

Transcript of the Sheku Bayoh Inquiry

Thursday, 15 February 2024

1

2

(10.00 am)

3

LORD BRACADALE: Good morning, Mr McSporran. Would you take

4

the oath.

5

MR JOHN MCSPORRAN (sworn)

6

LORD BRACADALE: Ms Grahame.

7

Questions from MS GRAHAME

8

MS GRAHAME: Thank you. Good morning, Mr McSporran.

9

A. Good morning, ma'am.

10

Q. You are John McSporran?

11

A. Yes.

12

Q. What age are you?

13

A. I am 65.

14

Q. To go through just some of your background experience,

15

you joined the police in 1982?

16

A. Yes.

17

Q. You have given a detailed history of your career in

18

paragraph 1 of your Inquiry statement that we will come

19

to in a moment.

20

A. Yes.

21

Q. And the Chair can reflect on that at some point.

22

I think by about 1992 you were a sergeant and then

23

a detective sergeant in Glasgow?

24

A. Yes.

25

Q. In 1996 you joined Special Branch?

26

A. Yes.

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1 Q. In 2000 you were promoted to detective inspector in
2 charge of Scotland's police counter terrorism
3 surveillance capability and led surveillance operations?

4 A. Yes.

5 Q. In 2004 you were promoted to detective chief inspector
6 in charge of Special Branch?

7 A. Special Branch Special Operations.

8 Q. You were then seconded in work for the UK Government to
9 work in Africa, and in early 2005 you were posted to
10 Sierra Leone?

11 A. Yes.

12 Q. In 2006 you returned from Sierra Leone and you were
13 promoted to detective superintendent in charge of CID in
14 Ayrshire division?

15 A. Yes.

16 Q. That included, as I understand it, being SIO in murder
17 investigations?

18 A. Yes.

19 Q. You had completed the SIO course and the review of major
20 investigations course?

21 A. Yes.

22 Q. You were later transferred to take charge of covert
23 special operations targeting terrorist and organised
24 crime groups, and supporting murder investigations?

25 A. Yes.

26 Q. You were a technical firearms commander and you were

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- 1 policy lead for UK policing on data communications?
- 2 A. Yes.
- 3 Q. You also undertook sensitive enquiries directed by the
4 Crown Office into allegations of racism and religious
5 abuse by members of football clubs?
- 6 A. Yes.
- 7 Q. You have been involved with enquiries into allegations
8 of racism?
- 9 A. Yes.
- 10 Q. In 2009 you were transferred to take charge of what was
11 then a newly established major investigations team and
12 you were SIO in category A murder enquiries and complex
13 crimes?
- 14 A. Yes.
- 15 Q. You retired from the police in 2012?
- 16 A. Yes.
- 17 Q. And then you were recruited, along with another, to the
18 police complaints commission Scotland and that was the
19 predecessor to PIRC?
- 20 A. Yes.
- 21 Q. PIRC -- it was created on 1 April 2013?
- 22 A. That is correct.
- 23 Q. Have you had the chance to watch any of the other
24 evidence in the Inquiry at all?
- 25 A. I have.
- 26 Q. So you will know that in front of you there should be

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1 a folder, and this contains a number of documents
2 including statements and suchlike. If you prefer to use
3 hard copies those are there and available for you. But
4 my plan today is to put things on the screen in front of
5 you, and as we are going through pages of documents,
6 they will be on the screen, and if you are happy to do
7 so, you can simply look at the screen and I will ask you
8 questions in relation to what we see.

9 A. Thank you, ma'am.

10 Q. If there is anything that you think we should have or we
11 should have available, we will try and find it. If
12 there is an issue with that or we can't immediately lay
13 our hands on it we will be able to get it at the next
14 break. So if there is anything that you are aware of
15 that you think might help us understand the position,
16 please let me know and we will do our best to get that.

17 A. Thank you.

18 Q. Can we put your Inquiry statement on the screen. This
19 is actually a written response prepared by you in
20 relation what is known as a Rule 8 request from the
21 Inquiry team.

22 A. That is correct.

23 Q. But to make it easier, for me primarily, I am calling
24 these Inquiry statements, and this is your Inquiry
25 statement if I can call it that.

26 A. Yes, ma'am.

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1 Q. So your name is at the top, and it is 57 pages long. It
2 has been signed by you on every page; is that correct?

3 A. That's correct, ma'am.

4 Q. If we look at the last page we will see that it was
5 signed on 16 August 2023. Your signature is redacted,
6 you can see it on the screen, we have the final page on
7 the screen now. So you can see that, signed on
8 16 August?

9 A. Yes, ma'am.

10 Q. We have redacted your signature, but the copy that you
11 have just looked at has your actual signature showing on
12 it.

13 A. That's correct, ma'am.

14 Q. Just above that signature there is a paragraph that
15 says:

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

20 You knew that when you signed it?

21 A. Yes, ma'am.

22 Q. As we mentioned a moment ago you retired in 2012 and
23 were recruited by the then PCCS and then joined PIRC,
24 when it became PIRC, you were part of it on
25 1 April 2013.

26 A. Yes.

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1 Q. How soon after you had retired from the police did you
2 join PCCS?

3 A. Approximately three months.

4 Q. There is other evidence available to the Chair that
5 a number of people were employed prior to PIRC formally
6 commencing. And part of their role was to help set
7 things up, and get the team established. Was that part
8 of what you were doing at the time?

9 A. Yes, initially there was only one person to set up
10 investigations, that was Mr John Mitchell, who
11 I understand you will see later. I was the second
12 person recruited to do that.

13 Q. Sometimes with the microphones, they are not as loud.
14 Perhaps the person sitting next to you could assist and
15 maybe bring that slightly closer and we will see if that
16 helps, because you are quite quietly spoken and everyone
17 in the room needs to hear.

18 A. Sorry.

19 Q. That is a lot better. That is perfect. Good. We may
20 be hearing from Mr Mitchell later in the Inquiry that he
21 helped set up. Was he there when you joined?

22 A. Yes.

23 Q. Thank you. I think in your Inquiry statement you say
24 that PIRC were funded by the Scottish Government?

25 A. Yes.

26 Q. And there was sufficient monies to set up a team, to

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- 1 recruit a team of investigators, and that there were
2 around 20 people or so to cover Scotland?
- 3 A. Initially there was 20 investigators, a head of
4 investigations, who was Irene Scullion, and a director
5 of investigations, John Mitchell. So 22 in all but the
6 investigations were 20 people.
- 7 Q. This was a new team, investigations was then brought
8 into a new organisation called PIRC?
- 9 A. Yes.
- 10 Q. And as I understand it, that was partly to take account
11 of Article 2 of the European Convention on Human Rights?
- 12 A. Yes. I think I mention it in my statement, that -- and
13 you went over it previously during the Inquiry, the five
14 principles for independent investigation when Article 2
15 and Article 3 are engaged.
- 16 Q. Thank you. We will come on to that again. Then, as
17 I understand it, you were initially
18 a senior investigator with PIRC?
- 19 A. Yes.
- 20 Q. We've already heard evidence from Mr Keith Harrower and
21 Mr Billy Little, who were deputy senior investigators?
- 22 A. Yes.
- 23 Q. And they have said you were more senior than they were?
- 24 A. Yes, initially there was two senior investigators,
25 myself, and I think it has been mentioned before,
26 Mr Casey.

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1 Q. Yes. We have heard about Richard Casey, I think known
2 as Ricky?

3 A. Yes.

4 Q. Then since 2017 am I correct in saying you have been
5 their head of investigations.

6 A. Yes, since 2017. I retired on 31 August last year.

7 Q. So you were head of investigations from 2017, up until
8 the end of August last year?

9 A. Yes.

10 Q. And you are now retired?

11 A. Yes.

12 Q. Thank you. I think in your Inquiry statement you say in
13 your role within PIRC you have directed or overseen over
14 200 death investigations?

15 A. Yes, I did the maths when I committed it to paper, so
16 overall 271 death investigations.

17 Q. Is there a distinction between directed and overseeing,
18 that you could explain to us?

19 A. Yes, so there are two types of death investigations,
20 there's Crown-instructed death investigation and there
21 is a police-referred death instruction. So if Crown
22 instructs we must investigate. If police refer we don't
23 necessarily have to investigate, it will be dependent on
24 the circumstances. So in a police-referred one you will
25 do an assessment to determine whether you need to
26 investigate or are required to investigate.

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1 So the number of investigations or number of
2 referrals does not necessarily equate to the number of
3 actual investigations, because of that assessment
4 process. So when the referral comes in you will assess
5 it, you will ask for additional material, potentially
6 statements, etc, to undertake that assessment to decide
7 whether you are going to investigate it.

8 So that is the assessment phase. I was engaged in
9 most assessments, or the signing off of a lot of
10 assessments. Equally, I would take part in the
11 investigation or I would lead the investigation. So
12 there's various stages across that, that is why 271
13 sounds a large number but the actual number of
14 investigations would be less than that.

15 Q. Of the 271 how many were Crown-led investigations, which
16 had to be investigations and how many were referrals
17 from the Chief Constable?

18 A. That varies. Initially there were more referrals from
19 the police. Now I think the majority tend to be Crown
20 directed. Equally where we get a referral in from the
21 police, and we think it should be investigated, what we
22 may do is actually notify Crown and see whether they
23 then wish to direct. If they don't, we can proceed to
24 investigate anyway, but a Crown direction always trumps
25 a police-referred investigation.

26 Q. If the Crown sends you an instruction, you have to

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- 1 investigate?
- 2 A. Yes.
- 3 Q. So of those 271 referrals or investigations, how many
4 were actual investigations that you were involved in?
- 5 A. I can't say precisely. What I did do in the preparation
6 of my Rule 8 statement was examine how many I had been
7 involved in since PIRC came into being on 1 April 2013
8 up to 5 May, the date of Mr Bayoh's death, and I think
9 there was about~... just over 50. That is assessments,
10 referrals, and investigations. The actual number of
11 investigations that I had been involved in up to that
12 point was 22 death investigations.
- 13 Q. Of those death investigations -- 22 death investigations
14 that you were involved in, how many involved deaths in
15 police custody or deaths following police contact?
- 16 A. I don't think I broke it down in my Rule 8 statement so
17 I couldn't give you a precise number. Deaths in custody
18 are twofold, so what most people would understand is
19 a death in a police cell and then as soon as somebody is
20 arrested or restrained or whatever they are actually
21 in effect in custody, and therefore if that person dies
22 that is a death in custody. Then you've got death
23 following police contact. So I don't think I broke it
24 down, I didn't undertake that analysis when preparing my
25 Rule 8 statement.
- 26 Q. I appreciate you can't give us a precise figure. From

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1 your recollection now, are you able to give us
2 an indication?

3 A. Probably half and half, about 50/50. That is a rough
4 estimate.

5 Q. So of the 22 deaths, about half were deaths in custody?

6 A. Yes.

7 Q. And half were deaths following police contact?

8 A. Yes.

9 Q. And as you have said, were some deaths in cells?

10 A. Some deaths are in cells but it's considered as soon as
11 a person is arrested or restrained, they are actually in
12 custody, they are no longer free to go about their
13 business, so that is the definition of in custody.
14 Therefore, if the person then dies, that is a death in
15 custody.

16 Q. So if around 11 were deaths in custody or thereabouts?

17 A. Yes.

18 Q. Can you, again reflecting back, indicate how many were
19 deaths in cells, and how many were not?

20 A. That varies year-on-year. Some years you can get four
21 deaths in police cells, some years you might just get
22 one. Going back to 2013, 2014, 2015, I couldn't give
23 you a precise number.

24 Q. Do you have an impression now of whether there were more
25 deaths in cells than deaths during a restraint or
26 involving officers?

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1 A. I think certainly things have progressed and advanced.
2 That is one of the roles of PIRC is to identify
3 challenges, procedural problems, where things can be
4 improved, and to make recommendations to the police.
5 Some of that may arise from the investigation of deaths
6 in custody. So, for example, high risk prisoners are
7 put on constant observations, we've made a number of
8 recommendations to improve how constant observations are
9 undertaken, so that the officers doing the constant obs
10 don't miss something and place the person at increased
11 risk because they are a high risk prisoner. So that is
12 part of the role of PIRC is learning and improvement,
13 and also making recommendations to Police Scotland so
14 that they can develop and improve and lessen the risk
15 that these things happen.

16 Q. So in that period between 1 April 2013 when PIRC was
17 created initially and 3 May 2015, so in that period
18 prior to the death of Mr Bayoh, can you help us
19 understand how many involved deaths where the police
20 were involved in a restraint that you had been involved
21 in?

22 A. I can't give you a precise figure. I think part of the
23 challenge when I was doing my Rule 8 statement was going
24 back over the statistics, and a lot of the statistics
25 from that period the numbers existed but the actual
26 circumstances were no longer recorded and that is

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- 1 the difficulty I have in being precise about this.
- 2 Q. All right. Thank you. But you were involved with the
3 investigation into the death of Mr Bayoh?
- 4 A. Yes.
- 5 Q. You were also involved at a later date into the fatal
6 shooting of an asylum seeker in the hotel in Glasgow?
- 7 A. Yes.
- 8 Q. And you have been involved in other major PIRC
9 investigations, you have said?
- 10 A. Yes, ma'am.
- 11 Q. Your statement indicates you were a trained
12 post-incident manager?
- 13 A. Yes.
- 14 Q. Was that prior to May 2015 or after?
- 15 A. Prior to it.
- 16 Q. Prior to it. And we have heard that some of the PIRC
17 investigators were what they call PIM-aware but you were
18 actually a trained post-incident manager yourself?
- 19 A. Yes, I went down to an English force, from memory
20 I think it was Bedfordshire, what -- between PIRC and
21 Police Scotland, who run the PIM course, we organise one
22 day's training for PIRC investigators, to raise their
23 awareness of the post-incident procedures, the PIM
24 process.
- 25 Q. You have attended numerous post-incident procedures
26 following deaths in custody, you said?

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- 1 A. Deaths in custody, deaths following police contact,
2 fatal shootings, other police shootings.
- 3 Q. Then you have also told us that you were asked to
4 undertake a review of the -- what is now the IOPC in
5 England and Wales and you also investigated the
6 Hillsborough Inquiry?
- 7 A. The IOPC or the IPCC, as it was at the time, asked PIRC
8 to undertake a review of their Hillsborough
9 investigation to see what lessons or improvements could
10 be made, so myself, John Mitchell, Brian Dodd, and
11 I think Billy Little, we went down. I authored the
12 report which was submitted to the IPCC now the IOPC,
13 identifying various -- providing recommendations for
14 areas that they may wish to consider to improve the
15 investigation.
- 16 Q. Do you recall when that was?
- 17 A. I have it in my head it was 2014 but it might have
18 been ... 2014, 2016, round about that time period.
- 19 Q. Was it before or after Mr Bayoh's death?
- 20 A. I can't recall.
- 21 Q. I would like to ask you about three documents, and you
22 have mentioned Article 2 and the importance of that to
23 PIRC.
- 24 A. Yes.
- 25 Q. I would like you to look at three documents, which
26 I have referred Mr Harrower and Mr Little to, so you

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- 1 probably have seen me do that.
- 2 A. Yes, ma'am.
- 3 Q. These will come up on the screen. The first is
- 4 PIRC 04446. You will see that this is dated
- 5 12 November 2012. It is entitled.
- 6 "Police Investigations and Review Commissioner.
- 7 "Operational model.
- 8 "Response to Article 2 investigations."
- 9 A. Yes.
- 10 Q. Do you recognise that document?
- 11 A. I do.
- 12 Q. Was this a document that was in place by the creation of
- 13 PIRC in April 2013?
- 14 A. Yes.
- 15 Q. Had you had any training or guidance in relation to this
- 16 document?
- 17 A. Not so much training or guidance but certainly I had
- 18 read the document, and I also researched the stated
- 19 cases by the European Court in relation to Article 2 and
- 20 Article 3 matters.
- 21 Q. Thank you. Just in general what was the importance of
- 22 Article 2 to PIRC?
- 23 A. I think it's one of our primary functions because there
- 24 have been -- as you are well aware, ma'am, you are more
- 25 schooled in the law than I am -- but since 2007 and
- 26 before that, there has been decisions by the

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1 European Court that the police cannot investigate
2 themselves in respect of a death in police custody or
3 death following police contact. That investigation
4 needs to be independent, effective. I think the key
5 decision was from memory Ramsahai v Netherlands in 2007,
6 and in 2009 you had decisions by the European Commission
7 for Human Rights in respect of Article 3 investigations
8 and then in 2010 you had the paper you have referred to
9 throughout this Inquiry, the recommendations and the
10 five principles from the European Commissioner for
11 Human Rights.

12 Q. Thank you. Let's go on to page -- page 2, paragraph 5
13 I am interested in. We have heard some evidence about
14 this document so I won't take you to every paragraph but
15 you will see paragraph 5 says:

16 "The Human Rights Act 1998 and obligations imposed
17 under Article 2 apply equally to the [police,
18 Crown Office] and PIRC. Where Article 2 is engaged the
19 Police Service have a duty to ensure that they conduct
20 themselves in a manner that is consistent with the five
21 procedural obligations that the courts have held to
22 exist.

23 These are then listed in bullet points and the first
24 is:

25 "The investigation must be independent insofar as it
26 should have no hierarchical or institutional connection

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1 to those implicated."

2 A. Yes.

3 Q. The second is:

4 "The investigation must be effective."

5 Now, these are in bold in this document.

6 A. Yes.

7 Q. You will see that in the paragraph under it, it says:

8 "So far as this document is concerned it is the
9 first two obligations that are relevant and which must
10 be observed by the [police] and PIRC under direction of
11 [the Crown]."

12 We have heard that those were very significant
13 obligations on PIRC but that wasn't to say the other
14 three should be ignored?

15 A. No.

16 Q. Do you agree with that?

17 A. I do agree with that. Part of it, if we look at the
18 fourth bullet point:

19 "There must be a sufficient element of public
20 scrutiny."

21 Of course, in respect of a Crown-directed
22 investigation we refer all matters to Crown, we don't
23 publish those sort of details, so that is
24 the restriction there. If it is a police-referred
25 matter we can publish. And involvement of the next of
26 kin, that is key.

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1 Q. Why do you say that is key? Because obviously I didn't
2 read the final three:

3 "The investigation must be reasonably prompt.

4 "There must be a sufficient element of public
5 scrutiny."

6 And it says:

7 "The next of kin must be involved to an appropriate
8 extent."

9 Why do you say that is key?

10 A. Because they are the relatives of the deceased.

11 Invariably they are traumatised by the death, hugely
12 upset, and you need to involve them, you need to inform
13 them. That is why we have the whole family liaison
14 officers, to support the family of the deceased. It is
15 key.

16 Q. Thank you. Can we look at page 8 now. Just very
17 briefly. We see here, "Additional advice for staff".
18 This is in a section called:

19 "PIRC investigators guidance note. Referrals
20 involving the police use of firearms."

21 Page 8 says:

22 "If the indications are that the guidance is not
23 going to be complied with we should explain to officers
24 that, in relation to the use of lethal force they should
25 record their honestly held belief why they used the
26 force and we should make it clear that conferring is not

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1 necessary when recording their own belief. We must be
2 clear that we are not seeking for officers to be
3 separated and we understand that they are entitled to
4 legal advice."

5 There is a few matters there.

6 A. Yes, that is largely coming from the PIP/PIM process.

7 Q. We have asked some witnesses about what happened to the
8 officers on 3 May 2015. They were taken back to the
9 canteen at Kirkcaldy Police Office, but not separated.
10 There's some guidance within this document about
11 conferring and separation.

12 A. Yes. The officers -- there has been a debate,
13 particularly in England and Wales, about separating
14 officers following death in custody, fatal shootings.
15 However, I think it has been held that it is very much
16 a matter for the police. As long as there are processes
17 in place to ensure that the officers don't confer and
18 they are given the warning against conferring, and you
19 are ensuring that integrity of the process, that you
20 don't leave them alone so they have got the opportunity.
21 That is part of the PIP process which is -- it's
22 a police process but you have the post-incident manager,
23 you have their deputy, you've got support staff or other
24 officers that come in.

25 I have been involved in -- well, you mentioned the
26 fatal shooting of the asylum seeker in the hotel in

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1 Glasgow. In that case we had 53 key police witnesses,
2 so you have got to find accommodation for them, you need
3 multiple PIMs and support staff, you need multiple PIRC
4 investigation teams, and right upfront they should be
5 given the warning against conferring, sometimes that
6 warning might be broadcast over the radio, sometimes we
7 are travelling a distance to -- for example, there was
8 a shooting in Inverness, I was travelling up to
9 Inverness, I spoke to the post-incident manager,
10 I said: have you given the warning about conferring yet?
11 Not yet. Do it. Get it done over the radio. Because
12 officers were in different stations and record the fact
13 that it is done.

14 Q. Right. There is a recognition in that paragraph that it
15 says:

16 "We must be clear that we are not seeking for
17 officers to be separated and we understand that they are
18 entitled to legal advice."

19 A. Yes, legal advice is part of the PIM process. Should
20 they require it.

21 Q. And PIM recognise that that is an option for officers
22 who may wish to take legal advice?

23 A. Yes. I have been to -- I think sometimes we -- PIP and
24 PIM become interchangeable, so PIP is the process,
25 post-incident procedures, PIM is the post-incident
26 manager. But sometimes people think it is post-incident

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1 management, so it's interchangeable sometimes.

2 So I have been to post-incident procedures following
3 deaths where there was -- the officers didn't require
4 and didn't seek legal advice, equally I have been to
5 post-incident procedures where the officers did seek
6 legal advice. It is very much a matter for the officers
7 themselves to decide.

8 Q. It then goes on to say:

9 "Each case will have to be dealt with on its own
10 merits, the underlying principle will be to ensure that
11 our investigation is as effective as it possibly can
12 be."

13 That is one of the five principles that you want to
14 carry out?

15 A. Yes.

16 Q. Not just an independent investigation, but also
17 effective or adequate?

18 A. Yes.

19 Q. "If investigators are confronted with an unwillingness
20 to comply the relevant senior PIRC representative should
21 be consulted."

22 So there is a recognition that there might be some
23 unwillingness on the part of officers but the senior
24 PIRC representative should be consulted?

25 A. Yes. The only example we have is the case of Mr Bayoh's
26 death, in all other cases we have been involved in the

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1 officers have always given initial accounts or detailed
2 statements. This is the only one that that has not
3 happened.

4 Q. Is that your experience throughout your career?

5 A. Yes.

6 Q. We've heard that the PIP, the process, envisages
7 different steps and procedure, and one of them is
8 initial -- basic facts?

9 A. Yes.

10 Q. Then initial accounts, and then a more detailed
11 statement which can be taken around 48 hours later,
12 after the event?

13 A. Yes, and I think that comes from studies to show that
14 when you have a critical incident, when you are involved
15 in let's say a fatal shooting or something like that, to
16 a certain extent sometimes you get tunnel vision because
17 you are focusing on the emergency in front of you, and
18 your memory immediately after that is just the focus on
19 that critical area. But I think studies have shown that
20 with the passage of 48 hours a lot of memory of other
21 events comes back and that is why you want the detailed
22 statement 48 hours later. The initial account is very
23 much to allow the progress of the investigation, so the
24 first thing is you have got sit rep, that is stage one.

25 Q. Sorry, I didn't catch that?

26 A. Sit rep, situation report. A lot of times that from the

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1 STORM log, and I think we have heard about STORM logs.
2 So that is the situation report and the PIM will obtain
3 that. Next thing is a PIM basic facts. So the
4 post-incident manager will get an account from one of
5 the officers, preferably not the key officer that was
6 involved in the use of force or the discharge of
7 firearms but one of the other officers, trying to get
8 basic facts as to what occurred. And then initial
9 accounts from the officers or staff. The initial
10 accounts are just very brief, usually no more than one
11 or two pages, just about. For example: I went, I saw
12 I did, and this is my honestly held belief of my reason
13 to use force, of the necessity to use force. And it's
14 as basic as that.

