6 The next question I would like to ask of the
7 witness, which I don't think was covered -- forgive me
8 if I am wrong in this regard -- was: were you aware that
9 it had been said that the police officers would not give
10 a statement until the outcome of the post mortem had
11 been done, and if so did you discuss this with the Crown
12 representative Dave Green?

13 The next questions arise under the discussion that
14 my learned friend had in respect of PIRC 04182, that is
15 the document which sets out various questions for the
16 police officers, the investigations. And in respect of
17 the heading, "Arrest and restraint", what I would like
18 to ask him is if a black man had died after being
19 detained by officers after restraint, it would
20 presumably be important to ask how he was restrained,
21 which officer restrained him and to ask them to describe
22 what they did and what they saw others do in respect of
23 the restraint, and with reference to that document there
24 simply are none of those questions asked.

25 The next and final issue relates to questions that

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1 were asked by my learned friend in connection with
2 Kate Frame and Dr Karch. He was asked whether or not
3 the Commissioner or anyone else in PIRC came back to him
4 about matters around about the November of that year to
5 ask further questions about it, and his answer was that
6 he did not have any recollection of that, no.

7 There is a document PIRC number 01856(A) and that is
8 a letter from Kate Frame to solicitors Aamer Anwar & Co
9 that records that Ms Frame did have a conversation with
10 DSI Harrower about this, and sets out that there appear
11 to have been what is described as:

12 "... a misinterpretation of SI Harrower's rehearsal
13 of a conversation which in turn has led to a phrase
14 'eminant and expert practitioner' being erroneously
15 referred to."

16 What I would like to ask him about this matter if it
17 jogs his memory any was, first of all, why he didn't
18 stay with the samples. My learned friend obtained from
19 him confirmation he didn't stay with the samples but
20 didn't ask why he didn't stay with the samples or ought
21 he to have stayed with the samples, whether or not he
22 told Dr Cary that he was going sightseeing in Norwich
23 and whether or not it prompts his memory in any way if
24 I put that part of the letter from Kate Frame to him to
25 see whether or not that jogs his memory in relation to

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1 those discussions having been had.

2 LORD BRACADALE: Could you just go back to your first point
3 and clarify it a little bit more?

4 MS MITCHELL: Yes, certainly. We have heard evidence about
5 how important it is to gather evidence at an early stage
6 in proceedings, and I think it was Detective
7 Chief Inspector Keith Hardie that said that the golden
8 hours, the first 24 hours, are your best opportunities
9 to gather evidence. The earliest briefing note we
10 appear to have on 3 May says:

11 "It was reported that, as officers drove into
12 Hayfield Road, they saw the now --"

13 LORD BRACADALE: Can I just clarify, is that the briefing
14 note that he provided to his superior officers? The one
15 we were discussing this afternoon, the printed one?

16 MS MITCHELL: Yes, it's a printed one. Yes.

17 LORD BRACADALE: For the attention of the managing officer
18 or something like that?

19 MS MITCHELL: Indeed, I think so.

20 LORD BRACADALE: That is the one you are talking about?

21 MS MITCHELL: Yes. 03694 is the PIRC reference number.
22 I am just asking someone to check to ensure that is
23 the right one. The evidence of this witness was that
24 the collective had provided information which was
25 assimilated together and that collective provided

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1 information which was put in the briefing note of 3 May
2 which said:

3 "It was reported that, as the officers drove into
4 Hayfield Road, they saw the now deceased coming towards
5 them as the vehicles came to a halt. They could clearly
6 see he was in possession of a knife and was making his
7 way towards them."

8 Really what I am wanting to ask is it became clear
9 to him at a later stage that that was not the case.

10 LORD BRACADALE: Is there any evidence of that?

11 MS MITCHELL: He says at 108/12:

12 "... the knife had been recovered and potentially
13 that wasn't as initially reported in the early
14 information that we had."

15 So that is the evidence he gave to this Inquiry.

16 LORD BRACADALE: Did he say when he had received that
17 information?

18 MS MITCHELL: I don't think so. He just said:

19 "... the knife had been recovered and potentially
20 that wasn't as initially reported in the early
21 information that we had."

22 I'm afraid he doesn't specify a time. But
23 regardless of when it was, my Lord, I would respectfully
24 submit that the question holds good, which is: if you've
25 heard that and then you hear a different story, would

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1 that not cause you to make further enquiries as to why
2 you heard that first story in the golden hours and then
3 it changed to something else? Why was that story being
4 put about by someone?

5 I would respectfully submit that a question in that
6 regard would be appropriate, and also to ask: had it
7 been an enquiry in relation to civilians, would it have
8 caused him to examine it further? Those are my
9 questions, my Lord.

10 LORD BRACADALE: Thank you.

11 MS MITCHELL: I am obliged.

12 LORD BRACADALE: Ms McCall.

13 Rule 9 application by MS MCCALL

14 LORD BRACADALE: Yes, Ms McCall.

15 MS MCCALL: Sir, it is an issue that arises in this
16 afternoon's evidence, and it's the transcript at
17 page 126 to 127. There were questions from senior
18 counsel to the Inquiry that appeared to suggest that
19 PIRC investigators may have felt constrained in asking
20 anything beyond the questions set out in the interview
21 strategy. There was also a question about why the
22 officers were not asked to justify their use of force in
23 terms of that interview strategy.

24 In that context Ms Grahame made reference by way of
25 example to Ross Stewart's interview of Sergeant Maxwell

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1 and an apparent quote from Mr Stewart's Inquiry
2 statement which is SBPI 00448, which in fact is a Rule 8
3 response. An apparent quote from that was put to the
4 witness, and the suggestion that was put was that,
5 because Mr Stewart was a less experienced investigator,
6 he may have benefitted from a more fulsome strategy
7 document.

8 Following the quote attributed to Ross Stewart,
9 which is on page 124 at line 24 to page 125, line 11 of
10 the transcript, the witness was asked to comment.

11 The issue is this, sir: the quote was presented in
12 the form of a single quote when in fact it comprised two
13 sentences that come from different parts of Mr Stuart's
14 Inquiry statement. That approach results, in my
15 respectful submission, in a misleading impression of
16 Mr Stewart's actual evidence. In fairness to this
17 witness, to Mr Stewart and in particular from my
18 perspective to Sergeant Maxwell, I want to put the
19 accurate individual quotes to the witness and ask
20 whether he thinks there was in fact any difference in
21 his approach at the interview to that taken by
22 Ross Stewart and whether he thinks the interview
23 strategy in light of that did actually constrain
24 investigators or not.

25 If your Lordship requires the source of the quotes,

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