15 That then gets passed to, for example ourselves, to
16 allow us to progress the investigation, therefore we
17 have an understanding broadly of what has occurred. And
18 that gets handed to us. And then with the passage of
19 48 hours, the officers supply what they call their stage
20 four accounts which is their detailed accounts.

21 Q. Thank you. So going back for a moment to basic facts,
22 you have said it wouldn't be the officers directly
23 involved. Could that be, for example, the
24 police sergeant in charge of the response team, who
25 would go and maybe it's the response team members who
26 carry out a restraint or use force, but he was not -- he

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1 was not directly involved with the restraint and the use
2 of force?

3 A. Yes. So broadly if somebody is hands on, for want of
4 a better expression, or the persons that has discharged
5 the shots, the fatal shots, etc, you want somebody that
6 has not been hands on or discharged the fatal shots.
7 That usually comes from one of the other officers that
8 has been there and has observed what has happened.

9 Q. So someone who was maybe standing by and observing, but
10 not directly involved with what is going on in relation
11 to the incidents of force?

12 A. Yes.

13 Q. And initial accounts, would the process envisage that
14 they would be taken from all the officers involved?

15 A. Initial accounts are usually obtained from what they
16 term key police witnesses, so that is officers that are
17 directly involved in the incident. An officer that is
18 not directly involved but may have played a peripheral
19 role, they are not held to be a key police witness, they
20 are not part of the PIP process therefore operational
21 statements could be requested from them immediately, and
22 that would be full operational statements.

23 Q. So in this scenario involving Mr Bayoh, we have heard
24 that there were nine officers who attended the scene but
25 we also heard about other officers who arrived slightly
26 later, towards the end of the incident, one was

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- 1 a detective sergeant and one was a detective constable?
- 2 A. Yes.
- 3 Q. So they were at the scene but not directly involved with
4 the restraint itself?
- 5 A. I think also Sergeant Maxwell, who turned up, he was the
6 shift sergeant -- Temporary Sergeant Maxwell as he was
7 at the time. But he didn't go hands on, therefore
8 preferable because the two detectives that turned up
9 didn't see the initial -- what had happened, they turned
10 up slightly afterwards. So potentially Sergeant Maxwell
11 would be the best placed to provide that, the basic
12 facts. Because from my recollection, six officers went
13 hands on with Mr Bayoh, you had PC Short injured and
14 going to hospital. So probably Sergeant Maxwell would
15 be the best person to give the PIM basic facts or to
16 obtain the PIM basic facts from.
- 17 Q. In terms of initial accounts, key officers, would that
18 be the officers involved in the restraint?
- 19 A. Yes.
- 20 Q. And then detailed accounts or statements from everyone
21 present, would that be envisaged at 48 hours?
- 22 A. Yes. Of the nine principal officers, you would expect
23 detailed statements within -- well, with the passage of
24 48 hours. DC Connell and DS --
- 25 Q. Davidson?
- 26 A. -- Samantha Davidson, I think they gave accounts,

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1 detailed accounts, shortly thereafter, because I am
2 aware DC Connell provided a statement to us, I think his
3 statement was dated the 4th, so that is the next day.
4 He is the one that actually recovered the knife, but he
5 hadn't been hands on or involved in the restraint or the
6 incident therefore he provided an operational statement.
7 I don't know what is -- the Inquiry reference number is
8 but from memory it was statement 22A, taken by PIRC
9 during the course of the Bayoh investigation.

10 Q. We have those numbers but we use our own numbers
11 unfortunately. Thank you. Let's move on from that
12 document that we see on the screen and I would like to
13 refer you to another document please and this is
14 a memorandum of understanding which is PIRC 04453. If
15 we can move up the page we see:

16 "Memorandum of understanding between Crown Office
17 and PIRC."

18 If we go to the very end of this document first of
19 all -- sorry, there are appendices at the rear, so if we
20 can move back up, please. We will see that this
21 document was signed, the actual signatures are redacted
22 but it was signed for PIRC on 10 December 2013, and
23 signed on behalf of the Crown Office on
24 11 December 2013. So this document had been signed and
25 agreed prior to the events in May 2015?

26 A. Yes. It has been revised a few times, and developed as

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1 familiarity with PIRC and our role -- and our role has
2 expanded so it has been revised over -- a few times.

3 Q. We understand this is the document that was --

4 A. In force at the time.

5 Q. -- in force in May 2015?

6 A. Yes, ma'am.

7 Q. Let's go to the top. We noticed the first page. If we
8 could start looking at the next section. Memorandum of
9 understanding, and you will see on page 2 which we are
10 on, if we move down:

11 "Role of Crown Office~..."

12 And then it says:

13 "PIRC statutory responsibilities."

14 I think you have spent some time in your Inquiry
15 statement explaining the statutory responsibilities and
16 how the statute worked in practice?

17 A. Yes. The legislation, I think as I have said later on
18 in my Rule 8 statement, is incredibly complex and not
19 easily understood. As you are aware, dependent on the
20 nature of the referral to PIRC, if it comes from Crown
21 we have certain powers, if it comes from the police we
22 have slightly different powers. And it is difficult to
23 disentangle all this because it is really quite complex.

24 Q. We see at the bottom of that page, if we can just move
25 down slightly, you can see that we have heard there can
26 be referrals from the Chief Constable?

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- 1 A. Yes.
- 2 Q. And there are Crown-led investigations?
- 3 A. Yes.
- 4 Q. And we can see here -- if we can just see the numbers,
5 it's section 2.1 of this document and it refers to
6 section 33A of the 2006 Act, and if we look at (b) this
7 relates to where it's direct -- where PIRC is directed
8 by the appropriate prosecutor, so this would be the
9 Crown-led element of the statute?
- 10 A. Yes.
- 11 Q. And there are two paragraphs. The first we can see here
12 which is (b) (i):
- 13 "To investigate any circumstances in which there is
14 an indication that person serving with the police may
15 have committed an offence."
- 16 I think that is what other witnesses have described
17 as investigating alleged criminal allegations or
18 a potential crime?
- 19 A. That is right.
- 20 Q. So that is Crown-led, into a potential crime?
- 21 A. Yes.
- 22 Q. And then (b) (ii), which others have referred to, is
23 about investigating:
- 24 "... the circumstances of any death involving
25 a person serving with the police~..."
- 26 And that is an investigation into circumstances of

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1 a death --

2 A. Yes.

3 Q. -- where there has been police involvement?

4 A. Yes.

5 Q. So (b)(i) is the criminal allegations and (b)(ii) is

6 investigating circumstances?

7 A. Yes.

8 Q. And I think you have spent time explaining that in your

9 statement?

10 A. Yes, ma'am.

11 Q. Thank you. So again, you are familiar with this

12 document, are you?

13 A. Yes.

14 Q. Again, was this something that was trained to PIRC

15 investigators when PIRC came into -- when this document

16 came into force or is it something that you were

17 expected to read and understand?

18 A. I am not sure whether it was trained but certainly staff

19 were informed of it, they were expected to read it. It

20 is the basis of our agreement between PIRC and Crown.

21 Also to a certain extent it explains the legislation,

22 the different types of investigation we do, so

23 investigative staff would need to be aware.

24 Q. If we stay -- can have a look at page 4, section 5.1.

25 This sets out the role of PIRC in investigations and

26 talks about the different powers and 5.2 makes it clear

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1 that:

2 "During the course of an investigation PIRC
3 investigators will have the powers of a constable."

4 A. Yes.

5 Q. But we have heard that unlike a constable those powers
6 will end at the end of the working day?

7 A. Yes.

8 Q. It sets out at 5.3 that:

9 "The PIRC is independent from any policing body
10 operating within Scotland."

11 A. Yes.

12 Q. And I think Mr Little gave evidence that it is not just
13 Police Scotland that you are potentially investigating,
14 there's other bodies that you could investigate?

15 A. That's correct, so Ministry of Defence Police, British
16 Transport Police, Civil Nuclear Constabulary,
17 Her Majesty's Revenue and Customs, Borders, Immigration;
18 anybody that really has enforcement or policing powers
19 comes under the remit of PIRC in Scotland. So you have
20 got these national agencies, the National Crime Agency,
21 for example, they are operating both sides of the border
22 but if the incident happens in Scotland to do with these
23 agencies, PIRC investigation. If the incident happens
24 in England or Wales, then it is IOPC that investigates.

25 Q. Thank you. Then 5.4:

26 "In order to provide effective investigations,

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1 particularly those requiring specialist skills, the PIRC
2 may second officers, or members of staff from police
3 forces operating in Scotland or elsewhere within the UK.
4 Officers on secondment will be directly supervised and
5 instructed by senior PIRC investigators during the
6 course of investigations. Any decision to second
7 specialists will require careful consideration about
8 independence in particular in relation to obligations
9 under ECHR Article 2 and 3 investigations."

10 A. Yes.

11 Q. So we have heard that it is envisaged that PIRC may not
12 have all the skills that are required in any individual
13 investigation, but you have the authority to second the
14 people who do have the skills?

15 A. We have -- we have never seconded anybody to ourselves
16 from a policing body. When we were setting up PIRC we
17 certainly had a seconded officer but that officer's
18 secondment ceased before PIRC came into being. But we
19 have never seconded anybody because, as you point out
20 here, there is potential -- particularly because it
21 is -- you know, the largest policing body in Scotland is
22 Police Scotland, and therefore when it's an Article 2
23 matter potentially there is a real conflict there
24 seconding people from Police Scotland to PIRC.

25 What we can do is direct them to undertake certain
26 functions on our behalf, particularly you've got the

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1 geographic nature of Scotland and PIRC covers the whole
2 of Scotland, 24/7, 365. We have had incidents happening
3 in the Orkney Islands, Shetland Islands, the
4 Outer Hebrides, Thurso, Inverness. It is going to take
5 us a number of hours or a day to get to those locations,
6 therefore you cannot simply freeze everything. You may
7 have to task people in Police Scotland -- for example
8 scene managers, various other specialists -- to
9 undertake functions on your behalf. You will examine
10 what they have done once you get there to make sure they
11 have ticked all the right boxes, certainly a few times
12 when we are travelling to an incident you are speaking
13 to the specialists, and saying: look, have you done
14 this, have you done that, can you do this on our behalf?
15 Because you simply can't hit the pause button due to the
16 practicalities until we get there, so we can direct them
17 to undertake functions on our behalf and we can then
18 check that they have done that effectively.

19 Q. So you or PIRC can take steps to preserve the evidence
20 in relation to any aspect of an investigation, pending
21 your arrival, depending on the geographical limitations?

22 A. Yes. If it is a death in custody in a police cell, you
23 can just lock down that cell. We have had before where
24 we have locked down an entire wing of a cell block. But
25 if the death in custody occurs outside in the street,
26 for example, the practicalities of freezing everything

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1 at that point just don't exist. You know, you've got
2 a person dead in the street, you are not going to wait
3 five, six, seven, eight hours for us to turn up, you
4 need to move on that.

5 Equally there if there's evidence lying around,
6 sometimes it is practical it protect it by putting
7 a cordon around the scene. But equally you've got to
8 take into account weather conditions. If you take
9 for example the death of Mr Bayoh, that Sunday morning
10 it was raining heavily, so the practicalities of
11 protecting a scene when you've got inclement weather,
12 you have really got to move quite quick on it and we
13 will then come along later on and just check what they
14 have done.

15 Q. Is there an expectation in the situation you are
16 describing that police officers will preserve the
17 evidence in a forensic way or that they will install
18 tents over items, or do you have any direction to
19 provide in relation to that?

20 A. We do have some direction. I go back to an example we
21 touched on earlier, which was the fatal shooting of the
22 asylum seeker in the hotel in Glasgow. After the
23 shooting occurred his body was taken out, it was taken
24 to a bus stop effectively, where they tried medical
25 intervention to save his life. That failed, and that
26 area was then protected until ourselves and

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1 Police Scotland scene managers could get to it and the
2 body then got transported to the mortuary. So sometimes
3 it is practical to do it, other times it not practical.

4 Q. In terms of directing the way that a scene is preserved,
5 is that something that PIRC have input into?

6 A. Yes. Sometimes scenes can be quite complex. And there
7 can be -- I don't know whether it's the right choice of
8 phrase, the division of the spoils. So for example --
9 and I will go back to the shooting of the asylum seeker
10 in the hotel in Glasgow. He had stabbed five people.
11 Up to that point -- now we can't investigate the
12 actions -- his actions in stabbing those persons. That
13 is an enquiry for Police Scotland. Police Scotland then
14 discharged Tasers and discharged firearms, we can
15 investigate those incidents because we are investigating
16 the actions of the officers. But frequently what you've
17 got is -- sorry about that, I keep hitting that, I speak
18 with my hands, so forgive me.

19 But sometimes those scenes are like dual scenes, so
20 we are investigating one aspect of what happened at that
21 the scene and the police might be investigating another
22 aspect, so what you have got to do is get the scene
23 managers to co-ordinate, and sometimes prioritise who is
24 doing what first to achieve the best outcome.

25 Q. So there can be parallel investigations, if you like,
26 going on at one scene?

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- 1 A. Yes.
- 2 Q. One aspect being investigated by the police, the other
3 aspect being investigated by PIRC?
- 4 A. Yes, and that happens more than you would think. There
5 was a shooting up in Inverness, I think it is -- the
6 whole thing is concluded now, the person has been -- not
7 so much found guilty but remanded to the state hospital.
8 But you have a whole series of incidents leading up to
9 the shooting by the police so the police will
10 investigate the series of incidents leading up to it and
11 we will investigate the shooting. But both occurred at
12 the same location so you've got a dual location to
13 examine.
- 14 Q. Does that involve communication, effective communication
15 between the police and PIRC in those situations?
- 16 A. Yes.
- 17 Q. Can I go back to the paragraph we were looking at, 5.4.
18 You said that PIRC have never seconded anyone but we've
19 also heard that PIRC may require to rely on support from
20 Police Scotland officers, and you have talked about
21 a scenario where geographically PIRC are going to take
22 some time to arrive at a scene and officers will assist
23 in preserving the evidence at that scene.
- 24 A. Yes.
- 25 Q. Can you explain a little about the rationale between --
26 the difference between seconding someone to PIRC, which

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1 has never been done and there are concerns about
2 independence, but relying on the support of police
3 officers?
4 A. I think because you are then checking their work, so you
5 have -- particularly outwith office hours, for want of
6 a better expression, we have small teams on call
7 therefore you don't have all the specialisms. Therefore
8 you are asking for the assistance of Police Scotland to
9 deploy some of their specialists, but you are then
10 checking their work. You might be speaking to them as
11 you are travelling towards that location, when you get
12 there you say: what have you done? I have done X, Y, Z.
13 Okay, can you also do A, B and C.

14 So you are checking that that work and making sure
15 that they have completed that task. You would certainly
16 not be asking one of the principal officers involved to
17 do anything like that. It would be staff brought in
18 that were not involved in the incident itself.

19 Q. Would that be for a minimum period or a distinct task
20 rather than bringing them into PIRC on secondment?

21 A. You wouldn't bring them in on secondment. Usually it is
22 within the first 24/48 hours they are doing those tasks
23 on our behalf because we simply don't have the
24 resources, and we need to muster resources, we need to
25 get them to the location. There is a lot of logistics
26 involved so if you are going up to Inverness for

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1 a large-scale enquiry you simply just don't go. If you
2 know it then it's like we need to book hotels, we need
3 additional vehicles, staff need to take a change of
4 clothes, there's logistics involved in trying to achieve
5 that, which is also another factor that comes into play.

6 Sometimes you might be on the road and you
7 just: right, fine I am going and you will travel and it
8 might take three or four hours to get there. You then
9 might manage the initial response or oversee what the
10 police are doing, knowing that the next morning you are
11 going to have additional officers, additional PIRC staff
12 in who have those specialisms so you are trying to
13 manage that in that interim period by gaining assistance
14 from specialists within the police.

15 Q. So is it envisaged that although you may require to
16 initially rely on support from the police, whether
17 managing the scene or holding the fort if you like until
18 PIRC arrive, is that seen as a temporary arrangement,
19 temporary support from Police Scotland?

20 A. In most instances, yes. That is why PIRC has employed
21 people with various specialisms, so previous experience
22 in scene management, you spoke to Mr Lewis, he worked in
23 roads policing, he was involved in road crash and deaths
24 investigations in that regard, people with firearms
25 experience, people with experience of custody, family
26 liaison. So people with those experiences. But

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1 we don't have all the specialisms, it's a small
2 organisation, so for example we can't undertake cyber
3 matters, we just don't have that capability, so you will
4 rely on cyber crime in Police Scotland because you
5 simply don't have those specialisms, we are not large
6 enough and we are not funded to do that.

7 Q. Any other areas where you don't have specialist staff to
8 assist?

9 A. I think because of our restricted role in undertaking
10 death investigations or other such things, most of the
11 specialisms that we require we have. There's all sorts
12 of diverse specialisms within the police because they
13 have so many other purposes other than PIRC, therefore
14 they have a lot of additional specialists. And that --
15 we may never get involved in that type of investigation.
16 So we focus on the key areas that matter to ourselves,
17 which is the ones I have highlighted.

18 Q. Thank you. Then going back to this memorandum, do you
19 see 5.5 on the screen. It says:

20 "PIRC investigations are intended to comply with the
21 five principles of effective investigation outlined by
22 ECHR, namely; independence, adequacy, promptness and so
23 far as possible public scrutiny and victim involvement."

24 A. Yes, ma'am.

25 Q. So again this is mirroring the previous document we
26 looked at with the five principles?

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1 A. Yes.

2 Q. So that is integral to the work of PIRC and the
3 investigations that are carried out?

4 A. Yes.

5 Q. Is that something that is trained to staff when they
6 join PIRC?

7 A. I don't know whether you would actually call it trained
8 to staff because we have an induction process for all
9 new staff but that is largely to teach them the way PIRC
10 operates, HR, all that sort of stuff. But if they join
11 investigations if they do not have previous experience
12 certainly we walk them through our processes and the
13 reasons for it. A lot of it becomes on-the-job
14 training, but they certainly become aware of it very
15 quickly.

16 Q. Thank you. Can I ask you to look at a third document,
17 please, which is PIRC 04438. There is no date on this
18 actual document, it's not signed but the Inquiry has
19 been advised by PIRC that this was dated 17 June 2014.
20 So prior to Mr Bayoh's death and after PIRC had been
21 created. You will see on page 1:

22 "This paper [was designed] to take cognisance of
23 the report by His Honour Judge Keith Cutler
24 Assistant Coroner on the 29th May 2014 in respect of the
25 shooting of Mark Duggan by the Metropolitan Police."

26 Do you see that?

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- 1 A. Yes.
- 2 Q. You do recognise this document?
- 3 A. I think so. I don't know who authored it. It might
4 even have been me.
- 5 Q. All right.
- 6 A. Because it certainly -- I was aware of the Duggan thing
7 and I had researched the decision in Duggan. I can't
8 remember who drafted it but I certainly wrote quite
9 a few of these. Whether I wrote this one I don't
10 remember, but I certainly remember this report itself.
- 11 Q. Excellent. So there has been a number of concerns
12 raised by the IPCC and it says in the final sentence:
13 "The purpose of this document is to identify
14 learning opportunities and give clear guidance of what
15 is expected of the PIRC Investigation Team following
16 such a shooting by officers of Police Scotland."
17 So this was a document designed to identify learning
18 opportunities and give guidance. Was that something
19 that was done in PIRC before May 2015, documents were
20 prepared for that purpose?
- 21 A. Yes. Because sometimes I think we described it as
22 learning the lessons so if there was a significant case
23 from England and Wales that could potentially occur in
24 Scotland we would learn those lessons and we would
25 cascade some of that learning. But equally there was
26 the transition to post-incident procedures which prior

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1 to 2014/2015 were solely for firearms incidents in
2 Scotland. There was that gradual transition to them now
3 being applied to potentially any serious incident,
4 particularly a death. So I think the first time it was
5 used or attempted to be used was in relation to
6 Mr Bayoh's death, but prior to that it was only for
7 police shootings.

8 Q. Thank you. The next section is, "Investigative
9 function". And again this talks about the initial
10 stages after the discharge of a police firearm. It
11 says:

12 "... Police Scotland must in line with the
13 European Convention on Human Rights ... Article 2, take
14 all appropriate steps to reduce any possible risks of
15 the investigation being undermined by any deficiencies
16 such as failing to secure all available evidence."

17 Then it says:

18 "The responsibility for securing evidence and taking
19 appropriate action in an Article 2 investigation remains
20 with Police Scotland until such time as the PIRC has
21 taken over conduct of the investigation."

22 Is that what you were talking about a moment ago --

23 A. Yes.

24 Q. -- where police continue to preserve a scene for the
25 purposes of preserving the best evidence, until PIRC
26 arrive in the location and are able to take control?

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1 A. Yes. Sometimes if you've got complex scenes you lock
2 down the scene, you will ask that police officers stand
3 by on the cordon, lock it down where potentially
4 possible. So, again I will use the example of the fatal
5 shooting in the hotel in Glasgow. That scene was locked
6 down because it was going to be a complex scene to
7 examine. We had to cut walls apart trying to recover
8 bullets, etc, so there was a whole range of complexities
9 that -- and that could take place over a number of days
10 so if you can lock it down and secure it sometimes that
11 is the best approach, sometimes it is not always
12 possible.

13 Q. I am interested in this phrase:

14 "... until such time as the PIRC has taken over
15 conduct of the investigation."

16 Is that -- that point where PIRC take over conduct
17 of the investigation, is that from the moment PIRC
18 receive the call from Crown Office saying: do
19 a Crown-led investigation, or is it from the point that
20 PIRC arrive at the scene?

21 A. No, it's from the point that we get the instruction from
22 Crown. Equally, if we go into the practicalities
23 sometimes what will happen is the police will refer
24 a death or serious incident to PIRC, we might examine
25 it, we might notify Crown, and Crown say: fine, we're
26 now directing to you investigate. Equally we might go

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1 back to police and say: Crown are not directing us but
2 we have decided to investigate. So it's at the point of
3 notification to the police, not at the point of our
4 arrival. At the point of notification this is now
5 a PIRC investigation.

6 Q. And that is in a referral scenario. In a Crown-led
7 investigation, is it the point at which the Crown send
8 you the instruction?

9 A. We can -- frequently what you get is a verbal
10 instruction and that is then backed up by a letter of
11 instruction maybe next day, a couple of days later,
12 dependent on whether it's during office hours, etc. And
13 usually that letter of instruction, the actual letter of
14 instruction will give the terms of reference, what they
15 are directing that we investigate. But outwith office
16 hours or even during office hours, quite frequently we
17 get a verbal instruction from Crown and it will then be
18 backed up by a letter.

19 Q. So in terms of that paragraph, the responsibility for
20 securing evidence and taking appropriate action in
21 an Article 2 investigation remains with Police Scotland
22 until effectively PIRC have had the call from
23 Crown Office?

24 A. Yes.

25 Q. Thank you. Then at that point responsibility passes to
26 PIRC?

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1 A. Yes.

2 Q. Then:

3 "Police Scotland use of firearms."

4 If we look at that:

5 "Police use of a firearm can be defined as:

6 "Discharge of a firearm."

7 But it can also include Taser or discharge of CS

8 gas.

9 A. Yes. So you have conventional firearms and what might
10 be considered conventional firearms, so that's guns,
11 shotguns, etc, you've got Taser obviously. But it's
12 an anomaly within the legislation, again CS gas or PAVA
13 as it is, falls within section 5 of the Firearms Act
14 1968, it's the definition of what is a prohibited
15 weapon, and it includes anything designed to discharge
16 a noxious liquid. So potentially whoever was drafting
17 the legislation missed the fact that CS/PAVA actually
18 constitutes a firearm and therefore all these get
19 referred to PIRC.

20 I am not aware of a similar requirement in England
21 and Wales, unless of course there is further like
22 serious injury or death or whatever. So again there is
23 a slight anomaly within there. But certainly discharge
24 of a conventional firearm nearly always leads to
25 investigation.

26 Q. In terms of the events involving Mr Bayoh in May 2015 we

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1 have heard evidence there was a discharge of CS gas.
2 Would that have meant that this document would be
3 applicable in relation to the events at Hayfield Road on
4 3 May?

5 A. I think the Crown instruction to investigate trumps any
6 police referral. So the PIRC have instructed us to
7 investigate a death, consequently the police need to
8 refer. Discharge of CS gas falls into abeyance really
9 because the Crown direction will include us
10 investigating all aspects of what occurred, which will
11 include the discharge of CS and PAVA.

12 Q. If we look back to the top of the page, this is:

13 "PIRC independent investigative processes following
14 police use of firearms."

15 Right at the top, please. It's PIRC independent
16 investigative processes after the police have used
17 a firearm which can include circumstances involving
18 discharge of CS spray. When you mentioned it a moment
19 ago you said a Crown-led investigation trumps
20 a referral.

21 A. Yes.

22 Q. This doesn't seem to be restricted just to referrals.
23 So would this document apply to either investigation,
24 whether it's a Crown-led investigation or arising out of
25 a police referral?

26 A. Yes, certainly the way the legislation is framed is the

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1 police need to refer to PIRC all incidents where
2 firearms are used or discharged, and that includes
3 CS/PAVA. So that is a requirement in law. But the fact
4 is Crown have then instructed: investigate the death,
5 investigate all the circumstances. So you will examine
6 automatically what has occurred, including the discharge
7 of CS and PAVA.

8 It is my opinion, and I'm not a legal expert I am
9 not a lawyer, but there is still a requirement for
10 Police Scotland to notify us that CS/PAVA has been
11 discharged. Now, that did occur, because my
12 understanding is that Keith Harrower got told on day one
13 when he turned that up CS and PAVA had been used, so
14 they did fulfil their legal obligation. The standard
15 method is they actually commit that to paper and send us
16 a form, which is usually completed by the officers that
17 discharged it or their supervisor. But the legislation
18 doesn't say you must fill out the paperwork or complete
19 a form, just you must notify PIRC.

20 Q. So to go back to the first point, even if there hadn't
21 been a discharge of CS spray in relation to
22 Hayfield Road, the minute Crown said you've to
23 investigate, that was the point at which PIRC would
24 investigate regardless?

25 A. Yes.

26 Q. Although it was still important for -- it was still

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- 1 required for Police Scotland to intimate that spray,
2 CS spray has been discharged?
- 3 A. Yes.
- 4 Q. And that was then told to Keith Harrower --
- 5 A. Yes.
- 6 Q. -- on the day, he became aware of that on the day and
7 that was sufficient to comply with their legal
8 requirements under the legislation?
- 9 A. Yes, and usually when CS/PAVA has been discharged and we
10 are investigating we will ask that the CS or PAVA
11 canisters are then weighed. They should be weighed at
12 the start of a shift to know how much liquid is within
13 them, and if they are discharged they should be then
14 weighed following the discharge, so that we can tell how
15 much liquid has actually been used during the incident.
- 16 Q. We heard some evidence from Mr Little about this, that
17 also the canisters are allocated to individual officers.
- 18 A. Yes.
- 19 Q. And I think to summarise my understanding of his
20 evidence, that then allows you to see who has used
21 a canister that was attributed to them, and how much
22 liquid or spray was discharged from that canister?
- 23 A. Yes, officers are based at police stations. Usually you
24 have a cabinet at the police station that you are based
25 in, in which is your CS/PAVA spray and you have a key
26 that unlocks it. And at the end of your shift you put

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1 it back into that cabinet. Part of the challenge is
2 that take for example officers that are getting drafted
3 in from different divisions to assist Glasgow policing
4 division, they might not start at their home station
5 therefore they might not get access to their own
6 individual CS or PAVA, they might need to be supplied
7 with it at the station that they are attending,
8 therefore there are spare supplies kept. So it's not
9 always on an individual basis, it depends on the nature
10 of -- the favourite one is football, you know, big games
11 either in the west of Scotland or east of Scotland, you
12 might get officers drafted in from wherever to assist
13 with the policing of that event. But the officers might
14 be told: well, don't go to your home station, report to
15 this station and start there. Therefore they won't have
16 access to their individual CS/PAVA.

17 Q. But if they are given a CS spray to go to the football
18 match, would there be normally a record kept of who has
19 been given a CS spray?

20 A. There should be. I am not certain it always occurs.
21 But then I have not examined that.

22 Q. So in terms of gathering in evidence that might assist
23 an investigation where there has been a discharge, the
24 forms are only one element of evidence that could be
25 recovered. There's the weighing and determination of
26 has the spray been used, how much does it weigh now,

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1 how much did it weigh earlier and what is the
2 difference?

3 A. Yes.

4 Q. So there are two different avenues of investigation open
5 to PIRC potentially there?

6 A. Yes. For example each year there is usually 200 to 300
7 referrals of CS/PAVA. There is not a lot of
8 investigation into them because it gets used most days.

9 MS GRAHAME: I wonder if you could just give me a moment,
10 please.

11 I wonder if it would be possible to adjourn slightly
12 early, if that is a possibility?

13 LORD BRACADALE: Certainly. We can stop now and take
14 a 20-minute break.

15 (11.17 am)

16 (A short break)

17 (11.45 am)

18 LORD BRACADALE: Ms Grahame.

19 MS GRAHAME: Thank you. Just before the break we were
20 talking about the discharge of CS spray. You explained
21 that there are different elements of evidence that might
22 be available, both the weighing of the canister, the
23 comparison with the records of what it weighed
24 originally, how much liquid has been used, that type of
25 thing.

26 A. Yes.

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- 1 Q. But there was also the form, the forms that were
2 completed?
- 3 A. Yes.
- 4 Q. You spoke about how on 3 May Keith Harrower was advised
5 that CS spray has been discharged or became aware that
6 CS spray has been discharged?
- 7 A. Yes.
- 8 Q. I am interested in looking at that in a little bit more
9 detail, if I may.
- 10 A. Of course.
- 11 Q. We have heard evidence that police officers, they can
12 use force, but if they do use force operationally, that
13 they must justify that.
- 14 A. Yes.
- 15 Q. That is in relation to every single use of force --
- 16 A. Yes.
- 17 Q. -- that is adopted. So that means as we have heard
18 evidence, if they strike a baton three times, they have
19 to justify every individual strike of that baton?
- 20 A. Yes.
- 21 Q. Is that right?
- 22 A. I think the one exception is handcuffing. So
23 handcuffing has the effect -- it is sometimes a use of
24 force, but you don't need to report that.
- 25 Q. Thank you. We have heard of that use of force, in order
26 to justify it, and in order for that to be legal, it has

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- 1 to be reasonable and proportionate and necessary?
- 2 A. Yes.
- 3 Q. And we've also heard evidence about something called
4 preclusion, where you have to use the absolute minimum
5 force so you have to have either ruled out a lower level
6 of force before you adopt a higher level, or take the
7 view that from the circumstances it wouldn't be
8 worthwhile using that lower level of force?
- 9 A. That's correct.
- 10 Q. Is that correct?
- 11 A. Sometimes that is a very quick process, the officer
12 could look at a set of circumstances and preclude
13 everything apart from the option that they decide. That
14 can happen in a matter of seconds. But they have got to
15 explain themselves, and justify their actions.
- 16 Q. That justification has to be provided for that use of
17 force to be deemed legal?
- 18 A. Yes, well, I -- I am not sure I would describe it as
19 legal, but it's a requirement within Article 2 and
20 within Article 3. If they overstep the mark, that could
21 cross into criminality, in which case we would be taking
22 the matter to Crown.
- 23 Q. In terms of the completion of the form, is it right to
24 say that there's actually more than one reason why those
25 forms should be completed? One is formal notification
26 in terms of the legislation?

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- 1 A. Yes.
- 2 Q. There has been use of an item, a spray, which is
3 classified as a firearm?
- 4 A. Yes.
- 5 Q. And so there has to be that notification to PIRC?
- 6 A. Yes.
- 7 Q. And we have heard it is done through officer safety
8 training and an email address that then comes to PIRC
9 within 24 hours, I think?
- 10 A. Normally.
- 11 Q. Normally. The other element in terms of completing the
12 form is to justify why that use of force was adopted,
13 why that spray was discharged?
- 14 A. That's correct.
- 15 Q. So in terms of the notification to Mr Harrower on 3 May,
16 although there may have been notification or he was
17 advised spray had been discharged, what about the
18 justification part, if the forms were not completed?
- 19 A. Yes, well I think I would split that into two areas, so
20 legislative-wise Police Scotland are required to notify
21 us of the discharge of CS/PAVA. Then you you've got
22 second element which is the officers themselves must
23 justify why they considered it necessary, and we then
24 look at necessity, proportionality etc. So you've got
25 the legal requirements on Police Scotland, moving down
26 below that level is the officer then must justify that.

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- 1 Q. So it's not for Police Scotland to create
2 a justification, it's for the individual officer and
3 it's their responsibility --
- 4 A. Yes.
- 5 Q. -- to provide justification?
- 6 A. Yes.
- 7 Q. Regardless of any notification requirements under the
8 legislation?
- 9 A. Yes.
- 10 Q. Thank you. Is that part of what you said before
11 the break, that it could be a line manager or
12 a supervisor who completes the form notifying PIRC of
13 the discharge?
- 14 A. Yes. Equally, sometimes the supervisor may obtain the
15 account from the officers, and then commit that account
16 on to the form, but he should have spoken to the officer
17 and obtained the officer's thought processes as to why
18 he considered the use of CS PAVA was necessary.
- 19 Q. Necessary, reasonable and proportionate?
- 20 A. Yes. The vast majority of the officers themselves
21 complete the forms, but occasionally you will get
22 a supervisor or somebody else completing it. That is
23 rare, but it can happen.
- 24 Q. We heard that there can be situations where the officer
25 is injured or goes off duty immediately afterwards and
26 isn't in a position to complete the form for some health

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1 reason?

2 A. Yes.

3 Q. In that case a supervisor can carry out the process

4 themselves?

5 A. Yes, that is largely the circumstances I am describing.

6 Q. We heard evidence from Mr Little that these forms can be

7 gathered in by PIRC and they are not just left in

8 a filing cabinet somewhere but actually there is

9 a process that they go through in relation to PIRC in

10 terms of assessing the justification that is provided;

11 is that correct?

12 A. Yes, it applies to all police-referred matters to PIRC,

13 they undergo that assessment process. There is a huge

14 number of CS/PAVA referrals to us, they greatly outweigh

15 any other type of referral, but it does go through

16 an assessment process. The more complex the incident,

17 the greater the assessment. Sometimes you might decide

18 to immediately -- without probing the incident any

19 further, as soon as the referral comes in you think: no,

20 this is quite a serious situation, we're moving straight

21 to investigation without undertaking a detailed

22 assessment for -- well, what could be described as more

23 minor matters. So if it is simply they have discharged

24 CS/PAVA to bring the person under control, they've

25 justified that in the form, you complete that

26 assessment, and you decide not to investigate. So there

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1 is a whole range of considerations when you are
2 undertaking assessment.

3 Q. Is that assessment essentially a preliminary view by
4 PIRC in regard to whether it appears obviously
5 a reasonable approach or there may be issues that
6 require investigation?

7 A. Yes. And we have also got to bear in mind that PIRC are
8 an oversight body of Police Scotland so we will -- even
9 though we might consider that the actions were
10 proportionate, reasonable, necessary, we will examine
11 a random sample of these and investigate them to ensure
12 that Police Scotland are and their officers are acting
13 in accordance with policy and procedure. Because
14 otherwise, if we don't investigate some of these, they
15 are not necessarily performing the oversight function
16 that we are set up to do.

17 Q. So PIRC do not simply just take the forms at face value,
18 they occasionally dig below the surface?

19 A. Yes. If we pick up something within a form, when doing
20 the assessment, thinking: hmm, this doesn't sound quite
21 right, we would move it to an investigation, but equally
22 we will randomly dip sample some of these and move them
23 to investigation, just to make sure that Police Scotland
24 are ticking the right boxes for want of a better
25 expression.

26 Q. Thank you. I was also going to ask you about

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1 an incident which had taken place on 18 October 2014
2 in Victoria Hospital, where we understand there was
3 a discharge of CS spray in the Accident and Emergency
4 department and we heard some evidence about this from
5 Mr Little.

6 A. Yes.

7 Q. He said there was a PIRC investigation into that
8 discharge.

9 A. Yes.

10 Q. And a report had been prepared and some recommendations
11 were made. Do you have -- do you know about that
12 investigation?

13 A. Yes. I think Mr Little, he was the lead investigator
14 for that. I, as his supervisor, then quality controlled
15 the report so I was aware of the findings and
16 recommendations.

17 Q. Do you remember what the recommendations were roughly in
18 relation to that?

19 A. It was primarily surrounding record-keeping within
20 Fife Division of Police Scotland. The records were
21 chaotic for want of a better term, CS/PAVA wasn't
22 regularly getting weighed so you couldn't tell whether
23 anybody had used it, how much they had used, etc. It
24 was chaotic, and the recommendations were primarily, for
25 want of a better expression: you need to get your house
26 in order here, you need, you know, proper records,

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1 proper control.

2 Q. When were Police Scotland advised about those
3 recommendations; do you remember?

4 A. I don't remember. When we issue findings and
5 recommendations to Police Scotland we usually ask that
6 they report to PIRC within three months of receiving the
7 report with the findings and recommendations, as to what
8 steps they have taken to implement them.

9 Now, I can't remember when we issued the report in
10 relation to the Victoria Hospital. What I do know is
11 that it was I think potentially the November following
12 the death of Mr Bayoh that Police Scotland came back to
13 PIRC to say how they had implemented the recommendations
14 from the Victoria Hospital incident, so several months
15 after the event.

16 Q. If the event, if you take it from me it
17 was October 2014, that would be just over a year after
18 the event?

19 A. Yes.

20 Q. Mr Little talked about this and he couldn't recall but
21 thought that perhaps the three-month period would have
22 gone beyond May 2015. Do you have any recollection of
23 that?

24 A. No, I don't.

25 Q. No. Thank you. We were on the document from June 2014,
26 and that was PIRC 04438. I will just complete going

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1 through this at the moment. I won't go into the detail
2 at this stage. Do we see on page 2 that in relation to
3 investigative processes, there's mention there of PIRC
4 investigation at the scene. There is comment
5 geographical location and how quickly PIRC can arrive at
6 a scene?

7 A. Yes.

8 Q. There is reference here to the PIRC scene manager, and
9 that:

10 "A trained and experienced PIRC scene manager will
11 be appointed."

12 Did you have PIRC trained and experienced scene
13 managers in place in May 2015?

14 A. Yes.

15 Q. Then it talks about the initial actions to consider the
16 circumstances, and the consultation to be had. And the
17 PIRC senior investigator will produce a scene
18 investigation strategy which they will deliver on behalf
19 of the senior investigator?

20 A. Yes.

21 Q. "The strategy will ensure the locus is
22 photographed/video recorded capturing all evidence
23 in situ and where appropriate aerial and '360 degree'
24 photography should be utilised."

25 A. Yes.

26 Q. And:

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1 "Any scene entry log already in place by
2 Police Scotland should be discontinued and held as
3 a production. A PIRC scene entry log should be raised
4 and maintained throughout duration of the scene
5 investigation~..."

6 A. Yes.

7 Q. Then if we move on to the next page, page 3. There's
8 talk of cordons, there will be a uniform police presence
9 to ensure the security of the outer cordon?

10 A. Yes.

11 Q. Although we have heard evidence about the importance of
12 independence, we have heard that in terms of scenes
13 often PIRC will have to rely on the support of
14 Police Scotland officers, who may be uniformed
15 officers --

16 A. Yes.

17 Q. -- to secure and preserve the integrity of a scene. Is
18 that correct?

19 A. That is correct. I think looking at it logically it's
20 the sight of a uniformed police officer saying to
21 somebody: sorry, this is taped off, as a member of the
22 public you cannot get in here. And that is difficult
23 for PIRC investigators to do, we don't wear uniforms or
24 whatever, a lot of times members of the public are
25 completely unaware of who we are and what our functions
26 are. And therefore that is primarily why you will use

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1 uniformed police officers on the cordon. And you have
2 seen it on television, we have all seen it on
3 television, you know, the blue and white tape things,
4 cordoned off.

5 Q. First of all, would you have the resources to allocate
6 someone that task of ensuring nobody gets into the
7 scene?

8 A. No.

9 Q. Do you have any concerns about how this appears to the
10 public when PIRC are involved in what should be
11 an entirely independent investigation?

12 A. I think we have to look at the practicalities, which is
13 PIRC are a very small organisation, we are not funded or
14 staffed to undertake a lot of these scenes. And I fully
15 appreciate the -- what you would say is the -- how it
16 looks. The optics, I meant to say, sorry. I was trying
17 to remember the word there. The optics. I fully
18 understand the optics but it is the practicalities that
19 kick in, in these events.

20 Q. Then it says:

21 "The PIRC scene manager should liaise with the
22 Police Scotland scene manager and establish what
23 Specialist Forensic Services have been requested by
24 Police Scotland prior to PIRC arrival~..."

25 Again, is this what you were talking about earlier,
26 identifying what specialist resources may be required

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1 that may include forensic specialists?

2 A. Yes, invariably if you are going to photograph
3 an incident scene, that will be the Scottish Police
4 Authority, SPA Identification Bureau.

5 Q. Thank you.

6 LORD BRACADALE: Sorry to interrupt, I wonder if somebody
7 could just move the microphone down a bit. I think it
8 is not quite picking you up. Try that now.

9 A. My Lord, I think I was trying avoid punching it.

10 LORD BRACADALE: I appreciate that but I think it is
11 probably more important that we hear you rather than --
12 we can live with the difficulty with the microphone.
13 Thank you.

14 MS GRAHAME: Thank you.

15 It says there:

16 "... PIRC will have primacy in relation to
17 the investigation into the police shooting/discharge
18 [discharge of spray], Police Scotland may have a duty in
19 relation to the scene in terms of another criminal
20 offence, ie the person shot ... is concerned in firearms
21 offences or has committed another crime at the scene."

22 I think that is what you touched on before the break
23 where you talked about a scenario where in relation to
24 the Glasgow shooting the person had allegedly -- or had
25 stabbed five individuals prior to the police using
26 force --

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- 1 A. Yes.
- 2 Q. -- and shooting that person. I think as I understand
3 your evidence you said PIRC investigate the use of force
4 by the officers, but the five stabbings would remain
5 within the purview of the police?
- 6 A. Yes. But certainly when we are reporting the incident
7 to Crown, you are trying to put context around why did
8 the police use lethal force, so while the police are
9 investigating the initial incidents, the five stabbings,
10 we have obtained details from Police Scotland of those
11 incidents because it is like a continuous sequence of
12 events, you can't just start at this point which is: why
13 did you shoot him? Well, we shot him because ... the
14 sequence of events that occurred before that. So there
15 is an exchange of information frequently between --
16 between Police Scotland and PIRC. Sometimes -- in
17 relation to that incident, I think we figured out some
18 of the attacks were targeted attacks but Police Scotland
19 were not aware of that, so it's the exchange of
20 information because it is a continuous sequence of
21 events, and for both reporting separately to Crown but
22 drawing a line and saying: well, that is us, that is
23 Police Scotland. It is then more difficult to
24 understand the totality of what has occurred so that is
25 why there is an information exchange.
- 26 Q. So you are avoiding a sort of artificial separation of

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1 events when they are linked?

2 A. Yes.

3 Q. Thank you. Then at the bottom of the page we see:

4 "PIRC productions officer/s should seize and
5 accurately record and label all productions from the
6 scene as directed by the ... scene manager.

7 "A PIRC investigator performing the role of scribe
8 will shadow the ... [senior investigator] and record all
9 requests/instructions made by the~...
10 [senior investigator], capturing the time and date,
11 details of person requested/instructed and any
12 reply/comment made in response to the
13 request/instruction."

14 A. Yes.

15 Q. We have heard evidence from Mr Little that in his role
16 as lead investigator he may be very busy, there is a lot
17 happening, but the scribe will note down what is
18 happening as it takes place. Is that the role?

19 A. Yes. That is the ideal situation, which is you take
20 somebody with you. If you are the lead investigator you
21 have all sort of considerations, you are talking to
22 a lot of different people, and therefore you want
23 somebody with you who is going to take notes. That is
24 the ideal scenario, frequently it does occur,
25 occasionally it might not occur. I have been to
26 an incident when I was the first person there and it

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- 1 took two or three hours for the rest of my staff to
2 arrive, so you do your best.
- 3 Q. In that situation why were you the first person to
4 arrive and the team didn't arrive for two or
5 three hours?
- 6 A. What had happened was I had finished and was on the
7 motorway passing Glasgow Airport when I got phone call
8 saying we have just shot somebody in Inverness. Now, we
9 work 8 to 4 therefore all the staff had went home, so
10 I am phoning Crown, Crown are saying -- in this instance
11 I said to Crown: do you want to instruct? They
12 said: no, we don't. Therefore I will take it as
13 a police referral, phoning the office and saying: right,
14 get the staff back into the office, because they are all
15 headed home and what I did was simply turned round and
16 drove straight up to Inverness. Of course they have got
17 to get back into the office, get all their kit,
18 notebooks, all that sort of stuff load up the car and
19 then drive to Inverness. So effectively I was on the
20 road already, whereas they would have to come back in,
21 so that is why I would arrive two or three hours before
22 them.
- 23 Q. Did you not feel the need to go back to the office and
24 brief staff or pick up kit?
- 25 A. It was the practicalities, because those who are
26 familiar with Glasgow, the Kingston Bridge during the

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1 rush hour is, for want of a better expression,
2 a nightmare, therefore I headed over the
3 Erskine Bridge and cut across country because otherwise
4 it might have taken me 90 minutes to get back to the
5 office adding additional delays. So again, it was just
6 the practicalities.

7 Q. So on that occasion you arrived first, on your own?

8 A. Yes.

9 Q. There was no scribe, there was no team with you?

10 A. No.

11 Q. But you were able to go to the scene and take charge at
12 that point?

13 A. Yes.

14 Q. That was a decision that you made based on
15 practicalities as well as anything else?

16 A. Yes.

17 Q. Did that hinder your team, the fact that you had not met
18 them at the office and given them a briefing in advance?

19 A. No, obviously I have hands-free in the car so I could
20 phone and describe the set of circumstances that was
21 getting relayed to me. Because I was getting phone
22 calls from various people within Police Scotland,
23 including the appointed post-incident manager and
24 I would then relay that information to the team that
25 were coming out so that they were briefed on the
26 circumstances so they could hit the ground running as

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- 1 they arrived.
- 2 Q. Did you find that telephone communication with your team
3 adequate for the purpose?
- 4 A. Yes. There is always -- as they arrive -- it depends on
5 the last communication you had with them. If the last
6 communication you had had with them for example was
7 an hour before and you had been tied up doing things,
8 you would want to update them as to what has happened
9 within the last hour and then get them assigned to their
10 duties.
- 11 Q. Right. Then looking at:
12 "PIRC investigation at the ... (PIM) suite."
13 Post-incident management suite. Is this an example
14 of what you were saying earlier about the terms being
15 interchangeable?
- 16 A. Yes.
- 17 Q. "The PIRC senior investigator attending at the scene
18 will deploy a post-incident management ... aware member
19 of PIRC staff to the Police Scotland post-incident
20 management suite."
- 21 Was this also what you were talking about earlier,
22 where someone who has maybe had awareness training will
23 be appointed although they may not be a post-incident
24 manager, a qualified PIM?
- 25 A. Yes. Because I think we need to remember that PIP or
26 PIM is a police process, it has a dual purpose. There

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1 is an investigative element of it, and there is also the
2 welfare element of it. So it's very much a police
3 process, so certainly we need to understand from our
4 perspective the four stages within that process.

5 Equally, there are certain functions that we will
6 want to oversee, so if firearms are discharged we will
7 want to oversee and video record what is called the
8 count back, so unload your weapon, drop your weapon or
9 drop the magazine out of the weapon, count how many
10 bullets are in, how many bullets did you start with, how
11 many bullets are left in it, does that equate with the
12 number of shots fired.

13 So there is quite a lot within that to oversee, so
14 it is not just the four stages. Equally, you might be
15 seizing clothing etc. Now, it is not necessarily what
16 you think because you are not seizing a firearms
17 officer's clothing for firearms deposit residue because
18 their clothing has that on it all day, every day. But
19 sometimes it can be to confirm the actions of the
20 officers, so police firearms officers are trained that
21 if they shoot somebody they will immediately go forward
22 and render first aid. So there might be a transference
23 of blood and they might tell you: yes, I went forward
24 and I gave first aid. You examine the clothing, there
25 is blood on the clothing, that matches their account and
26 therefore supports their account of events.

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1 So there is quite a lot of complexities within these
2 and considerations. Not all of them apply to every set
3 of circumstance, it just depends -- each one is unique.

4 Q. The post-incident manager or post-incident management
5 aware investigator will also be ascribed a scribe:

6 "Ideally a PIRC investigator scribe will shadow and
7 record all requests/instructions, timed and dated made
8 by the PIRC PIM aware investigator."

9 A. Yes, depending on the nature of incident there is
10 usually two PIRC staff go, somebody that is PIM aware
11 and somebody to support them. In large-scale incidents
12 we can be deploying four, five, six, staff to
13 an individual PIP suite, we have had incidents where
14 there has been three different PIP suites dotted across
15 the country, and we are sending staff to each of them to
16 oversee that. So it can quickly eat up resources. But
17 we do need to go and -- we do need to go and we do need
18 to oversee it and at least two staff go to each one. In
19 more complex incidents, I think I touched on it before
20 the break, we have had an incident with 53 key police
21 witnesses, so that is quite a large amount of people to
22 manage, with different post-incident suites.

23 Q. It says:

24 "A PIRC scene manager/production officer(s) will
25 also attend at the PIM suite and seize any
26 firearms/production identified as relevant."

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1 And then it identifies the six PIM suites that are
2 available around the country.

3 A. There is dedicated PIM suites. These are the dedicated
4 PIM suites, but a PIM suite can be held in any police
5 office where it's feasible. So, for example, something
6 happens in Thurso, you are not removing officers to
7 Inverness, you know, because it is three hours
8 northwards. So the PIM suite, if the incident happened
9 in Thurso, the PIM suite might be in Thurso. We have
10 had a death in custody in Elgin, the PIM suite was held
11 in Elgin. Again, ideally you are going to a dedicated
12 PIM suite but the geography of Scotland sometimes
13 precludes that.

14 Q. I think we have heard that the officers were gathered in
15 Kirkcaldy Police Office after Mr Bayoh died?

16 A. Yes.

17 Q. And that was in the canteen area?

18 A. Yes.

19 Q. Is that the type of larger space that can be used to
20 accommodate a PIM suite?

21 A. Yes. Usually it is one large room. The dedicated PIM
22 suites have several rooms because also you need office
23 accommodation for the post-incident manager from
24 Police Scotland and their staff. If we turn up we are
25 going to want office accommodation as well. So the room
26 itself might be where the principal officers are sat,

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1 but we will need to use additional offices just to
2 manage whatever we are doing.

3 Q. Thank you. Then if we look at the final page it talks
4 about conferring, officers not conferring with each
5 other, which you have already spoken about, it's on the
6 last page. If there is a need to confer:

7 "... in order to ensure transparency and maintain
8 public confidence, this must be documented including
9 time, date, place, issues discussed, by whom and the
10 reason(s)."

11 And:

12 "The Police Scotland PIM manager should have
13 reminded the officers involved in relation to
14 conferring."

15 Then there is a section at the bottom called,
16 "Minimum deployment of PIRC personnel". It is split
17 into scene and PIM suite. Do you see that?

18 A. Yes.

19 Q. At "Scene" it says:

20 "Senior investigating officer.

21 "Scribe.

22 "Scene manager.

23 "2 production officers."

24 That would be five individuals?

25 A. That is the ideal. Equally, if you have got multiple
26 scenes, you know, you are going to have multiple

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- 1 deployments.
- 2 Q. So there could be more than that but that says minimum
3 deployment in relation to the scene?
- 4 A. Yes, when we are talking scene here we are talking about
5 the general location, not necessarily to the exact scene
6 of the incident. Although the scene managers and
7 production officers might be going directly there, the
8 PIRC lead investigator might be going to the police
9 office to find out what has happened.
- 10 Q. So if we have heard that there were officers in
11 Kirkcaldy Police Office, and PIRC investigators went
12 there --
- 13 A. Yes.
- 14 Q. -- but there was also a scene at Hayfield Road --
- 15 A. Yes.
- 16 Q. -- that wouldn't necessarily require this minimum number
17 of officers to be at both locations?
- 18 A. No, I think Garry Sinclair was the person deployed to
19 Hayfield Road as the PIRC scene manager. And
20 John Ferguson, who sadly is no longer with us, was
21 deployed to Victoria Hospital.
- 22 Q. The senior investigating officer, is that effectively
23 a lead investigator?
- 24 A. Yes. The terminology changes. It is like -- you've got
25 a lead investigator, you've got a senior investigating
26 officer you've got an initial investigating officer.

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1 Broadly they are all the same -- the same person but
2 just sometimes the nomenclature slightly changes. But
3 for PIRC it is either a lead investigator or
4 a senior investigator, and it's not always the person
5 with the title of senior investigator, they are the
6 senior investigator for that investigation.

7 Q. So you may be within PIRC's hierarchy
8 a senior investigator, you may be
9 a deputy senior investigator, or simply an investigator,
10 but you may be appointed as a lead investigator in
11 relation to an incident?

12 A. Yes.

13 Q. Thank you. Then the second element there of minimum
14 deployment relates to the PIM suite. We have heard from
15 a PIM, a PIM manager, Conrad Trickett --

16 A. Yes.

17 Q. -- about events in May of 2015, and he said that if you
18 are a suspect, you are removed from PIP?

19 A. Yes.

20 Q. Was that correct?

21 A. That is correct.

22 Q. So PIP or PIM or a PIM suite, that would contain people
23 who were witnesses?

24 A. Yes.

25 Q. Officers who may have witnessed an event?

26 A. Yes.

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1 Q. But not suspects?

2 A. Certainly not.

3 Q. And the minimum deployment for that area would be
4 a PIM-aware investigator, a scribe, a scene manager and
5 a productions officer, so that is four individual roles?

6 A. That is the ideal. There have been incidents where you
7 don't need four people, you only require two people, so
8 for example all incidents are managed by control rooms,
9 we have heard about area control rooms within the
10 police. But the staff within the area control room that
11 managed the incident, they could be seen as key police
12 witnesses.

13 Now, there is no need for forensic examination on
14 anything like that, you will pick up the Airwaves radio
15 traffic later, so you might only need to send two people
16 to the control room where that PIP is being held, and
17 that is frequently why you have multiple PIPs because
18 you have the control room controlling the incident, and
19 I think for Mr Bayoh's death the incident was controlled
20 at Bilston Glen, which is in Edinburgh, whereas you have
21 the incident in Kirkcaldy, so you might have two
22 separate PIP suites.

23 There have been times when we have had three
24 separate PIP suites: one for the control room, one for
25 the location and then there has been actions by other
26 officers at a distance from it, therefore there has been

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- 1 three post-incident processes run.
- 2 Q. If you only have one PIM suite and one scene, would you
3 agree that this is the minimum deployment --
- 4 A. Yes.
- 5 Q. -- in relation to PIRC personnel?
- 6 A. Yes, and that is usually what we do. We will evaluate
7 it so if there has been a discharge of firearms we will
8 send four to that PIP suite. But equally, that incident
9 is being controlled by the control room, we will send
10 two additional staff to that location.
- 11 Q. That is if there are two PIM suites?
- 12 A. Yes.
- 13 Q. So that -- looking just that the page of minimum
14 deployment, that would be a total of nine roles, nine
15 PIRC personnel?
- 16 A. Yes.
- 17 Q. And that would be the minimum deployment that would
18 normally be sent?
- 19 A. That is the ideal.
- 20 Q. Thank you. We have heard from Mr Harrower and we have
21 heard from Mr Little that Mr Harrower was lead
22 investigator on 3 May 2015?
- 23 A. Yes.
- 24 Q. Mr Little took over on 4 May?
- 25 A. Yes.
- 26 Q. And then that you became involved on Tuesday, 5 May.

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- 1 A. Yes.
- 2 Q. So from your statement I understand you arrived on duty
3 at 8 o'clock on 5 May 2015 and that is when you learned
4 about the incident?
- 5 A. Yes.
- 6 Q. You hadn't been personally involved in the events on the
7 3rd or the 4th?
- 8 A. No. So the 3rd was the Sunday, the 4th was the Monday
9 but that was the May day public holiday so I was off
10 that day.
- 11 Q. When did you first hear about the death of Mr Bayoh; was
12 it on arrival on 5 May?
- 13 A. Yes. I think I had actually been away with my wife on
14 the 4th so I didn't pick up on it until I went into my
15 work on the 5th.
- 16 Q. The 5th was the Tuesday?
- 17 A. Yes.
- 18 Q. We have heard that at that time Mr Harrower and
19 Mr Little were deputy senior investigators in PIRC --
- 20 A. Yes.
- 21 Q. -- but appointed as lead investigators. We have heard
22 that at that time you were a senior investigator?
- 23 A. Yes.
- 24 Q. And you came in on the Tuesday?
- 25 A. Yes.
- 26 Q. I would just like to ask you a little bit about your

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1 role on the Tuesday, because before Mr Little came in we
2 understood you were appointed lead investigator on the
3 Tuesday. But Mr Little said that initially he remained
4 in that role, you came in with oversight but it then
5 evolved and you were effectively the lead and he was
6 your deputy. I would like to hear your explanation of
7 your role on the Tuesday.

8 A. I think initially -- so on the Monday Billy was
9 appointed as lead investigator. I came in on the
10 Tuesday and was told: right, provide oversight
11 and assistance to Billy. As the complexities very
12 rapidly developed, it was then decided, right, I am now
13 the senior investigator, and Billy is my deputy. When
14 precisely that happened, I can't say now but it did
15 happen fairly rapidly.

16 Q. Mr Little wasn't able to remember a precise moment in
17 time when you became the lead and he took the role of
18 your deputy. When you say "fairly rapidly" can you help
19 the Chair understand when that role evolved that you
20 were the lead?

21 A. I think it was shortly after the 5th. It didn't happen
22 on the 5th because I think you will see from my policy
23 log that at some point I have recorded Mr Little as the
24 lead investigator with me as the back-up. So it would
25 have been after the 5th because otherwise I wouldn't
26 have recorded that on paper. So it was probably from --

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1 in fact it was -- I am quite certain it was the 6th, and
2 the reason why I say that is because I then decided to
3 go through to Fife to meet -- along with Billy to meet
4 with DCI Keith Hardie to do with approaching the nine
5 principal officers. So I am fairly certain it was the
6 6th, that is why I say it quite rapidly evolved into
7 that.

8 Q. And in terms of the practicalities of that role which
9 you had, did you change your approach from having
10 oversight on the 5th, to when you became lead
11 investigator, and if so can you explain how you did
12 that?

13 A. No, most of the 5th was taken up in understanding
14 exactly what had happened, getting the PIRC incident
15 room up and running, allocating roles and
16 responsibilities. Some of those had already occurred on
17 the 3rd and the 4th, but getting an understanding of
18 exactly what had happened. And there is also quite
19 a lot of information coming in during that sort of
20 period, some of it conflicting, some it erroneous, so
21 you are trying to understand exactly the nature of the
22 incident.

23 So for me on day one you are getting briefings from
24 staff, you are reading briefing papers -- I know you
25 have examined Keith's briefing paper -- and you are
26 getting a good understanding, you are also -- myself and

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1 Billy are talking all the time, because it is still is
2 very early doors in the investigation. And we are just
3 agreeing priorities.

4 Really when you get an Inquiry of this magnitude,
5 really the lead investigator, the senior investigator,
6 takes responsibility for policies and strategies, with
7 the deputy then converting them into practical actions
8 for staff then to go out and undertake that, to complete
9 the sort of -- what your policies and strategies are.

10 But you work seamlessly because you are talking all the
11 time, and equally if one of you goes off on holiday for
12 a week the other has to be able to take over. You don't
13 leave a gap.

14 So there is a really close relationship between the
15 senior investigator and their deputy, because that needs
16 to occur. And that occurs whether it's within PIRC, it
17 occurs within the police, it occurs within other
18 agencies.

19 Q. I would like -- you have mentioned the policy and there
20 was a policy log, I would like to come on to that in
21 a moment. But before I do so, can I ask you some
22 questions focused towards the independence of the
23 enquiry. I think in your statement you said that you
24 knew some of the officers who were involved in the
25 investigation into the death of Mr Bayoh?

26 A. Yes.

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1 Q. Police officers from Police Scotland?

2 A. Yes.

3 Q. And I would like to ask you particularly about those.

4 You have said that you knew Pat Campbell, we have heard

5 he was the SIO?

6 A. Yes.

7 Q. And you knew ACC Nicolson --

8 A. Yes.

9 Q. -- who was the Gold Commander?

10 A. Yes.

11 Q. You have said in your statement you had no relationship

12 with them in May 2015 but I wonder if you could just

13 explain in a little more detail how you knew them and

14 what your relationship had been before?

15 A. Yes. So starting with Pat Campbell, I worked in

16 Intelligence at force headquarters, Pat Campbell worked

17 in CID Operations. He was a detective superintendent in

18 CID Intelligence, Special Operations. He was

19 a detective sergeant at headquarters. So I knew that he

20 worked at headquarters, I would occasionally pass him in

21 the corridor but I never worked alongside him. And in

22 respect of the Bayoh enquiry I had no contact with him

23 throughout the duration of the Bayoh investigation. No

24 contact at all.

25 Moving on to Mr Nicolson, when I was

26 detective superintendent down in Ayrshire division

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1 Mr Nicolson was my line manager, so he was the Detective
2 Chief Superintendent, and he line managed the
3 detective superintendents in each of the geographical
4 divisions. So I certainly knew him. But when I moved
5 on to the intelligence side I then had a different line
6 manager.

7 Now, again I had no contact with Mr Nicolson
8 throughout the duration of the Bayoh enquiry, so I did
9 not see those as potential conflicts. I knew of them,
10 I explained my relationship to them, but I didn't see
11 any conflict there.

12 Q. Can I ask you a little more about your contact or
13 relationship with ACC Nicolson.

14 A. Yes.

15 Q. You said he was your line manager. How many other
16 detective superintendents did he line manage at that
17 time?

18 A. At that time there was ... I think there was 12
19 territorial divisions within Strathclyde and each had
20 a detective superintendent in charge of the CID for that
21 division. It was slightly unique insofar as the
22 detective superintendents in the division didn't answer
23 to the division or the divisional command, they answered
24 to the Detective Chief Superintendent CID Operations,
25 who was Mr Nicolson. So he was managing them. There
26 was also two or three specialist

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1 detective superintendents in charge of specialist areas,
2 so for example at one point in time the
3 detective superintendent in charge of the Fraud Squad,
4 so they would be managed within CID Operations, and
5 maybe answerable to the detective chief superintendent
6 CID Operations.

7 Q. So when you were working in Ayr, how regularly did you
8 have discussions or meetings or contact with Nicolson?

9 A. Usually you would have at the very least weekly contact.
10 If you were the on-call detective superintendent you
11 would come out at the weekend, and you would then brief
12 Mr Nicolson on what had occurred over the weekend,
13 equally, you went down and you briefed the command team
14 as to serious incidents that occurred over the weekend,
15 so you would have fairly regular contact with him.

16 Q. How long were you in Ayr with this regular contact with
17 ACC Nicolson?

18 A. I think I was there for about six months, and then
19 I transferred up to Special Operations and that was --
20 that moved me away from his line management.

21 Q. I think we were looking at your career earlier. When
22 exactly did you move to Special Operations of
23 Special Branch; was this 2000 or was it a different
24 time?

25 A. So I was DSI in Special Branch Special Operations, so
26 that is covert investigations into terrorism or

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1 organised crime and support to murder investigations.

2 On return from Africa I was then appointed

3 detective superintendent in Ayrshire division. I spent

4 about six months there and then was transferred back to

5 what you could call covert operations or covert

6 specialist operations, again examining terrorist

7 matters, organised crime, support to murder

8 investigations and I had various areas of business, some

9 of them quite sensitive areas of business.

10 Q. I think from your statement you told us that you had
11 returned from Sierra Leone in 2006 and it was after that
12 you were promoted and moved to Ayr; is that correct?

13 A. Yes.

14 Q. And you spent six months with ACC Nicolson as your line
15 manager?

16 A. Yes.

17 Q. How long did you spend in Ayr; was that the six-month
18 period?

19 A. Yes.

20 Q. So this was some time after 2006?

21 A. Probably during 2006.

22 Q. Did you have any contact with ACC Nicolson after you
23 moved and you were promoted?

24 A. Yes, you would see him on a regular basis, not so much
25 to discuss business because we were in two very
26 different business areas, I worked on the secret covert

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1 side of policing, dealing with quite sensitive matters.
2 But I would see him on a regular basis because it was
3 headquarters and his office was probably -- it was at
4 the other end of the corridor from where my office was.

5 Q. As well as seeing him in the building, did you have
6 actual contact with him during that period?

7 A. Occasionally because if the operational arm of CID
8 required assistance in respect of targeting organised
9 crime groups or murder enquiries -- and we are now
10 dealing with highly sensitive matters, so if they
11 required assistance, they would approach me for such
12 assistance.

13 Q. But he no longer had line management responsibility
14 towards you?

15 A. No, and I was also the authorising officer at one time
16 for a lot of the covert activity under -- it was RIP and
17 RIPS, it is now the Investigatory Powers Act. Although
18 the highly sensitive material was required to go to the
19 Chief Constable, I then acted as effectively the scribe
20 for the Chief Constable and it then went to the
21 Surveillance Commissioners, now the Interception of
22 Communications Commissioner, for authorisation.

23 So therefore Mr Nicolson or one of the other
24 detective superintendents might say: look, we're hitting
25 a brick wall with this investigation, we need covert and
26 sensitive assets deployed, so they would seek such

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- 1 assistance, and if it was -- if you consider it
2 necessary and proportionate, you would facilitate that.
- 3 Q. When did your contact with ACC Nicolson come to an end?
4 (Pause). When did your contact with ACC Nicolson come
5 to an end?
- 6 A. Probably when I retired from the police. Because we
7 worked in the same building, we worked in the same
8 corridor, although they are on one side of the building,
9 we are on the other side of the building. But you would
10 you see him -- you would pass him on a regular basis.
- 11 Q. So was that about 2012?
- 12 A. Probably.
- 13 Q. So by 2015 -- between 2012 and 2015 had you had any
14 contact with ACC Nicolson at all?
- 15 A. Not that I recall, I don't think so.
- 16 Q. Did you -- we have heard evidence there was a process,
17 a code of conduct in PIRC, and a process where if you
18 were concerned about any possible conflict you could
19 declare a knowledge of someone or awareness or
20 a familiarity or a relationship.
- 21 A. Yes.
- 22 Q. Did you feel in 2015 that you should declare your prior
23 knowledge and awareness and contact with ACC Nicolson or
24 not?
- 25 A. No, because I had no contact with Mr Nicolson during the
26 Bayoh enquiry, therefore I didn't consider there was

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1 a conflict.

2 Q. Thank you. I would like to move on and look at your log
3 that you have already mentioned.

4 A. Yes, ma'am.

5 Q. Can we look at a typed version first. The policy log
6 PIRC 04153. We've looked at this the document with
7 Mr Little in evidence, and it is a policy log which is,
8 as I understand it, a typed version of a handwritten log
9 that you would have prepared.

10 A. Yes.

11 Q. So Mr Little said you were the author of the policy log;
12 is that right?

13 A. That is correct.

14 Q. And you commenced that on 5 May 2015.

15 A. Yes.

16 Q. This is a typed version of it. I am actually going to
17 go through the detailed handwritten version with you
18 today but we can see from this document on the face of
19 it the incident is 3 May, the senior investigating
20 officer is named as DSI William Little, who is the
21 deputy senior investigator. The deputy investigating
22 officer is given as you, John McSporran, who is the
23 senior investigator.

24 A. I think that is what we touched on a short while ago,
25 that that sort of flipped on the Tuesday. Sorry, on the
26 Wednesday, which would be the 6th. So when I wrote --

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1 initially committed this to paper, the front page is
2 these roles and responsibilities, but that quickly
3 flipped on the next day.

4 Q. So on Tuesday 5th you are listed as the deputy --

5 A. Yes.

6 Q. -- to Mr Little, who is the lead investigator. The
7 following day that flipped, and you became -- you
8 essentially took the lead --

9 A. Yes.

10 Q. -- from 6th May? You also mentioned earlier that you
11 were appointed to take oversight. I am interested in
12 this -- a relationship between someone who is listed as
13 both the deputy who also has oversight. Can you explain
14 that, please?

15 A. I think it is just an anomaly because I had to -- I had
16 to record somewhere that I was involved, and there is no
17 mechanism -- because it is quite prescriptive describing
18 the roles here there is no role for oversight or
19 overseer, therefore the best way I thought I could
20 record that I was involved was by putting myself down as
21 deputy. That was on the 5th. And it was a simple
22 matter of to a certain extent transparency, to show that
23 I was involved.

24 Q. This role of having oversight, regardless of what is on
25 that page, what did that role involve? Did you
26 understand the nature of that role?

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1 A. I think it was to support and assist Billy Little. But
2 as I say, that quickly evolved the next day, and
3 we don't really have anybody since then appointed as
4 overseer. You do have -- in my role as head of
5 investigations for PIRC you will have oversight of all
6 the ongoing investigations and the reports, but that
7 doesn't make you the overseer in respect of any of the
8 specific investigations. So I think it was more
9 an anomaly in respect of this one, where it was
10 like: John, you have oversight, you help Billy. And
11 come my day two, which was the 6th that flipped
12 so: John, you're now the lead investigator, Billy you're
13 the deputy.

14 Q. Who was it that ultimately took that decision to make
15 you lead?

16 A. I think it was Mr Mitchell.

17 Q. From perhaps a slightly different perspective from
18 someone outside PIRC, someone with the role of having
19 oversight may be viewed as someone who is sitting above
20 the lead investigator, and perhaps checking things are
21 done properly or where things are being missed or not
22 being done properly they could perhaps direct
23 a different direction in relation to investigation; is
24 that any part of having oversight?

25 A. I would say yes, considering what you are saying just
26 now. But equally, when you are the senior investigating

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1 officer you are checking the statements, checking who is
2 doing what, all that sort of stuff. So there's a degree
3 of oversight there of the investigation, you are the
4 senior investigating officer, you are overseeing that
5 investigation, you are directing, you are creating
6 policies, strategies, you are interacting with the
7 deputy senior investigator, who is translating a lot of
8 that into actions. Staff go out, they complete the
9 action, take a statement, get productions, get
10 documents, whatever, that is brought in, it gets
11 recorded within the investigation, and you are examining
12 that and you are reading -- reading a lot of -- a lot of
13 things, so that you are as aware as possible of
14 everything that is going on.

15 Equally, you can get information overload so
16 sometimes the best way to gain an understanding is just
17 to have staff brief you or you have a daily briefing
18 where staff impart to you and the deputy the relevant
19 and salient points from their actions the day before.
20 Rather than going chapter and verse as to what has
21 occurred, it's like: tell me the important stuff I need
22 to know here, I will catch up on the reading when I get
23 the opportunity.

24 Q. So regardless of your PIRC title or what is said here,
25 am I correct in saying that you had a contribution to
26 make to this investigation and you had influence over

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1 the direction of the investigation?

2 A. Yes.

3 Q. Thank you. Let's look at -- just the other names
4 mentioned, we've heard that -- who is listed as office
5 manager, Ian MacIntyre, we were told he was one of three
6 staff involved in the major incident room --

7 A. Yes.

8 Q. -- if I can put it that way, and productions officer we
9 have heard -- you have mentioned Garry Sinclair, who was
10 allocated the role of scene manager for Hayfield Road?

11 A. Yes.

12 Q. He was also involved in other matters as well.

13 A. Yes.

14 Q. Then other relevant staff included yourself,
15 John Ferguson, who was also a qualified scene manager.
16 Family liaison involved Alistair Lewis and John Clerkin?

17 A. Yes.

18 Q. But we have heard from Mr Little that there were a large
19 number of members of PIRC, the PIRC team who were
20 involved, and in fact all bar one were actively involved
21 in this investigation?

22 A. Yes. I think we need to remember at that time we had
23 a total of 22 people. This was a large-scale
24 investigation, it was very quickly becoming
25 a large-scale investigation. Now, I have run murder
26 enquiries where I have had 50 or 60 staff and this was

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1 going to be a highly complex thing and we had to manage
2 this with effectively 20 deployable staff. So staff are
3 multitasking, some are doing crime scene management then
4 as soon as they complete that they will move on to
5 another role. Quite apart from -- I think we have
6 touched on Garry Sinclair being crime scene manager
7 responsible for productions on day one, later on he
8 became the interview adviser when he was drawing up the
9 interview for the interview of the nine principal
10 officers, so sometimes they are performing multiple
11 roles.

12 Q. You have mentioned this in your Inquiry statement, but
13 what were your views about the resources available to
14 you in this investigation in relation to Mr Bayoh's
15 death and the adequacy of those resources at that time?

16 A. I don't want to stray into the political sphere.
17 I don't consider that we were effectively funded or
18 resourced to undertake the functions. I think probably
19 Ms Frame might have more to say on that but I don't want
20 to stray into the political sphere.

21 Q. From your experience -- looking back now and from your
22 experience of dealing with murder investigations, deaths
23 in custody, deaths following police contact, leaving
24 aside political issues, but solely in relation to
25 the numbers that you had available to conduct this
26 investigation, do you feel you had adequate resources

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1 available to PIRC at that time?

2 A. At that time, no. Now, what I will add to that is that
3 following the investigation of the death of Mr Bayoh and
4 the investigation into the M9, the death crash on the
5 M9, application was made saying: we are stretched here,
6 we need additional funding, we need additional
7 resourcing, and that was forthcoming. But I think it
8 took the Bayoh investigation and the M9 crash, and our
9 ever-increasing workload to demonstrate that we were
10 under-resourced and under funded. Because
11 potentially -- this is a personal opinion now -- there
12 should have been more of a scoping exercise undertaken
13 by Government to measure the scale of the task that PIRC
14 would have to undertake and that scoping exercise should
15 then have been used to identify how much funding and
16 resourcing would be required.

17 I am not sure whether that occurred or to what level
18 it occurred or what detail it occurred.

19 Q. Thinking about the resourcing, we have heard there were
20 22 members of staff from top to bottom?

21 A. Yes.

22 Q. That Mr Little on 4th came in and had all bar one
23 working on this Inquiry. He still required the support
24 of Police Scotland?

25 A. Yes.

26 Q. Particularly in relation to issues regarding

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1 house-to-house enquiries?

2 A. What I would say there is that, I think as we are aware
3 and we have discussed, on Sunday, 3rd PIRC were simply
4 instructed to investigate the incident at Hayfield Road
5 and the aftermath of that. Whereas Police Scotland were
6 investigating all the events leading up to the incident
7 at Hayfield Road. Sorry, I have lost my train of
8 thought. Can you repeat the question?

9 Q. I was talking about resourcing and the adequacy of
10 resourcing, and talking about some of the evidence we
11 have heard from Mr Little, talking about how he used all
12 but one of the PIRC resources and staff he had at his
13 disposal on the 4th when he came in. But, in addition,
14 he talked about still requiring to rely on support from
15 Police Scotland, and one of the matters I mentioned was
16 the house-to-house.

17 A. Yes, I think, because of the preceding incidents,
18 Police Scotland were doing that house-to-house enquiry.
19 So, as we know, Mr Bayoh had been in the house of
20 Mr Dick in the early hours of Sunday, 3rd. He had then
21 left there and returned to his own house. There was
22 an altercation outside with his friend, Mr Saeed. He
23 then left that house and then walked along various roads
24 until he arrived at Hayfield Road in Kirkcaldy. So we
25 were doing Hayfield Road, the immediate nature of
26 Hayfield Road, including house-to-house.

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1 Police Scotland were doing all the other house-to-house,
2 because that is what they had to investigate. Now, that
3 changed on the 5th where basically Crown said: just do
4 everything, take over all aspects -- sorry, I am
5 punching that again -- take over all aspects. At which
6 point we told Police Scotland: stop the house-to-house,
7 we are now taking over all aspects of the
8 house-to-house. But they had already done some of that
9 anyway. Fine. They had done it. We would examine what
10 they had done. If we felt it necessary to go back and
11 see somebody, then we would do that.

12 Q. So thinking about the resources that were available to
13 PIRC that first week, approximately 21 members of staff
14 were available. You have said you took the view that
15 you were not adequately resourced. Can you help the
16 Chair understand where you felt there was perhaps
17 a shortfall or further resources would have benefitted
18 PIRC at that time?

19 A. Where you have limited resources, I think there is
20 a difference between an effective investigation and the
21 timeliness of the investigation. Because you can be
22 effective with limited resources, but it might take you
23 longer to get there and, therefore, the limitation on
24 resources will delay the investigation and what can be
25 achieved within timescales. Part of the challenge, as
26 we know, if we go back to the five principles, was

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1 promptness. If you have limited resources, it delays
2 things, it adds to frustration, not just within the
3 organisation but it leads to frustration by,
4 for example, the family of the deceased, who consider
5 that things aren't progressing as quickly as we would
6 like. You are doing the best with the resources you
7 have but, if those resources are limited, there is
8 a limit. I know I have used the word "limited" and
9 "limit" twice there, but there is a limit in what can be
10 achieved within reasonable timescales.

11 Q. Looking back now at that early week, those early days,
12 can you identify in your mind areas where you simply
13 didn't have any more staff to do a task you would have
14 liked to have been done?

15 A. I think as the days went on staff began to multitask.
16 So we are sending out actions: right, let's complete the
17 house-to-house, let's get this -- you are prioritising
18 what you are doing. Right, we want the house-to-house
19 completed as quickly as possible. So it was at that
20 point, and I think Billy Little touched upon it, I am
21 saying: I need additional resources here, I have ran out
22 of staff, and I went to the Commissioner, and she said:
23 shut down the review section in PIRC, that is the other
24 side of our business, complaint handling reviews, get
25 out and help the investigations team, let's complete the
26 house-to-house at the very least. So they assisted us

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1 with that, to complete that aspect. Because that was
2 quite important. Because during the house-to-house you
3 were turning up witnesses who had seen -- or you were
4 identifying witnesses. I use a lot of colloquialisms,
5 "turning up witnesses", but you were identifying
6 witnesses who had seen aspects of it and required
7 statements taken.

8 Equally it's a thing which frequently occurs --
9 frequently occurs during murder investigations, there
10 are other things, you get the revisit of the scene
11 precisely one week later. So I organised the revisit to
12 the scene one week later to see if -- because this
13 occurred 7.20 on the Sunday morning, so we would go
14 there from about quarter to 7 on that morning through to
15 the back of 8 and see -- we would stop vehicles with the
16 assistance of the traffic department or roads policing
17 in Police Scotland, stop vehicles, and that actually
18 threw up a couple of additional witnesses that had never
19 come forward in the first instance. So -- but because
20 you are doing that, as you are speaking to people, you
21 require staff to take them aside; who are they? What
22 did they see? Get statements from them. Sometimes
23 arrange: well, you can't give a statement just now
24 because you are on your way to work, because the
25 hospital is fairly close by and there was a change over
26 of shift, so you are making arrangements to go back and

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1 see them in the evening. There are all these things to
2 consider.

3 Q. When was it that you spoke to -- was it Ms Scullion, and
4 she directed: let's shut down the complaint handling
5 section and use those staff as well?

6 A. It was Ms Frame, who was the Commissioner.

7 Q. Sorry. Ms Frame, sorry.

8 A. I think that was within two or three days. Because
9 I know I had those resources by the Sunday, which was
10 the week later, and our priority was completing the
11 house-to-house. So I knew I had those resources come
12 that weekend. Now, those staff did not work at
13 weekends, therefore I must have had them prior to the
14 weekend.

15 Q. So you come back to work on Tuesday, 5th?

16 A. Yes.

17 Q. You've got additional resources at your disposal prior
18 to the weekend. Would that be by the Friday?

19 A. Potentially, yes.

20 Q. The 8th.

21 A. Yes. But I think what we need to remember is that none
22 of those staff were trained investigators. They had an
23 entirely different function within PIRC. But equally
24 legislative-wise PIRC investigators have the powers of
25 a constable, other PIRC staff don't. So they didn't
26 have powers of a constable, because you are designated

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1 by the Commissioner and, if you ever look at a PIRC ID,
2 on the back of it there is a statement that states the
3 legislation and confers the powers of a constable on
4 you. So investigators while doing the investigation on
5 behalf of the Commissioner have the powers of
6 a constable, other PIRC staff don't. So --

7 Q. Did that then limit the roles or the tasks they could be
8 allocated?

9 A. Yes, certainly. You wouldn't allocate them a task to
10 undertake by themselves. Because usually you work in
11 pairs for the corroboration, what you would do is then
12 split the investigators and actually give them a member
13 of the review staff to act as their corroborating
14 person, and that is how we did it. But we didn't
15 individually allocate actions for them to go out and
16 complete. They were there to assist primarily from the
17 corroboration perspective.

18 Q. I see. Thank you. Can we turn now to the actual
19 handwritten document. I am going to go through this and
20 it will be on the screen, and we will be able to go
21 through it in that sense. You won't have the ability to
22 flick through pages doing it this way, but if there is
23 another page you would like to see, we can hopefully
24 work through that. And I have a hard copy myself.

25 A. Yes, ma'am.

26 Q. So this is, as you can see it on the screen, PIRC 04154

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1 and it says "Management policy file" at the top, and we
2 see handwriting. Is that your handwriting?

3 A. Yes.

4 Q. It gives "Date of crime/incident 3rd May 2015".

5 Mr Little's name is there and your own name is there.
6 Do we see this is -- we saw the typed version a moment
7 ago. Is this effectively what it was typed from?

8 A. Yes. I started completing this on the 5th and that is
9 why you have got the anomaly where basically Billy and
10 me flip roles come the 6th. But I had started writing
11 this on the 5th.

12 Q. Tell us, what is a management policy file? What is it
13 for?

14 A. It is to basically manage the investigation from
15 a strategy and a policy perspective. All major
16 investigations usually have a management policy file,
17 and it is to record your high level decisions; setting
18 out the progress of the investigation in a structured
19 way, your thought processes, why are we doing this.
20 Now, that translates into a series of actions. So,
21 for example, you might have a forensic strategy. You
22 would record your forensic strategy and then that gets
23 converted into a series of actions by staff which is: go
24 out and seize productions, submit them to a lab, get
25 examinations done. So it's quite high level policy and
26 strategy. It is not a series of actions, but equally it

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1 is to chart the development of the investigation and
2 record what is your considerations, what your reasons
3 sometimes for taking the investigation in this direction
4 or whatever, so it's quite a high level document. Now,
5 all senior investigating officers, whether they be in
6 the police, PIRC or wherever, are trained in management
7 policy files.

8 Q. We obviously know this is your document and you started
9 it and created it. What role would normally be
10 responsible for creating and starting a management
11 policy file?

12 A. It is usually the senior investigator or senior
13 investigating officer within the police.

14 Q. Would that be like the lead investigator in PIRC or
15 someone with the title "senior investigating officer"?

16 A. Yes, but usually you only have a management policy file
17 for those large-scale investigates. You don't have them
18 for smaller investigations. It is only for large-scale
19 investigations. Within the police, that is primarily
20 murders or major enquiries. Let's say, a terrorist
21 investigation, a terrorist incident. It is quite high
22 level. But for more general crime you certainly
23 wouldn't do that and within PIRC it is for the
24 large-scale investigations.

25 MS GRAHAME: Thank you. That sets us up for this afternoon,
26 but I am conscious of the time. Would that be

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1 an appropriate moment to rise?

2 LORD BRACADALE: We will stop for lunch now and sit at

3 2 o'clock.

4 (1.01 pm)

5 (The short adjournment)

6 (2.00 pm)

7 LORD BRACADALE: Ms Grahame.

8 MS GRAHAME: Thank you. We had just turned to your log --

9 A. Yes.

10 Q. -- before lunch, and I wonder if we can go back to that
11 and have it on the screen, please, if we can move to the
12 second page. We will see at the top of page 2 it says:

13 "Decision No 1."

14 A. Yes.

15 Q. And you said before lunch that this management policy
16 file is designed to record high level decisions that are
17 taken?

18 A. Yes.

19 Q. Does that involve all high level decisions?

20 A. Due to the nature of it, a lot of the decisions may be
21 taken by Crown and then passed to us. Where Crown are
22 issuing additional instructions I would usually record
23 it within the policy file, and I think as we move on we
24 will see that.

25 Some decisions are natural to any investigation. So
26 although you may record them, you don't really need to

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1 go into depth because broadly everybody understands what
2 they are. For example, house-to-house enquiries, you
3 don't actually need to specify what a house-to-house
4 enquiry is because everybody involved in
5 an investigation understands what that is. You might
6 need to set the parameters for the house-to-house
7 enquiry, and in this case it was the route Mr Bayoh took
8 from his home to Hayfield Road. So you would set those
9 things. So it is quite a high level, you don't
10 necessarily need to go into detail, because, as I said
11 earlier, that will translate into a series of actions to
12 be issued to staff to complete.

13 Q. Looking at that decision number 1, you have
14 a description of the investigation?

15 A. Yes.

16 Q. If we just move to the bottom of that page for a moment,
17 I think we will see it says:

18 "Officer making decision."

19 Your signature appears there on the true copy and
20 the date and time is given 5 May 2015.

21 A. Yes.

22 Q. So before we look through the content of this page, can
23 you tell the Chair -- obviously this relates to
24 an investigation that started on 3 May?

25 A. Yes.

26 Q. You arrive back at work on 5 May and start the policy

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- 1 log?
- 2 A. Yes.
- 3 Q. You are giving a description of the incident here on
4 5 May. Did you prepare this on 5 May on the basis of
5 your knowledge at the time --
- 6 A. Yes.
- 7 Q. -- or was it prepared retrospectively?
- 8 A. No, it is prepared at the time. Some entries are
9 prepared retrospectively, and I think I explained that
10 in my Rule 8 statement, so you may be away from the
11 office, at meetings or things like that, so you might
12 not be able to complete that day or even the next day,
13 so you would retrospectively complete it. And if I do
14 retrospectively complete it, I tend to indicate that it
15 has been retrospective, what has actually happened and
16 then when I create the entry. Again, that is just for
17 the purposes of transparency. If I could also say my
18 habit in every investigation, murder or other
19 investigation, is always to give a narrative of what my
20 understanding is in decision 1 as to my understanding of
21 what happened, albeit sometimes that can be quite
22 limited.
- 23 Q. So decision 1 may not necessarily be a decision that has
24 been taken, but perhaps a summary of your understanding
25 at that time?
- 26 A. Yes.

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- 1 Q. If the Chair looks at the date on any of these pages,
2 and as in here we see it is 5 May, was that the date
3 that you prepared this summary?
- 4 A. Yes. It would be late in the day because obviously
5 I was reading the briefing paper, I was getting briefed
6 by staff, holding lots of discussions and things like
7 that, examining some material that had come in. And you
8 might pick up on it as we go through it. Because we
9 were aware, for example -- and that is why I referenced
10 DC Derek Connell's statement which was provided on the
11 4th and that indicated that the knife had been found
12 a distance away from where the interaction with Mr Bayoh
13 took place. Consequently there was no certainty --
14 I know you have spoken about it during the Inquiry, but
15 this narrative that was presented on day one that
16 Mr Bayoh was potentially in possession of the knife when
17 he confronted the police officers and that indicated to
18 me probably or possibly he did not have possession of
19 that knife because it was found a distance away from
20 where the incident -- I think it was 30-40 yards away,
21 so that indicated to me that what we knew up to that
22 stage may not be accurate.
- 23 Q. That was information that was known to you on 5 May by
24 the time you prepared this decision number 1?
- 25 A. Yes.
- 26 Q. Just to be clear about that, we have heard evidence

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1 about a briefing note --

2 A. Yes.

3 Q. -- which was dated 3 May. Perhaps we could look at that
4 for a moment. It is PIRC 03694. This will come up on
5 the screen in a moment. Just to give you some of the
6 background, we heard from Mr Harrower that he had
7 prepared this briefing note on 3 May, based on the
8 information he had at that time.

9 A. Yes.

10 Q. And that was then used and Mr Little saw it on the 4th
11 and then we may hear that -- am I to understand you saw
12 this briefing note on the 5th?

13 A. Yes.

14 Q. So that is PIRC 03694. I can summarise this really. We
15 heard in relation to the briefing note on page 2 at
16 paragraph 4 that it was reported -- this is on 3 May:

17 "It was reported that as the officers drove into
18 Hayfield Road they saw the now deceased coming toward
19 them as the vehicles came to a halt. They could clearly
20 see he was in possession of a knife and was making his
21 way towards them. Some of the officers (unknown how
22 many at this stage) drew their police issue batons. At
23 least one of the officers also drew their PAVA spray and
24 issued a warning to the now deceased, who continued to
25 come forward."

26 The summary of that I put to Mr Harrower was that

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1 this was describing a subject who was the aggressor in
2 that situation, and the police had responded to that
3 aggression using batons and spray?

4 A. Yes.

5 Q. We had asked previous witnesses why in this decision
6 number 1, which -- we will just keep with this decision
7 number 1, if we can look at that page, just maybe
8 further up, we see that you have written here about
9 events of the early hours, we can move down, please:

10 "On being detained/arrested, Sheku Bayoh struggled
11 with police officers who physically restrained him.
12 Officers used CS/PAVA spray during the arrest and used
13 police batons against the deceased."

14 A. Yes.

15 Q. So we can see clearly that there is no reference there
16 to what is contained in the briefing note, that the
17 officers could clearly see he was in possession of the
18 knife and making his way towards them?

19 A. Yes.

20 Q. That was because you had seen DC Connell's statement by
21 then?

22 A. DC Connell's first statement is dated 4 May. As I said,
23 I don't know what your reference is but it was statement
24 22A within the PIRC statements. And his attention had
25 been drawn to the knife lying a distance away from where
26 the incident occurred. He had then photographed the

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1 knife and then lifted or seized the knife. So
2 I thought: I need to be cautious about assumptions here
3 because although we were told on the 3rd, and it's in
4 the briefing document you referenced, that he was in
5 possession of the knife coming toward them, well, that
6 didn't really square with the fact that the knife is
7 found 30-40 yards away, and that is why I am not being
8 definitive about that within my narrative.

9 Q. If we can carry on looking at the latter half of the
10 page, there is then a section for a reason and you have
11 explained that this technically wasn't reason, it was
12 a narrative. And it says:

13 "[He] was taken to the ground by police officers
14 where he was handcuffed to the rear and had leg
15 restraints applied."

16 That was the information that was available to you
17 at the time?

18 A. Yes.

19 Q. "[He] lost consciousness and appeared to suffer cardiac
20 arrest. CPR was administered by police officers and
21 an ambulance summoned. On arrival Mr Bayoh was placed
22 in the ambulance and CPR continued. He was taken to
23 Kirkcaldy Victoria Hospital where he died. Life was
24 pronounced extinct at 0904 hours."

25 A. Yes.

26 Q. Once you complete these he forms, I think you have said

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1 you sign these pages?

2 A. Yes.

3 Q. Do you check them for accuracy at that time?

4 A. It's as accurate as your knowledge is at that time.

5 Q. Right, so it's -- is it fair to say it is a snapshot of

6 where you are at that stage, when you sign?

7 A. Yes, obviously as you progress through any investigation

8 you are gathering evidence, you are gathering witness

9 statements, so it can be an evolving picture. But it is

10 as accurate as you know at that time.

11 Q. Let's move on to the next page. It remains decision

12 number 1, which you have explained, that is

13 the continuation, and it says:

14 "Police Scotland secured the incident scene and

15 appointed an SIO [Detective Superintendent]

16 Pat Campbell~..."

17 There was:

18 "Incident scene protocols to recover evidence and

19 undertake forensic scene examination were put in place."

20 You mention Garry McEwan, the divisional commander,

21 who was appointed the PS incident manager.

22 Now, where was that information from that

23 Garry McEwan was the Police Scotland incident manager?

24 A. I can't recall that -- excuse me, frog in my throat.

25 I can't remember where that came from but I think it

26 is more the critical incident manager, he -- the

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1 incident had been declared a critical incident, you have
2 a police incident officer who is usually a sergeant or
3 inspector that manages the immediacy of what happened or
4 the incident scene itself. But because this had been
5 declared a critical incident, Mr McEwan had been really
6 I should say there "critical incident manager" but
7 I have just recorded it as PS incident manager.

8 Q. We have heard Garry McEwan was responsible for declaring
9 this a critical incident?

10 A. Yes.

11 Q. So that became his responsibility?

12 A. Yes.

13 Q. Thank you. Then it says:

14 "Police Scotland notified the Scottish Fatalities
15 Investigation Unit ... of [Crown Office] and notified
16 them of the death. Mr David Green ... instructed that
17 PIRC would investigate the death with Police Scotland
18 investigating the incidents leading up to the death."

19 A. Yes.

20 Q. So even at that stage when you signed this page on the
21 5th you were aware that there had been -- what has been
22 called a parallel investigation or a split in the
23 investigation and I think you have already described
24 that actually today in evidence. Police Scotland were
25 doing the lead-up, PIRC were dealing with the events at
26 Hayfield Road, and at the hospital?

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1 A. Yes. I think also on the 5th -- and I can't remember
2 when the letter from Crown came in, broadening our terms
3 of reference. Now, I can't remember seeing it on the
4 5th but I know it was dated the 5th from Crown, and
5 consequently our terms of reference expanded, probably
6 from the 6th onwards.

7 Q. We will come on to that in a moment. But my
8 understanding is that that letter was dated the 5th?

9 A. Yes.

10 Q. So it's at some point on that date the terms of
11 reference were expanded to cover both the lead up and
12 the events from the Hayfield Road as well?

13 A. Yes.

14 Q. "About 0935 hours, Sunday 3rd May ... Mr Green contacted
15 the on-call PIRC DSI Keith Harrower and instructed PIRC
16 to investigate the death as per above.

17 "PIRC staff were called out and attended Kirkcaldy
18 where they met with Police Scotland staff, including
19 their SIO [Detective Superintendent] Campbell. Joint
20 forensic and incident scene strategies were agreed and
21 overseen by PIRC investigators."

22 Would you describe this as a high level description
23 of what was happening?

24 A. Yes.

25 Q. There is no times given there or detailed information
26 about handovers or information that was provided?

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1 A. No, because I think the detail would come slightly
2 later. This was me recording my understanding of events
3 up to that point. Some of the detail may have been
4 lacking, we might not have had that detail, and that is
5 why I tend to be -- it's quite high level, I am not
6 going into too many specifics at this point.

7 Q. Is it fair to say -- we have heard evidence that other
8 officers who were involved on 3 May had their own
9 notebooks or perhaps daybooks, we have heard about
10 a policy log from Pat Campbell, so there would be other
11 documentation available as well as your own log?

12 A. Yes.

13 Q. Thank you. Can we move on to the next page, which again
14 continues decision number 1:

15 "PIRC investigators Ferguson and Taylor dealt with
16 the hospital scene and arranged the transport of the
17 deceased to the City Mortuary, Edinburgh. PIRC
18 investigators Sinclair and Rhodes dealt with the
19 incident scene at Hayfield Road and productions seized
20 at Kirkcaldy Police Office including officers' clothing,
21 PAVA spray, police batons."

22 We have heard evidence from Mr Little about that.

23 A. Yes.

24 Q. And then you mention:

25 "A post mortem examination was arranged for Monday,
26 4 May ... at the Mortuary, Edinburgh."

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1 And on to the next section:

2 "PIRC FLOs Alistair Lewis and John Clerkin were
3 appointed."

4 And then it says:

5 "About 2210 hours 3 May ... PIRC investigators met
6 with the deceased's family and provided an overview of
7 the role of the PIRC."

8 Can I ask you, this is obviously describing events
9 on 3 May?

10 A. Yes.

11 Q. Was it your understanding that it was on 3 May that
12 Alistair Lewis and John Clerkin had been appointed as
13 FLOs?

14 A. I think it was the 4th. Because we didn't have any FLOs
15 on duty or available to us on the 3rd. As we know,
16 there was a debate about Police Scotland FLOs and
17 consequently when Police Scotland decided not to deploy
18 FLOs, Keith Harrower and I think it was Alex McGuire
19 went to see the family to explain, you know: we're PIRC,
20 we have been instructed to investigate, and it is our
21 intention to then deploy FLOs the next day, which would
22 be the 4th. So that is my understanding.

23 Q. And that understanding, was that from Mr Little when you
24 arrived on the 5 May?

25 A. Yes.

26 Q. He has given evidence that he contributed information to

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- 1 you so that you could have it for the log?
- 2 A. Yes.
- 3 Q. Would you agree with that?
- 4 A. Yes.
- 5 Q. Did much of the information about the preceding
- 6 two days' events come from Mr Little?
- 7 A. I would say it came from a combination -- primarily
- 8 Mr Little, but it came from a combination, so reading
- 9 documents, there was documents starting to arrive in
- 10 from Police Scotland, so you read as much as
- 11 practicable. You also get briefings from some of the
- 12 staff, but up until that point obviously Billy had been
- 13 in charge, so primarily from Billy but from some other
- 14 sources as well.
- 15 Q. "DSI Harrower requested statements from officers
- 16 involved as witness to the incident. Status of the
- 17 officers is that of witnesses at this stage!"
- 18 A. Yes.
- 19 Q. Tell us about why you have put that with an exclamation
- 20 mark?
- 21 A. I think what I have said in my Rule 8 statement is I can
- 22 no longer remember why I placed the exclamation mark.
- 23 Q. All right. But your understanding at that time is
- 24 statements had been requested from the officers as
- 25 witnesses and they were witnesses?
- 26 A. Yes.

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- 1 Q. Not suspects?
- 2 A. No.
- 3 Q. Is there any other possibility between suspect or
4 witness?
- 5 A. No, you are either a witness or you are a suspect. To
6 be placed into the category of a suspect there must be
7 some evidence that indicates criminality on the part of
8 a person. And that is just the way things operate. You
9 know, you can't treat somebody as a suspect without some
10 evidence.
- 11 Q. We have heard that if you are going to be treated as
12 a suspect, that that attracts -- that status attracts
13 certain protections for you. We have heard you might be
14 interviewed under caution. We have heard evidence from
15 Conrad Trickett that if you are a suspect you will be
16 removed from the PIP process entirely?
- 17 A. Yes.
- 18 Q. Is that correct?
- 19 A. Because you are afforded all the legal protection that
20 any member of the public has, which is the right to
21 silence, the right to consult a solicitor prior to
22 saying anything, you've got to administer the caution,
23 so it's a completely different status from that of
24 a witness.
- 25 Q. But regardless of whether you are a suspect or
26 a witness, you are not compelled to give a statement to

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1 a police officer?

2 A. No, you are not compelled. Largely most people do give
3 statements, particularly -- I have run murder enquiries
4 in organised crime and it is incredibly difficult to
5 actually sometimes get witnesses to speak up. Other
6 times everybody speaks up. Sometimes you just have to
7 work around that. I think, as you have explored and
8 I outlined later on within my rule 8 statement, the
9 unique nature of police officers where police officers
10 are allowed to use force up to and including lethal
11 force, but they must be accountable for the use of that
12 force. Equally there is there normally within the
13 legislation where in a Crown-directed investigation PIRC
14 have less powers than in a police-referred
15 investigation, where there is a degree of compulsion
16 that we can apply to police officers in
17 a police-referred one, where -- and it comes within
18 Regulation 5 of the 2013 PIRC regulations, where we can
19 require a police officer to provide us with any
20 information within their knowledge and we can decide the
21 format that that should be in, so: I want you to provide
22 informing in the form of a statement. But we did not
23 have that power and still do not have that power in
24 a Crown-directed investigation. The legislation is
25 complex.

26 Q. I think you have explained earlier there is the

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1 Crown-led investigation and the Chief Constable-referred
2 that can become an investigation?

3 A. Yes.

4 Q. Although you have certain powers to compel officers to
5 give statements if it is a Chief Constable referral,
6 that doesn't exist if it is Crown-led?

7 A. That is correct and I think Dame Elish Angiolini in her
8 report into police conduct matters has made
9 recommendations which are within the current Police
10 Conduct and Ethics Bill, where there should be a duty of
11 candour placed on police officers to provide an account
12 no matter what the circumstances.

13 Q. Is that because of their special status as police
14 officers?

15 A. Yes, and I think Dame Elish had identified -- well, it
16 was certainly brought to her attention and she took
17 cognisance of it, of the anomaly within the legislation
18 where the more serious the investigation
19 a Crown-directed death, PIRC investigators had less
20 powers than in a police-referred one, it seemed to be
21 upside down. You know, the more serious the
22 investigation, the more powers you should have.

23 Now, I know we also heard from Ms Boal, you put the
24 question to Ms Boal that you cannot actually physically
25 force a pen into any person's hand, but there has never
26 been another occasion before the investigation of

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- 1 Mr Bayoh, or after the investigation of Mr Bayoh's
2 death, where police officers have refused to provide
3 statements.
- 4 Q. Right. Thank you. I think it is fair to say in your
5 Inquiry statement you have given some information about
6 the proposed duty of candour --
- 7 A. Yes.
- 8 Q. -- that may apply. Thank you. Let's move on to the
9 next page, please. I think this is when we turn to
10 decision number 2, and this is also an entry from 5 May?
- 11 A. Yes.
- 12 Q. So you were creating this on that date, if I understand
13 correctly.
- 14 A. Yes, Billy had instructed the setting up of the incident
15 room on the 4th but I thought it important to record
16 that this was a major enquiry and that is why I made
17 that entry.
- 18 Q. Do you know why Mr Little hadn't created a management
19 policy file on the 4th, or even Mr Harrower on the 3rd?
- 20 A. Probably because they were both active in doing things
21 and tied up. We know for example Billy Little had the
22 post mortem to go to on the 4th, and then he had to
23 travel through to Kirkcaldy, and of course Keith was
24 very active on the 3rd, the date of incident itself. So
25 potentially they just didn't have the opportunity.
- 26 Q. So decision number 2:

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1 "Establish a PIRC major enquiry to investigate the
2 death of [Mr] Bayoh with appropriate major investigation
3 roles and strategies."

4 A. Yes.

5 Q. We heard evidence from Mr Little, who said he had set up
6 a major investigations team effectively --

7 A. Yes.

8 Q. -- with numerous staff, and he was appointing roles to
9 individual investigators and allocating tasks?

10 A. Yes, and I think that is why I am just formally
11 recording it within the management policy file.

12 Q. When it mentions the word "strategies", could you give
13 us a summary of the sort of strategies that we may see
14 in the remainder of the file?

15 A. Yes, well, I think sometimes there is a merging of the
16 term "policy" or "strategy", so you will have a forensic
17 strategy, and that is to recover forensic evidence, so
18 there's the seizing of the productions, the examination
19 of them at the forensic lab etc, you would hold
20 a forensic strategy meeting, you would record the
21 meeting and what was decided at the meeting. So that is
22 a forensic strategy.

23 You would have -- there is a range of strategies
24 within all major investigations, so you would have like
25 a CCTV strategy, you would have a media strategy, and
26 that is setting out at high level what the intent is.

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1 So the CCTV strategy undoubtedly starts with let's
2 recover every available CCTV, and that gets translated
3 into a series of actions allocated to staff to go out
4 and recover that CCTV. In a high profile event, in this
5 instance the terrible death of Mr Bayoh, there's a lot
6 of media attention so you need a media strategy. Now,
7 primarily that is handled by your media team but you
8 will record in here that we will have a media strategy.

9 Q. We may also hear there would be a family liaison
10 strategy and things like that?

11 A. Yes, so again you would set that at a high level but
12 primarily family liaison is thereafter managed by the
13 FLOs themselves who keep a separate FLO log of all that
14 interaction.

15 Q. And then the reason is given you wish to:

16 "Undertake a comprehensive and thorough
17 investigation into the death ... to capture and collect
18 all available evidence [for] Crown Office."

19 A. Yes.

20 Q. Then the next page covers decision number 3 and this
21 again is prepared on 5 May, and it is headed:

22 "Major investigation - roles and responsibilities."

23 And a list of names and suchlike is given and we
24 actually looked at that when we looked at the typed
25 version.

26 A. Yes.

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- 1 Q. You were mentioned there as giving oversight?
- 2 A. Yes.
- 3 Q. Which you have explained. The next page is decision
4 number 4 and this is where we see a reference to the
5 forensic strategy, and you have said:
- 6 "Implement a forensic strategy to identify, recover
7 and examine all relevant material pertinent to the
8 investigation."
- 9 If we move on to the next page for a moment, do we
10 actually see you have helpfully attached a forensic
11 strategy here?
- 12 A. Yes.
- 13 Q. Which is a typed document which you've slipped into the
14 relevant section of your log?
- 15 A. Yes. Usually if there's pertinent documents rather than
16 repeating them within it, I will just attach -- so
17 simply to say we are having a forensic strategy then
18 I attach the typed up forensic strategy rather than
19 having to rewrite it.
- 20 Q. The forensic strategy lists the policy, the reason and
21 then the strategy is listed there as bullet points?
- 22 A. Yes.
- 23 Q. It covers a large number of areas where forensic science
24 will be asked to assist in your investigation?
- 25 A. Yes.
- 26 Q. And that includes the post mortem but also:

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1 "Examination of the knife found at the scene~..."

2 A. Yes.

3 Q. "... for DNA [it says], fingerprints and other evidence;

4 "Comparison of the knife with knives from the home

5 of the deceased to identify whether they appear

6 a matching set."

7 And then other things such as photographs, CCTV,

8 physical items, recovery of mobile phones and other

9 articles and examination of vehicles as well. Then

10 towards the bottom of that page we see:

11 "Examination of officers' clothing, radios,

12 et cetera, for blood, footmarks and other relevant

13 evidence."

14 A. Yes.

15 Q. So is this effectively PIRC investigators setting out

16 the scope of the forensic examination that they wish

17 carried out?

18 A. Yes.

19 Q. If we can move on to decision number 5 on the next page.

20 This is dated 7 May, there is obviously a gap?

21 A. Yes.

22 Q. There's no entry, as far as I can see, for the 6th. Is

23 there an explanation for that?

24 A. Yes, I think I was busy out of the office on the 6th,

25 I think on the 6th I went to see Mr Anwar and the family

26 and then from there I then headed up to Kirkcaldy to

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1 meet with DCI Keith Hardie and his deputy, who I think
2 was Stuart Wilson. By that time Keith Hardie had taken
3 over from Pat Campbell as the SIO and I wanted to meet
4 with him and again inform him that I considered the
5 officers' status to be that of witnesses and I had asked
6 him to individually approach each of the officers,
7 notify them that I considered them to be witnesses, and
8 to request statements from them.

9 I also backed that up with an email and told them
10 that I wanted an individual response from each of the
11 officers. So I was basically tied up on the 6th, so
12 that is why I probably am writing this retrospectively,
13 because I was out of office doing things.

14 Q. So out of the office on the 6th, meeting with the
15 family?

16 A. Yes.

17 Q. And was that the first time that you had met with the
18 family?

19 A. Yes, we met in Mr Anwar's former offices at
20 Carlton Place.

21 Q. You have also said you went to Kirkcaldy and met with
22 DCI Hardie?

23 A. Yes.

24 Q. You described him as the SIO. We have also heard him
25 described as the single point of contact?

26 A. Yes.

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1 Q. By that date, 6 May, he had, we understand, become
2 a single point of contact. Can you explain what an SPOC
3 is?

4 A. Yes. So we in PIRC, as I think mentioned by others
5 including Billy Little, we do not have access to police
6 systems. So we don't know what duty that officer is on
7 on a particular day, what shift they are on, whether
8 they're on annual leave, whether they are sick, whether
9 they are on a night shift or anything like that. So we
10 always direct requests for various documentation because
11 if we try and go and get all that stuff ourselves it
12 is -- a lot of stuff is scattered throughout
13 Police Scotland, so STORM material and radios will be at
14 an area control room, for example -- you will have stuff
15 scattered all over Police Scotland.

16 Therefore the easiest way, and it's always been the
17 case, right back since the establishment of PIRC, is
18 that we operate through a single point of contact, so we
19 ask Police Scotland to appoint an officer as a single
20 point of contact and we direct all such requests for
21 whatever to that single point of contact. It is then
22 the single point of contact's job to go and obtain that
23 material because they will have access to police
24 systems, they will know a lot of the people involved,
25 consequently that is the most economic way to go about
26 it, rather than us chasing all over the place trying to

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1 find out what the material is. Single point of contact,
2 and that is the way it happens. And that is the way it
3 operates today. For every investigation they appoint
4 a single point of contact.

5 Q. When you say "they appoint a single point of contact",
6 who is "they"?

7 A. Police Scotland. Sometimes there can be three single
8 points of contact -- I know that sounds a bit
9 contradictory but in some major investigations, so you
10 might have a single point of contact within area control
11 rooms to obtain all that material, you might have one
12 for the general investigation, and you might have one
13 for specialist areas like firearms or for the more
14 sensitive side of the business, that the rest of the
15 police might not have access to.

16 So, as I say, you could have two or three single
17 points of contact. A lot of times Police Scotland will
18 come back to you, and say: look, it's not practical for
19 one person to do all this, can we split it up and we
20 will tell you who to contact within the various business
21 areas. Usually we will agree to that. It's preferable
22 that it all goes through one person but sometimes it is
23 not feasible. But other times -- I think what we have
24 also got to remember is that these officers have, for
25 want of a better expression, their day job to do, so it
26 is quite a heavy responsibility to run around on behalf

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1 of PIRC. And Keith Hardie is also managing their aspect
2 of the major investigation at that point, so ...

3 Q. So for convenience, for questions of economy, ideally
4 one single point of contact?

5 A. Yes.

6 Q. Is that to do all communications between PIRC and
7 Police Scotland?

8 A. Largely, yes.

9 Q. Largely. So if you wish something from the individual
10 officers like a statement, or some sort of account to be
11 given, would that go through the single point of
12 contact?

13 A. Yes. We do not directly -- excuse me, we do not
14 directly approach the police officer, we act through the
15 single point of contact, they transmit the message
16 onwards to the officers.

17 Q. So that is the practice. What if you decide you wanted
18 to go to the officers direct?

19 A. Well, one, as I explained just a short period of time
20 ago, we don't have access to police systems so we don't
21 know whether they are on duty, we do not doorstep
22 officers at their family homes --

23 Q. Would you have access to personal details as to where
24 they live?

25 A. No, we don't. And that is why we've got to go through
26 the SPOC. The SPOC will tell us when the officer is on

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1 duty. And the normal practice is to see them when they
2 are on duty at their place of work. Sometimes we can
3 ask for their shifts to be changed so that --
4 for example, if they are night shift but we want to
5 interview them, they might change their shift to a day
6 shift so that we can interview them during the day. If
7 that is not practicable, there have been some occasions
8 where PIRC staff will come out and do a night shift and
9 go and interview the officer because they are night
10 shift.

11 Q. I wonder if you can think of any situation where,
12 instead of going to the single point of contact or in
13 addition to that, PIRC have ever made a direct approach
14 to the SPF or to a lawyer representing officers?

15 A. No, I can't think so.

16 Q. Can you think of any reason why that couldn't be done,
17 or why it isn't done?

18 A. I think if the officer is a suspect, not a witness, what
19 happens is we notify Professional Standards Department
20 that we consider the officer to be a suspect, and that
21 we want to conduct a suspect interview. That officer
22 can either request that a member of the Scottish
23 Police Federation sit in on the interview to support
24 them or a lawyer is present. That is normal for
25 a suspect interview.

26 Very rarely -- in fact I can't think of any other

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1 time -- do we approach the officer's solicitor because
2 they don't need a solicitor, they are a witness. Let's
3 remember police officers are professional witnesses,
4 they give statements all day every day, they attend
5 court to give evidence, part of their duty is to give
6 an account, so there wouldn't be a need to go to their
7 solicitor. Particularly in this case, they have been
8 told on day one, day two, Police Scotland had been told,
9 the single point of contact had been told, the senior
10 officer has been told we considered them to be witnesses
11 day one, day two, day three, day four, all the way up to
12 day seven, when Keith Hardie started to come back to
13 say: I have now individually approached the officers and
14 told them their status as witnesses.

15 Q. Perhaps we can just look very briefly at a statement we
16 have looked at from Keith Hardie, PS00667. This is
17 a self-penned statement from DCI Hardie completed on
18 27 May 2015 but in relation to events from the week
19 after --

20 A. Yes.

21 Q. -- Mr Bayoh's death. We will look at it in a moment but
22 in summary on Thursday 7 May he says in the statement
23 that he:

24 "... received a request from PIRC to make contact
25 with all officers who were known to be involved in the
26 arrest of Mr Bayoh and establish whether they were

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- 1 willing to provide an operational statement."
- 2 Was that actually at your request on the 6th?
- 3 A. Yes, so I -- myself and Mr Little physically met with
4 him on the 6th. I then backed that up with an email on
5 the 7th, requesting they individually approach the
6 officers.
- 7 Q. That was to DCI Hardie?
- 8 A. Yes.
- 9 Q. We will get this in a second, PS00667. No? There's a
10 slight glitch there. But just to summarise, on Thursday
11 7th May there is a series of paragraphs within this
12 statement we have looked at with DCI Hardie in evidence
13 from 1.35 in the afternoon that he and DCI Stuart Wilson
14 spoke to Craig Walker, then Daniel Gibson, then
15 James McDonough, then Kayleigh Good, then Alan Smith,
16 then Ashley Tomlinson, advising them that they were
17 witnesses, and asking if they wished to provide
18 a statement. And for those officers the uniform
19 response was they did not wish to provide a statement at
20 this time on the advice of their solicitor.
- 21 A. Yes.
- 22 Q. Then DCI Hardie goes on to explain in this statement at
23 9.20 on Tuesday, 12 May that he and DI Wilson spoke with
24 Temporary Police Sergeant Scott Maxwell, and that he
25 also did not wish to provide a statement at this time on
26 the advice of his solicitor. The statement itself does

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1 not indicate that he was advised that his status was
2 witness but we have heard evidence from DCI Hardie that
3 that was the message that was communicated?

4 A. Yes.

5 Q. And then on Wednesday, 13 May that Hardie and Wilson
6 spoke to PC Paton, who was also advised he was being
7 treated as a witness and PC Paton provided he did not
8 wish to provide a statement on the advice of his
9 solicitor.

10 A. Yes.

11 Q. And then on Monday, 18 May, Hardie and Wilson met with
12 PC Nicole Short. She was advised that she was being
13 treated as a witness, and PC Short provided that she did
14 not wish to provide a statement at this time on the
15 advice of her solicitor.

16 A. Yes.

17 Q. That was an instruction carried out by Hardie, the
18 single point of contact, in relation to all of those
19 officers on your and Billy Little's instruction?

20 A. Yes.

21 Q. Thank you. We were on the policy log, PIRC 04154.
22 Perhaps we can go back to that and look at decision
23 number 5. This entry is on 7 May:

24 "CCTV and digital evidence strategy."

25 So this indicates a decision was taken to implement
26 this type of strategy to identify public and private

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1 CCTV which existed and to capture any material that may
2 have a bearing on the investigation. And also to
3 recover evidence from mobile phones or electronic
4 devices. Am I right in saying at that time that you
5 were aware that an Ashley Wyse, who lived in the area of
6 Hayfield Road, had handed over a mobile phone for the
7 purposes of allowing PIRC to look at Snapchat footage
8 that she had recorded?

9 A. That is correct. Some of this can be slightly
10 retrospective but we have also got to consider does any
11 other member of the public have recorded something and
12 we are unaware of it, have we identified all CCTV that
13 might provide views. We also know that one of the --
14 one of the witnesses that saw Mr Bayoh walking along the
15 road in the lead-up to the incident had recorded footage
16 on their mobile phone. So this is a broad strategy,
17 let's capture everything we can. We have already got
18 some stuff but this is taking cognisance of everything.

19 Q. Would this include -- we have seen footage from
20 a dashcam --

21 A. Yes.

22 Q. -- on a vehicle, would that include that type of digital
23 material that you can gather?

24 A. Yes, I think that was Harry Kolberg and his son.

25 Q. Yes, thank you. Let's move on to the next page,
26 decision number 6. This is from 7 May also. It talks

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1 about a major incident room:

2 "Establish a major incident room within PIRC
3 utilising the CLUE 2 operation system, and appropriately
4 staffed, to manage all aspects of the investigation."

5 We have heard from Billy Little that he did that --
6 set that up on the 4th and he had three members of
7 staff --

8 A. Yes.

9 Q. -- manning that with Ian McIntyre, I think involved?

10 A. Yes, I think what I am doing there is formally recording
11 it into the policy log. Again, it's a bit
12 retrospective.

13 Q. The next page is also completed on 7 May. And this
14 relates to family liaison:

15 "Two family liaison officers ... were appointed to
16 provide information and support to the family of the
17 deceased.

18 "FLO strategy and recording of contacts will be
19 documented in the separate FLO strategy logs."

20 And the FLOs were Alistair Lewis and John Clerkin
21 and they had been appointed. And I think you have just
22 said a moment ago you thought they were appointed on the
23 4th?

24 A. Yes.

25 Q. So this is a retrospective recording of that?

26 A. Yes, but I think it is important to record it in the

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1 policy log, and to a certain extent you are playing
2 catch up a wee bit in the very early stages of
3 investigations, so sometimes you think: oh, I have not
4 documented that, I will now place an entry. Because
5 I know there is -- there is FLOs appointed and there is
6 a FLO strategy, so in the early stages some of it is
7 retrospective because you are playing catch up.

8 Q. In relation to the last couple of items, the CCTV,
9 digital evidence strategy, the family liaison strategy,
10 we don't see copies of these strategies in this section
11 of the log. We have heard part of the evidence of
12 Mr Lewis, who was one of the FLOs, and my understanding
13 of his evidence is that there was not a written FLO
14 strategy.

15 A. He should record that in the FLO log. The policy is
16 high level, it's appoint FLOs. Potentially -- what the
17 FLO does is answer to the SIO but he should be recording
18 everything within the FLO log. Now, the FLO strategy
19 has got to be flexible and adapt to the situation of
20 every family. And it's difficult to take cognisance of
21 all the factors, that is why it gets recorded in the FLO
22 log, because as you progress onwards you can establish
23 like family dynamics, all these various factors and that
24 should be recorded in the FLO log. Not in the
25 management policy file.

26 Q. So in the earlier example where we looked at the

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- 1 situation where the forensic strategy was copied and
2 inserted into the log, is there a reason why a FLO
3 strategy was not copied in and inserted into the log?
- 4 A. I can't think of one now. But I am assuming, and we
5 know what everybody says about assumptions, I expected
6 that Mr Lewis and John Clerkin would record that within
7 the FLO log.
- 8 Q. Who did you expect to write the family liaison strategy?
- 9 A. Normally it's the FLO themselves. They speak to the SIO
10 and the Deputy SIO, but usually the FLO creates the
11 strategy. To manage the family -- as I said, every
12 incident, every death is different, and therefore a lot
13 of the information that you are getting about the family
14 is coming from the family to the FLOs and that is why it
15 is important that they are managing that aspect of it.
- 16 If they become aware of matters that they think
17 should be brought to the lead investigator, the deputy,
18 they would come and tell you. There's got to be
19 a certain extent -- FLOs are highly trained. PIRC FLOs
20 do the same training as Police Scotland FLOs, so you
21 expect them to manage that quite professionally. And
22 Alistair Lewis is a highly experienced FLO as was
23 John Clerkin, so you expect them to manage that.
- 24 Q. In relation to the earlier forensic strategy that we
25 looked at, who had prepared that?
- 26 A. I think I typed that up.

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1 Q. You typed that. So if you had been typing up the family
2 liaison strategy would we have seen a copy inside the
3 log?

4 A. Probably. If I typed up a document -- and you will see
5 it later on as we come across other things, if I typed
6 something up rather than then having to rewrite it into
7 the policy or management file, my habit was simply to
8 attach that document and say "see attached", so ...

9 Q. Was there any expectation on your part -- having entered
10 in the log that there is to be a family liaison
11 strategy, was there any expectation on your part that
12 Lewis or Clerkin would send a copy to you for insertion
13 into the log?

14 A. No, because that would be recorded in the FLO log. The
15 FLO logs are quite large documents, in fact in relation
16 to the death of Mr Bayoh I think there was three FLO
17 logs, which are multiple pages, so the practicality of
18 actually inserting that into this book, it is just not
19 practical.

20 Q. Then if we can look at the reason, so if we move that
21 page up:

22 "Provide appropriate support to the family of the
23 deceased, acting as a single point of contact for the
24 receipt and provision of information to/from PIRC."

25 A. Yes.

26 Q. So the idea was that Lewis and Clerkin would be a single

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- 1 point of contact --
- 2 A. Yes.
- 3 Q. -- for the family. All the information would flow
4 through either of those investigators?
- 5 A. Yes.
- 6 Q. We have also heard that they remain part of the
7 investigation team?
- 8 A. Yes.
- 9 Q. They are not simply there to provide support or
10 emotional wellbeing assistance to the family?
- 11 A. No. It's quite a large burden being a FLO but they are
12 primarily investigators first and foremost. They have
13 a role in supporting the family and transmitting
14 information to the family but they also have a role in
15 acquiring information from the family and feeding that
16 into the investigation. That happens in most death
17 investigations, including murder investigations. First
18 and foremost the FLO is an investigator. But they also
19 have a role to play in supporting the family.
- 20 Q. Thank you. Then let's look at decision number 8.
21 I think this is also prepared on 7 May and it refers to
22 productions being seized by PIRC and they have to be
23 entered into a productions register and managed. So
24 again, is this you recording things which are actually
25 already going on?
- 26 A. Yes, I can't remember -- we had obviously taken

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1 possession of certain productions, some productions
2 remained with Police Scotland and we were required to
3 seize them effectively from Police Scotland. But you
4 are also, as you move forward you are seizing additional
5 items. MI stands for major incident production register
6 so you are recording what the item is, when it was
7 seized, where it was seized, who it was seized by, and
8 where it is stored. It's to keep track because
9 otherwise you can quickly lose track, especially in
10 a major investigation where you are gathering hundreds
11 if not thousands of items, it is very important to try
12 and keep track of that, and this is the major incident
13 production register, so it starts at production number 1
14 and runs onwards, sometimes into the -- from the
15 hundreds sometimes into the thousands. But you have got
16 to keep track of that.

17 Q. Do you have an investigator allocated to that role?

18 A. Yes.

19 Q. We can move on to decision --

20 LORD BRACADALE: If I could interrupt, just before you do
21 that could I take you back to the previous decision, the
22 one on the family liaison officers. You just explained
23 a few moments ago that the FLO was first and foremost
24 an investigator, but also had a function to support the
25 family.

26 A. Yes, my Lord.

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1 LORD BRACADALE: In your experience do these two functions
2 ever give rise to a degree of tension?

3 A. They can do. I have experienced it. Not only within
4 this one, I have run murder enquiries where the victims
5 were figures involved in organised crime. Organised
6 crime families, they are not particularly trusting of
7 the police to put it politely. Consequently there can
8 be a degree of tension between the family liaison
9 officers and the family of the deceased. But they have
10 a job to do because it's important that we acquire
11 information about the deceased, about sometimes family
12 dynamics, provide them with information, and
13 particularly where in a murder investigation if you
14 reach a successful conclusion and arrest people, you
15 will wish to inform the family of that before it hits
16 the media.

17 So, as I say, primarily they are investigators,
18 sometimes there can be a bit of conflict there, I have
19 experienced it in murder investigations I have ran.
20 Usually things can be calmed through the FLOs being
21 sensitive in how they approach the family and try and
22 build bridges or remove barriers.

23 I hope that answers your question, my Lord.

24 LORD BRACADALE: Thank you.

25 MS GRAHAME: We have heard some evidence from -- just
26 continuing with this family liaison for a moment, we

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- 1 have heard some evidence about the role of the
2 senior investigator --
- 3 A. Yes.
- 4 Q. -- in connection family liaison officers. What were
5 your responsibilities in relation to liaising or working
6 with family liaison?
- 7 A. Usually in any investigation where there is a death my
8 preference as a lead investigator was always to meet the
9 family at the start, just to introduce myself as the
10 person in charge of the investigation. The FLO would
11 thereafter take over that sort of liaison function.
12 That was my individual preference. I think it is
13 Billy Little's preference as well, I think he
14 potentially said so. And it's more as courtesy to
15 introduce yourself: I'm the lead investigator,
16 particularly when it comes to PIRC because not
17 everybody -- there is still quite a lot of members of
18 the public don't understand who PIRC are and our role,
19 so you want to make that introduction more from
20 a familiarity perspective but then the FLOs take that
21 forward.
- 22 Q. Can we move on, please, to decision number 9. This
23 again is entered into the log on 7 May but it is headed
24 up, "Post mortem examination". We have heard evidence
25 that this took place on 4 May.
- 26 A. Yes.

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1 Q. And that Billy Little was present at that examination.
2 It says it was undertaken at Edinburgh City Mortuary at
3 13.00 hours on Monday, 4 May. We have heard there was
4 a Quaser examination roughly between 12 o'clock?

5 A. Yes. If I may, ma'am, I think this is more me putting
6 a narrative entry rather than a decision entry.

7 Q. You mention the pathologist who is there from PIRC. You
8 mention Police Scotland, DC Peter Grady and also in
9 attendance a number of people there. Peter Gilzean,
10 Ricky Casey, Billy Little, Stuart Taylor, Keith Hardie
11 Bernie Ablett and SPA Derek Carroll, who was
12 a photographer?

13 A. Yes.

14 MS GRAHAME: I am conscious we often have a break for the
15 stenographer now. Would that be an appropriate time?

16 LORD BRACADALE: Yes. We will have a 15-minute break at
17 this point.

18 (3.01 pm)

19 (A short break)

20 (3.22 pm)

21 LORD BRACADALE: Ms Grahame.

22 MS GRAHAME: Thank you. We were looking at decision
23 number 9, and this was a narrative prepared on 7 May and
24 it relates to the post mortem examination. Decision
25 number 9. It's page 609861 according to the log. You
26 are narrating there that there has been a post mortem.

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- 1 We have heard evidence that was on 4 May.
- 2 A. That is right.
- 3 Q. So you are preparing this around three days later. Was
4 this prepared after a discussion with Mr Little, because
5 we have heard he attend the post mortem?
- 6 A. Its would have been. And of course you want to record
7 that the cause of death is unascertained pending further
8 investigation, as there will be further investigation
9 thereafter. So Billy Little went to the post mortem, he
10 would have informed me, I would have recorded it in here
11 so there is a record within the policy file of the
12 post mortem.
- 13 Q. So there is something recording that there has been
14 a post mortem and what the preliminary cause of death is
15 at that stage?
- 16 A. Yes.
- 17 Q. We have heard evidence from Mr Little he prepared a note
18 regarding the post mortem, who was in attendance,
19 matters of that sort. Did you have sight of that note?
20 I can let you see it. It's PIRC 04148.
- 21 A. To be honest I can't remember at this stage
22 whether I had sight of it or not.
- 23 Q. We won't go into that in detail. I want to ask you
24 about the people who were in attendance. You may have
25 seen me ask Mr Little about this, if you have been
26 observing any of his evidence. But there are three

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1 police officers in attendance at the post mortem:
2 DC Peter Gilzean, DCI Keith Hardie, and
3 a DC Peter Grady.

4 A. Yes.

5 Q. We have heard evidence that the Crown have instructed
6 PIRC to investigate the incident at Hayfield Road, and
7 effectively the cause of death of Mr Bayoh.

8 A. Yes.

9 Q. PIRC are attending the post mortem, we have heard that
10 that is arranged under instruction of the Crown?

11 A. Yes.

12 Q. But the cause of death is something that is within the
13 term of reference of PIRC?

14 A. Yes.

15 Q. We see that three police officers are present at the
16 post mortem.

17 A. Yes.

18 Q. We asked Mr Little about that, and I would like to ask
19 you, although you were noting this on 7 May, do you have
20 any views on police officers attending part of what is
21 supposed to be an independent PIRC investigation?

22 A. I think what we have got to remember in this case, and
23 it's happened in other cases, is that the police are
24 part of the investigation. We have the investigation of
25 the death but at that stage, at the time of post mortem,
26 the police were investigating the incident in

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1 Arran Crescent outside the deceased's home, where he had
2 a violent confrontation with his friend, Mr Saeed. So
3 potentially he may have picked up injuries at that.

4 Now, I am presuming that is potentially why the
5 police were at this post mortem. I have seen it before
6 in other post mortems where the police -- as I described
7 the fatal shooting in the hotel in Glasgow where the
8 police have got part of the actions, because the
9 deceased had injured himself while assaulting people in
10 the lead up to it, so part of those injuries are
11 pertinent to the police investigation, the majority are
12 pertinent to the PIRC investigation. It is not usual
13 but it does occur.

14 Q. You think that could be an explanation why DC Grady,
15 DC Gilzean and DCI Hardie were present at the
16 post mortem?

17 A. Potentially but I don't know what was in their minds or
18 the minds of Police Scotland.

19 Q. In a situation where PIRC are leading the investigation
20 into the death, would you, if you had been attending,
21 expect to ask why the police are there?

22 A. I would want to know why they are there. Because ...
23 well, why are they there? You know, what role do they
24 have now that the death investigation has passed to
25 PIRC? As I have said, it's rare but it does occur where
26 there has been incidents in the lead up to the death

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1 that the police have got and therefore some injuries
2 might have been picked up during those incidents that
3 the police will need to be aware of. Now, there is
4 nothing to stop PIRC passing that information back to
5 the police. Particularly because once the post mortem
6 report itself is issued Crown can give permission for
7 that to be shared with the police, and that has
8 occurred.

9 Q. So the Crown can give permission for that to be shared
10 with the police?

11 A. Yes.

12 Q. Do you think -- are you saying that PIRC can also take
13 a decision to issue that information to the police?

14 A. Not without Crown permission.

15 Q. You have said you would want to know why police officers
16 were present. How would you have gone about finding out
17 why the police officers were present?

18 A. Simply ask them.

19 Q. I think we have heard evidence from Mr Little that he
20 didn't ask. In terms of the independence of
21 the investigation and the Article 2 considerations we
22 have been talking about, do you have concerns about
23 a post mortem in the circumstances you were in at that
24 time, or PIRC were in at that time, where police
25 officers are present and PIRC don't know why?

26 A. Yes, I would have concern because I would want to know

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1 why they were there. As I previously said, I am making
2 an assumption, and we know the challenge with
3 assumptions, but I would want to know why they are
4 there, so I would probably just ask them: why are you
5 here?

6 Q. If you weren't satisfied with the answer or the
7 explanation given, what steps would you have taken?

8 A. You could tell them: I don't think it is appropriate for
9 you to be here. Particularly in high profile ones you
10 will you have a Fiscal there, as was the case here,
11 Bernie Ablett was there. So you can turn to the Fiscal
12 and say: I don't think this is appropriate.

13 Q. Would you have felt comfortable raising issues like that
14 prior to the post mortem?

15 A. If I see issues I raise them.

16 Q. Thank you. Mr Little gave evidence that he wouldn't
17 normally attend a post mortem. He had enough to do as
18 lead investigator in a big investigation, so he would
19 normally send someone else --

20 A. Yes.

21 Q. -- to attend. But he gave evidence that he had been
22 advised by Mr Ferguson that there was blood in the ears
23 of Mr Bayoh.

24 A. Yes.

25 Q. To put that in context, Mr Ferguson had been sent to --
26 tasked with going to Victoria Hospital in Kirkcaldy, and

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- 1 then he was involved in moving the body to the mortuary.
- 2 A. Yes.
- 3 Q. And he was also present at the post mortem. Because of
- 4 that, as I understand Mr Little's evidence, he had
- 5 concerns that the cause of death may have been
- 6 blunt-force trauma to the head.
- 7 A. Yes.
- 8 Q. There was some information available to Mr Little that
- 9 batons had been used at the scene.
- 10 A. Yes.
- 11 Q. So he went to the post mortem for that reason, because
- 12 he wanted to know the cause of death as soon as
- 13 possible. I think in summary the potential was that
- 14 this -- the outcome of the post mortem, if there had
- 15 been blunt-force trauma to the head, could have
- 16 potentially changed the status of the officers or
- 17 officer -- an officer who had used a baton?
- 18 A. I am not sure whether it would have immediately changed
- 19 the status of the officers because you had -- as I said
- 20 earlier, police officers are allowed to use force up to
- 21 and including lethal force. You would want additional
- 22 information to understand what happened, why it
- 23 happened, and that then may change the status of the
- 24 officers.
- 25 Q. There's no reference in the decision number 9 in the
- 26 log, no mention at all there of the issue regarding

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1 blunt-force trauma. I am interested in why there is no
2 reference to that. You do mention cause of death at the
3 bottom of that page --

4 A. Yes.

5 Q. -- being unascertained and further tests are to be
6 undertaken. I am interested in why there is no mention
7 of this blunt-force trauma issue?

8 A. I think because by that stage we knew from the findings
9 of the -- the initial findings of the pathologist that
10 blunt-force trauma to the head had not caused the death.
11 So that is why I wouldn't reference it.

12 Q. You knew that how?

13 A. Through feedback from Billy Little. Obviously he was at
14 the post mortem, he spoke to Dr Shearer, Dr Shearer
15 would inform him: look, at present I cannot establish
16 a cause of death therefore there needs to be additional
17 examination but certainly blunt-force trauma to the head
18 did not cause the death.

19 Q. I asked Mr Little about whether he had spoken to the
20 pathologist about any other potential causes of death,
21 to get a preliminary view from her, if that was
22 possible, available. I asked him about the possibility
23 of positional or mechanical asphyxiation contributing to
24 the death, he hadn't spoken to the pathologist about
25 that he said. Is that something you would have
26 discussed with the pathologist?

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1 A. I think really we present what is known up to that stage
2 to the pathologist. We then await what the
3 pathologist's findings are. What we don't want to do is
4 colour the judgment of the pathologist because they are
5 independent. If you are saying: well, I think
6 positional asphyxia, you are putting an idea into the
7 pathologist's mind. No, let them do their job, provide
8 their findings.

9 Now, there are some indicators where you may have
10 positional asphyxia petechial haemorrhages in the eyes,
11 which could be indicative of positional asphyxia. It is
12 not necessarily the case because there are other reasons
13 for it, so CPR -- and we know CPR occurred -- can
14 sometimes produce small petechial haemorrhages. So it
15 is very much let the pathologist do their job,
16 communicate to us their findings but let's not pre-judge
17 matters.

18 Q. Are you suggesting that asking about blunt-force trauma
19 to the head would be putting ideas into the
20 pathologist's head?

21 A. Certainly there was injuries to Mr Bayoh's head. We
22 know now and we knew then that batons had been recovered
23 at the scene and that officers had used batons on
24 Mr Bayoh, so that was a matter of fact and you are
25 presenting that fact to the pathologist.

26 Q. So you don't consider that to be influential or

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- 1 potentially influential in any way?
- 2 A. No, that is a matter of fact whereas the other ones are
3 hypothesis: could it be this, could it be that? Well,
4 let the pathologist do their job, report their findings.
5 If those findings are inconclusive, which they were
6 here, the pathologist will then undertake in conjunction
7 with experts additional enquiries: toxicology,
8 neurological sample etc.
- 9 Q. So if you are trying to avoid influencing the
10 pathologist in any way you don't mention other potential
11 causes of death?
- 12 A. No.
- 13 Q. You do ask about blunt-force trauma. The pathologist
14 gives you a preliminary view. Are you thinking about
15 any other possible causes of death at that stage or just
16 keeping a completely open mind?
- 17 A. You have to keep an open mind.
- 18 Q. Why was there so much interest in blunt-force trauma to
19 the head if it wasn't going to be a categoric alteration
20 to the status of the officers; why not wait until you
21 get the final post mortem?
- 22 A. What you do is you present the facts as known at that
23 time to the pathologist, to inform them. But you don't
24 stray into the realm of hypothesis. You present the
25 facts, because what happened -- I think the pathologist
26 needs an understanding of what happened or potentially

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1 what happened, because they can then examine during the
2 post mortem well, how did these injuries arise. So is
3 there a potential explanation for how those injuries
4 arose, which is why you present the facts to them as
5 understood at the time.

6 Q. Why the interest, do you think, in blunt-force trauma to
7 the head if it wasn't going to alter the status of the
8 officers; why not simply wait until you get the final
9 report? Was there a reason you can think of why there
10 was an immediacy or an urgency to finding out about
11 the blunt-force trauma to the head?

12 A. I think it's -- as you have said, John Ferguson flagged
13 up there was blood in the ears to Billy Little,
14 Billy Little then -- he knew batons had been used, he
15 knew Mr Bayoh had been struck with batons, had he been
16 struck to the head with a baton, now we subsequently
17 find out that that did occur, but I don't think we knew
18 exactly. So we are saying he has been batoned, we don't
19 know whether he has been batoned to the head because the
20 officers are not telling us until 32 days later, but we
21 knew batons had been used. That is probably why Billy
22 has specifically wanted that knowledge. So -- because
23 having been struck to the head, a strike to the head by
24 a baton can be a fatal blow. And of course we don't
25 have the nine officers' accounts of exactly what
26 happened at that scene, we were still left trying to

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1 piece things together from witness testimony, many
2 witnesses had only seen partial matters, trying to
3 figure it out from STORM and Airwaves and all the other
4 things. So I'm presuming Billy just wanted a quick
5 answer as to is that a potential.

6 Q. Did that help -- would that help the investigation
7 knowing blunt-force trauma to the head had not caused
8 death? Would that allow you to take things forward?

9 A. Yes, it rules out the fact that the blow from the baton
10 to the head caused death because we are then left with:
11 okay, so the batons didn't kill him. What was the cause
12 of death? What caused him to die? And very much the
13 initial one was unascertained pending toxicology and
14 neurology, and that takes quite a considerable period of
15 time because the samples get sent off to the
16 universities where they get examined and then they come
17 back and get given to the pathologist who writes up the
18 final post mortem report.

19 Q. Would it have been helpful to have blunt-force trauma to
20 the head being excluded noted in the policy log? You
21 have noted here other matters to do with the
22 post mortem.

23 A. It might have been but since we knew that it wasn't
24 a cause of death, I didn't record it. Now, we can argue
25 the pros and cons as to whether I should have put that
26 down, but the fact is I didn't.

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- 1 Q. I am wondering if it can be of as much assistance to
2 know what wasn't the cause as what was the cause?
- 3 A. Yes, certainly sometimes.
- 4 Q. In terms of looking at other decisions which have to be
5 made or explored, could knowing what it wasn't help
6 narrow down and focus the decisions that you are making
7 in the investigation?
- 8 A. It can do. As I said, this was a highly unusual case
9 insofar as it's the only investigation we have had in
10 the last 11 years where police officers didn't provide
11 accounts of what occurred until 32 days later.
- 12 Q. So looking back now in relation to -- obviously with
13 hindsight, looking back later to the entry in decision
14 number 9 in your log, do you think it may have assisted
15 to have reference to this issue regarding blunt-force
16 trauma to the head added in here?
- 17 A. Potentially yes. The fact is we did not. Now, I have
18 not recorded it in here. Maybe I should have. But
19 I didn't.
- 20 Q. Can I ask you about another matter. We have heard
21 evidence from Billy Little that he authorised disclosure
22 of that information regarding blunt-force trauma to the
23 head was not the cause of death to be disclosed to
24 the police officers who had attended Hayfield Road.
25 There is no mention of that in the policy file regarding
26 the post mortem either.

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1 A. Yes. Now, I don't think I became aware until much later
2 that it was Billy's decision because I knew police
3 officers had been at the post mortem, I thought it had
4 been them that had transmitted that information.

5 I didn't realise until much later it was actually
6 Billy's decision. So at that time, and at the time
7 that I created this, I wasn't aware of it, no.

8 Q. Mr Little has described this -- we took his evidence in
9 some detail on this and he described it as
10 an unprecedented decision that he had taken.

11 A. Yes.

12 Q. He had never taken a decision like that before, he has
13 never taken a decision like that since. As a decision
14 and as an unprecedented decision, do you think that is
15 something that should have been noted in the management
16 policy file?

17 A. Yes. But I wasn't aware of it at the time.

18 Q. When did you become aware that this had been a decision
19 by Mr Little?

20 A. Not for a considerable period afterwards. I was aware
21 of it before the officers gave their statements, which
22 was on 4 June. But I can't remember exactly when
23 I became aware it throughout those 32 days.

24 Q. Who was it that told you about this decision?

25 A. I think it would be Billy himself.

26 Q. Looking back now, do you think this is a decision that

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1 you should have been be told about to insert it into the
2 policy log?

3 A. Probably.

4 Q. Had you been told about it would you have entered into
5 the log?

6 A. Yes.

7 Q. And as part of that log entry would have noted down the
8 explanation for why that decision was made in the reason
9 section?

10 A. Yes.

11 Q. The other thing I would like to ask you about in
12 relation to this page --

13 LORD BRACADALE: Just before you do that Ms Grahame, you
14 said a moment ago that you thought that it was the
15 police officers who were at the post mortem that had
16 given that information?

17 A. Yes, my Lord.

18 LORD BRACADALE: Now, given the evidence that you gave
19 earlier this afternoon about the propriety of the police
20 officers being at the post mortem at all, did that
21 impression that you formed about they having
22 communicated the information give you cause for concern?

23 A. Once I became aware of it, but at the point
24 that I became aware of it, it was Mr Little or Billy who
25 had communicated that to me to say it was him that
26 passed that -- that information. So it was

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1 an assumption on my part that it was the police officers
2 but it was actually Billy and I found that out I can't
3 remember when my Lord, but some time before 4 June.

4 LORD BRACADALE: But when you were operating under that
5 assumption, did the existence of that assumption itself
6 not cause you some concern?

7 A. I think as Mr Little explained, it was -- his rationale
8 for doing so was to try and unblock the logjam, I think
9 is how he described it, of the officers refusing to
10 provide statements. Chief Superintendent McEwan
11 transmitted the information because he thought it was
12 from a welfare perspective of the officers to let them
13 know because, as I learned, one of the officers was very
14 upset, thinking that the blows to the head could have
15 caused the death of Mr Bayoh. So ...

16 LORD BRACADALE: I am more interested at this stage in your
17 own state of mind --

18 A. Yes.

19 LORD BRACADALE: -- Mr McSporran. Because if you formed the
20 impression, as you say you did, that this information
21 had been given to the attending officers by police
22 officers who were at the post mortem, whose attendance
23 at the post mortem you had concerns about, then would
24 that itself not be something that would really exercise
25 you?

26 A. I think it would. Now, I can't remember my exact

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1 mindset back there, my Lord. I think the challenge was
2 it had occurred, I didn't know exactly who had done
3 that. It was an assumption on my part that because the
4 police officers were there, they would transmit that
5 information into Police Scotland, and then Mr McEwan
6 would contact the officers and notify them. I did not
7 immediately know that it was Mr Little that had passed
8 that information to break the logjam. But I did become
9 aware at some point.

10 LORD BRACADALE: Thank you.

11 Ms Grahame.

12 MS GRAHAME: Looking back now, if you were in that situation
13 today where you find out that officers have been in
14 attendance at a post mortem, where there is
15 an expectation PIRC will carry out an independent
16 investigation, but officers are there, you are not sure
17 why they are there, and then later you find out that
18 information has been shared with the nine attending
19 officers, where no statements had been given, looking
20 back at that situation now, what would you do?

21 A. I understand the optics surrounding that because it
22 looks as though we are providing them with something to
23 try and assuage them, for want of a better expression.
24 And I don't necessarily think that that is proper.
25 I understand Billy's rationale because we had at the --
26 in the very early days, a complete lack of understanding

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1 as to what occurred, and it's the only time so far that
2 police officers have refused to provide statements.

3 I understand his rationale. He was trying to break the
4 logjam. This is the only occasion when it has occurred
5 because usually we will not pass that information
6 without Crown's approval.

7 Q. So looking back now, in a situation such as this, if it
8 happened now where you think this isn't proper, perhaps
9 you have concerns under Article 2, what steps could you
10 take as a lead investigator to address those concerns?

11 A. Well, first of all, if there were police officers in
12 attendance, and there have been cases, I would certainly
13 be saying: you cannot pass this information on to any of
14 the principal officers involved, that would be highly
15 inappropriate.

16 Q. Is that something you would do at the time?

17 A. Yes.

18 Q. Or shortly after the post mortem?

19 A. I would be saying to them shortly after the
20 post mortem: you cannot pass this -- because you need to
21 know the result of the post mortem, you cannot pass this
22 onwards. Equally it is a decision for Crown what gets
23 released. It is not for me or any investigator to
24 decide what to pass on to the officers involved.

25 As I say, I understand the rationale why Mr Little
26 did it. It's the only time it has occurred. If it were

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- 1 to occur again, I don't think we would.
- 2 Q. So would you -- you would give an immediate warning or
3 order to the officers that they shouldn't pass any
4 information on. Would you then go to the Crown to seek
5 permission if there was going to be any disclosure of
6 the preliminary post mortem results?
- 7 A. I think what we need is a request from Police Scotland.
8 Not just those that are in attendance, a request from
9 Police Scotland to say: can we tell the officers the
10 provisional results? We would then go to Crown and
11 say: this request has come in from Police Scotland, what
12 do you want to do? And if Crown say no, then it doesn't
13 get passed.
- 14 Q. So you would wait until you got the authority of
15 the Crown?
- 16 A. Yes.
- 17 Q. Thank you. Continuing to look at decision number 9,
18 there is also a reference here to:
- 19 "... non-engagement by the family at that time who
20 declined to attend the PM."
- 21 So this is -- just to recap, you are making this
22 entry on 7 May, regarding the post mortem that has been
23 carried out on the 4th?
- 24 A. Yes.
- 25 Q. Where did that information come from?
- 26 A. That would have come from Mr Little, and others.

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1 Q. So you weren't involved in any way determining whether
2 there had been engagement or willingness to engage to
3 any extent with the family?

4 A. No, because I didn't return to duty until the 5th by
5 which time the post mortem had already occurred.

6 Q. Thank you. Can we move on to page 10, please. Sorry,
7 decision number 10. You are then talking about
8 house-to-house enquiries and the work that is being done
9 in relation to that. Police Scotland had initiated the
10 house-to-house strategy, but then that had been taken
11 over by PIRC --

12 A. Yes.

13 Q. -- as the terms of reference from the Crown expanded --

14 A. Yes.

15 Q. -- to include all the events?

16 A. Yes.

17 Q. We spoke to Mr Little about resourcing at this time,
18 and I asked him about when the terms of reference were
19 expanded, to what extent did your resources expand. Do
20 you have a recollection of the resources expanding at
21 this time?

22 A. The resources -- so the investigative resources did not
23 expand but we requested assistance from the complaint
24 handling review side of the business, and that was to
25 complete the house-to-house. Because if you are
26 conducting house-to-house enquiries, you are recording

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1 everybody that lives in the house and whether they have
2 potentially seen anything. If they have seen anything
3 then you are taking a statement, that is why there are
4 two of you there. So that is why we wanted those
5 resources to complete the house-to-house because we had
6 taken it over on the 5th, Police Scotland had had two
7 days of doing that. We were -- we had done part of it,
8 which was the incident scene at Hayfield Road. They had
9 not completed their house-to-house enquiries so we were
10 then taking over, that is why we wanted additional
11 resources from complaint handling reviews to allow us to
12 do that and complete it.

13 Q. You have entered this entry into the log on 7 May,
14 Mr Little was unable to remember when he obtained those
15 additional resources from the case handling staff. Was
16 it round about 7 May that you obtained those additional
17 resources?

18 A. Yes, I would think so, because I think as we said
19 earlier it was later in the week, so Thursday would be
20 the 7th or Friday would be the 8th but it was certainly
21 before the weekend.

22 Q. Then decision number 11 is narrative. Where you note on
23 5 May there was a Crown Office direction that all
24 aspects of the investigation including preceding linked
25 incidents would now be investigated by PIRC.

26 So this is where you record the increase in your

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- 1 instruction?
- 2 A. Yes.
- 3 Q. If we move on to the next page, we can see that letter
4 of instruction has been inserted into the log at this
5 point.
- 6 A. Yes.
- 7 Q. If we look down we can see that it is 5 May, 2015.
8 There are two areas which require investigation, and
9 this is the circumstances leading up to the incident,
10 prior to contact with the police, and also the incident
11 itself with Mr Bayoh. This was official authorisation
12 from Crown Office?
- 13 A. Yes.
- 14 Q. Turn back, please, to decision number 11 we see you have
15 also noted Police Scotland were notified and instructed
16 to cease any investigative actions not already in
17 progress.
- 18 So once you received that letter from the Crown on
19 the 5th, that was then when Police Scotland were
20 notified at that point that they should cease their
21 investigations?
- 22 A. Yes.
- 23 Q. So did Police Scotland's actions continue until the 5th?
- 24 A. Yes.
- 25 Q. Then you have noted there that this was a wholly -- if
26 we can look at the reason:

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1 "Wholly independent investigations into all the
2 circumstances of the death."

3 And that was the point at which PIRC were in charge
4 of everything?

5 A. Yes.

6 Q. Thank you. Then if we can move on to decision number
7 12. Again, this is said to be a narrative, again dated
8 7 May. It says:

9 "From witness statements. On the evening of
10 Saturday 2nd May the deceased and his friends ..."

11 Then you start to give an explanation of the
12 preceding events?

13 A. Yes.

14 Q. So you have received the letter of instruction from the
15 Crown, you are looking at everything and is this
16 information that has been given to you by
17 Police Scotland --

18 A. Yes --

19 Q. -- in regard to their part of the investigation?

20 A. Yes, because they had taken statements from Mr Saeed,
21 Mr MacLeod and his girlfriend -- sorry, Mr Dick and his
22 girlfriend Ms MacLeod, who I think is now his wife, so
23 they were transferring those witness statements to us,
24 and of course we were reading those witness statements,
25 which gave -- because these are the preceding events so
26 they simply transferred that material to us.

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- 1 Q. So they have delivered these statements to you and
2 handed that over, was there a handover also or was it
3 simply PIRC investigators reading the statements?
- 4 A. I think from recollection Police Scotland had been
5 recording matters into the HOLMES incident room but they
6 would also have the statements themselves which would
7 also get typed up, so we would go and physically collect
8 them or collect them in electronic format.
- 9 Q. How quickly are police statements typed up and available
10 to PIRC?
- 11 A. Usually pretty quickly. Now, it's not that day but it
12 can be within a day or two, depending on the
13 circumstances. Sometimes it can take a longer period of
14 time. It can vary depending on the officers' duties,
15 there is no set timeframe for it. But it is better that
16 we get them as soon as possible because it gives us
17 a good picture of what occurred.
- 18 Q. So a statement will be taken by a police officer, and
19 then within a day or two that should be available on the
20 system for PIRC investigators?
- 21 A. As the investigation was transferred to us, all of the
22 investigation was transferred to us, we would say: hand
23 over everything you have got so far.
- 24 Q. So it would be immediately available at that point?
- 25 A. Yes.
- 26 Q. Then if a statement is taken by a PIRC investigator, not

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- 1 a police officer, how quickly are those statements
2 available to PIRC?
- 3 A. They are available immediately because usually what
4 happens is these will be manuscripts, written
5 statements. They come back to the office, they will
6 photocopy it, that will go into the incident room, it
7 can be photocopied a couple of times because myself as
8 SIO or Billy Little might say we want to read that now.
9 But it would also be passed then to our administrative
10 staff who would type that up. And that is to allow it
11 to be entered into our CLUE 2, as it was, operations
12 management system so that it can be searched and the
13 contents can be searched.
- 14 Q. So if an investigator comes back to the PIRC offices,
15 they can photocopy a handwritten statement and hand that
16 straight to you?
- 17 A. Yes.
- 18 Q. Was there an expectation that key witnesses or important
19 witnesses would -- their statements would be handed
20 direct to you?
- 21 A. Yes, and you would also want the investigator to come
22 and brief you, saying: look, I have interviewed this
23 person, I consider this a key piece of information. So
24 not all witness statements get drawn to your attention
25 because they might not be of particular pertinence or
26 high profile to the investigation, but you would

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1 certainly expect if somebody comes across key
2 information that adds value to the investigation, that
3 they flag that up to you and then show you the
4 statement.

5 Q. Would that be done on the day or the next day after they
6 have taken the statement, depending on timing?

7 A. Yes.

8 Q. So obviously if a statement says "I didn't see
9 anything", or "I have nothing to say", that wouldn't
10 necessarily be drawn to your attention?

11 A. Yes.

12 Q. But if there is information from a witness who has seen
13 something, you would want to know about it straightaway?

14 A. Yes.

15 Q. In addition to that, do we see at the bottom of this
16 page -- I don't need to go through the entire narrative
17 with you -- there is reference to:

18 "Several members of the public observed the deceased
19 walking along the road carrying a knife and telephoned
20 police."

21 By the time this is written up, 7 May, had you been
22 able to gather in the STORM records? We have seen STORM
23 records in the Inquiry with information about phone
24 calls made by the public. Was that available to you?

25 A. I think so because that is where we would get the
26 detail. Equally, those were witness that needed to be

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1 seen, either initially by the police or by PIRC. Those
2 are obviously key witnesses, because they described the
3 events in the lead-up to the incident.

4 Q. So by 7 May PIRC are in charge of the entire
5 investigation?

6 A. Yes.

7 Q. The police have delivered statements that they had
8 taken. You have your own investigators carrying out
9 work?

10 A. Yes.

11 Q. And by this stage are you effectively the lead
12 investigator?

13 A. Yes.

14 Q. And you are also providing information in the management
15 policy log?

16 A. Yes, there is a lot of reading to be done during initial
17 stages, it is almost information overload. But you just
18 have to knuckle down and get on with it, read as much as
19 possible. But, as I said earlier, if there is a key bit
20 of information you would expect the investigator to flag
21 that up to you.

22 Q. Can we look at some of the information you may have had
23 available. I would like first of all to look at -- we
24 have heard evidence that there were two eyewitnesses to
25 the events in Hayfield Road.

26 A. Yes.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. And these were key witnesses, Ashley Wyse and
2 Kevin Nelson.
- 3 A. Yes, I think there were other people who saw bits of
4 what happened. I know there was -- I can't remember the
5 witness's name but he saw the struggle on the ground
6 with the police officers.
- 7 Q. We have heard a lot of evidence from passers by, people
8 who made telephone calls in relation to all of the
9 incidents.
- 10 A. So it wasn't just Kevin Nelson and Ashley Wyse, there
11 were other people who witnessed some of the actions. So
12 they were also key witnesses.
- 13 Q. We have heard from people who were perhaps driving by or
14 in the vicinity who maybe saw things; is that the type
15 of people you are thinking about?
- 16 A. Yes, I know there was one witness, I can't remember the
17 witness's name, that saw the struggle on the ground.
- 18 Q. In relation to events in Hayfield Road, we have heard
19 that Ashley Wyse and Kevin Nelson, at that time at
20 least, lived in the vicinity and saw parts of the events
21 as they panned out?
- 22 A. Yes, Kevin Nelson was a ground floor flat. Ashley Wyse
23 was a first floor flat.
- 24 Q. So can I ask you about -- Ashley Wyse gave a statement
25 to officers on 3 May.
- 26 A. Yes.

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1 Q. But we are aware that an investigator from PIRC went to
2 speak to Ashley Wyse on 5 May at 19.20 hours.

3 A. Yes.

4 Q. Can I ask you to look at this statement and say when you
5 saw that. So it's PIRC 00043. You will see that this
6 is a statement, we will see it is taken on 5 May at
7 19.20 by investigator Alex McGuire from Ashley Wyse.
8 This contained information, if we look at page 2,
9 please, look at paragraph 5 which is about halfway down.
10 Here we are:

11 "I saw a black man in the street."

12 Do you see that paragraph there?

13 A. Yes.

14 Q. "I saw a black man in the street. He was nearly down on
15 the ground. He was surrounded by police officers.
16 There was at least six police officers surrounding him.
17 I saw the police officers all over him. What I mean is
18 they were holding him on the ground."

19 Then if we skim down to the final three paragraphs
20 on that page you can see:

21 "When the man was on the ground I heard him
22 screaming. It was a horrible sound."

23 Then:

24 "I think the black man was on his back when lying on
25 the ground. I'm not sure if he was moved whilst on the
26 ground. I saw him lying on the ground. I could see

Transcript of the Sheku Bayoh Inquiry

1 that his wrists were restrained. His hands/arms were in
2 front of him. The police officers were still lying on
3 top of him.

4 "There then seemed to be a pause, a break. The man
5 had been quiet for a little while. In this period the
6 police officers appeared to be speaking with him.
7 I could not hear any of his responses~..."

8 On to the next page:

9 "... but it appeared that the police officers were
10 having a conversation with him.

11 "I think the police officers were lying on top of
12 him a long time. I think it was at least five minutes
13 they were lying on top of him. It may have been about
14 ten minutes. This includes the time when he was being
15 taped to his legs. At all times he was surrounded by
16 Police Officers. There were at least six Police
17 Officers around him at all times."

18 So that is just a glimpse of the type of information
19 that was contained within Ashley Wyse's statement to
20 Investigator McGuire.

21 A. Yes.

22 Q. Now, this was taken at 19.20.

23 A. That would be when it started.

24 Q. That is when it started, so when would you have heard
25 about the information contained within this statement?

26 A. Probably the next day because she was a key witness. As

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1 we know, she had also recorded part of the interaction
2 on her mobile phone. So if they've started that at
3 19.20, I don't know how long it took them to take that
4 statement but then they have got to travel all the way
5 back from Kirkcaldy so they are maybe getting back to
6 the office 10/11 at night and therefore it would be the
7 next day that you would become aware of it. Because we
8 knew she was a key witness.

9 Q. And you would expect Mr McGuire to speak to you about
10 it?

11 A. Yes.

12 Q. Provide you with a copy of that statement?

13 A. Yes.

14 Q. So that would be the following day, which would be
15 6 May?

16 A. Yes, I would think so.

17 Q. Sorry, I missed out a section that I should perhaps have
18 read to you. Let's look at page 2. It is paragraph 6
19 and it's the final sentence. The paragraph begins:

20 "What it looked like to me was ..."

21 Do you see that paragraph?

22 A. Yes.

23 Q. And the last sentence of it is:

24 "It looked like one officer was using a baton to
25 hold the man down. It was on his upper chest towards
26 his throat."

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1 So that is another element of the information that
2 was provided --

3 A. Yes.

4 Q. -- to PIRC. Did you read this statement on the 6th?

5 A. I presume I did.

6 Q. Did you have a conversation with Mr McGuire about it?

7 A. I can't remember, but since this is key information,
8 I would expect it would have been flagged up to me and
9 Mr Little.

10 Q. Let's look at another statement that I understand was
11 taken on 5 May. PIRC 00019. You will see that this was
12 a statement taken from Kevin Nelson?

13 A. Yes.

14 Q. On 5 May 2015 and this one was taken at 1900 hours, so
15 again taken in the early evening?

16 A. Yes.

17 Q. Taken by investigator Kareen Pattenden. Do you see
18 that?

19 A. Yes.

20 Q. It was also in the presence of DSI Brian Dodd. So
21 I understand that is investigator Dodd?

22 A. Yes.

23 Q. So two PIRC investigators have taken this statement.
24 Again, would you have had the opportunity to -- well,
25 let's look at this statement first. If we can look at
26 page 2, first of all, and I am looking towards the

Transcript of the Sheku Bayoh Inquiry

1 bottom of that page, the third paragraph from the
2 bottom. It begins:

3 "When this male ..."

4 Do you see that on the screen?

5 A. Yes.

6 Q. "When this male started walking along the road he
7 appeared to be acting as if the police were not talking
8 to him. He ignored everything that was being said. My
9 view was clear. I would say the male was about 30 yards
10 from me and at this time he did not appear to be
11 carrying anything in either of his hands."

12 A. Yes.

13 Q. I think you said earlier that it was your understanding
14 by the time you wrote your initial narrative that
15 a statement had been obtained which cast doubt on the
16 suggestion that appeared in the briefing note that
17 Mr Bayoh had a knife in his hand and was approaching the
18 officers?

19 A. Yes, and I think that was the statement of DC Connell
20 which was provided on the 4th, because he recovered the
21 knife and we knew that the knife had been recovered.
22 I know we have seen photographs and video of
23 the incident scene, but it was recovered near the
24 roundabout whereas the incident had occurred further
25 along near where the bus stop was. So there was
26 a distance between them.

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1 Q. So you are adding this information from Kevin Nelson to
2 the information you already have about the location of
3 the knife when it was found from DC Connell?

4 A. Yes, and it is helping to build the picture. Because
5 the knife is found here, the incident happens here, here
6 is somebody telling us: I didn't see him with anything
7 in his hands. And of course that changes the narrative
8 because the initial narrative was that he had been
9 carrying a knife when the confrontation occurred.

10 Q. Then there is comment that:

11 "I could hear the male police officers shouting at
12 him. The only words I could make out were 'get down'."

13 Then if we move on to page 3, again I am really just
14 taking a snapshot of some of the entries in the
15 statement. Paragraph 5, please, "The black male ...",
16 there we are:

17 "The black male then stepped forwards towards the
18 female officer and appeared to lunge at her with his
19 left fist towards her face/head area. I believe he
20 struck at her with his closed fists at least three
21 times. I heard her scream out, so I cannot be positive
22 but I believe that at least one of these fists struck
23 her."

24 Then he says:

25 "At this point I decided to go into the front garden
26 to have a closer look. I do not know why I did this

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1 other than being curious. I believe it may have taken
2 me between 10 and 20 seconds to do this. I exited my
3 house via the front door and stood looking over my
4 gate."

5 Then:

6 "In this time the black male now appeared to be face
7 down on the pavement to the left of my house on my side
8 of the street. I could no longer get a clear view of
9 this male. There appeared to be five or six male police
10 officers attempting to restrain him. All of these
11 officers were dressed in uniform. I observed one
12 officer appeared to be kneeling on the ground with the
13 weight of his upper body by use of his arms to the black
14 male's shoulder or back of neck area."

15 Do you see that?

16 A. Yes.

17 Q. "I would not be able to describe this police officer.
18 The other police officers appeared to be laying across
19 the black man's body."

20 So again in terms of this statement and the
21 information that is contained in that, when would this
22 have first been brought to your attention?

23 A. I believe early doors, because I do remember being told:
24 look -- and probably the next day. Because if this
25 starts at 1900, by the time they complete it and travel
26 back through, so here's two key witnesses, Ashley Wyse

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1 and Kevin Nelson. This would have been flagged up to us
2 as quickly as possible, which is probably the next day.
3 Because we are trying to build a picture of what
4 occurred in the absence of the accounts of the officers
5 and, therefore, it's almost like a jigsaw where you are
6 taking as much relevant information as you can and
7 trying to complete the picture.

8 Q. So we've got nothing from the officers?

9 A. No.

10 Q. No basic facts, initial accounts or statements of any
11 description. You've got no use of force forms
12 completed, no use of spray forms completed?

13 A. Yes.

14 Q. And by 6 May you've got two statements from
15 eye witnesses.

16 A. Yes.

17 Q. Containing the information we have looked at and you've
18 got DC Connell's statement indicating that a knife was
19 found at a distance away?

20 A. Yes.

21 MS GRAHAME: I want to move on and ask you some questions
22 about that scenario, but it is quarter past 4. I wonder
23 if that would be an appropriate time?

24 LORD BRACADALE: We will continue with your evidence
25 tomorrow morning at 10 o'clock, Mr McSporran. The
26 Inquiry will adjourn.

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1 (4.15 pm)

2 (The Inquiry adjourned until 10.00 am on Friday,

3 16 February 2024)

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MR JOHN MCSPORRAN (sworn)1

Questions from MS GRAHAME1